

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

EMMANUEL DELA CRUZ
Registration number 13317

DECISION OF THE HEARING TRIBUNAL

October 3, 2022

I. INTRODUCTION

1. The Hearing Tribunal held a hearing into the conduct of Emmanuel Dela Cruz, Registration #13317 (“Mr. Dela Cruz” or the “Investigated Member”). In attendance on behalf of the Hearing Tribunal were Anita McDonald (pharmacist and Chair), Rick Hackman (pharmacist), Pat Matusko (public member), and Dave Rolfe (public member).
2. The hearing took place on June 16, 2022 via video conference. The hearing was held under the terms of Part 4 of the *Health Professions Act*.
3. Also in attendance at the hearing were Aman Costigan and Raymond Chen, representing the Complaints Director; James Krempien, the Complaint's Director for the Alberta College of Pharmacy; Julie Gagnon, independent legal counsel to the Hearing Tribunal; and Brett Code, legal counsel for the Investigated Member. The Investigated Member was not in attendance.

II. ALLEGATIONS

4. The Allegations considered by the Hearing Tribunal are as follows:

IT IS ALLEGED THAT, between February 1, 2017 and November 30, 2018, while Mr. Nadim Khan and Mr. Emmanuel Dela Cruz were registered Alberta pharmacists and the licensees of New Brighton Remedy’s Rx Pharmacy & Travel Clinic (ACP License #3266) (the “Pharmacy”), they:

1. Submitted, or allowed for the submission of, claims to Alberta Blue Cross when they should have known they were not entitled under the Pharmacy’s agreement with Alberta Blue Cross to the fees claimed, the particulars of which include the submission of:
 - a. 1,469 claims worth approximately \$29,380 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order;
 - b. 19 claims worth approximately \$380 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;
 - c. 77 claims worth approximately \$4,120 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy’s agreement with Alberta Blue Cross and Section 2(5) of the Alberta Health Ministerial Order;

- d. five claims worth approximately \$1,460 for Comprehensive Annual Care Plan (“CACP”) Initial Assessments within 365 days of a Standard Medication Management Assessment (“SMMA”) Initial Assessment, in breach of Article 3.1 of the Pharmacy’s agreement with Alberta Blue Cross and Section 2(4) of the Alberta Health Ministerial Order;
2. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:
 - a. 47 pharmacy service assessments where the Pharmacy’s documentation did not contain the rationale for writing the prescription;
 - b. 65 prescriptions that were not provided by the Pharmacy to support the claims to Alberta Blue Cross;
 - c. six pharmacy service assessments where the Pharmacy did not provide the documentation to support the claims to Alberta Blue Cross;
 - d. 10 pharmacy service assessments where the prescription documentation did not include the date the service was performed;
 - e. 11 care plan assessments where the supporting documentation did not indicate that the patient met the required elements for a CACP or SMMA Initial Assessment;
 - f. eight care plan assessments where the CACP or SMMA Initial Assessment was missing the pharmacist’s signature or the updated CACP or SMMA was not re-signed by the pharmacist.

IT IS ALLEGED THAT the conduct of Mr. Dela Cruz in these matters:

- a. Breached his statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy licensee;
- b. Had the potential to undermine the integrity of the profession;
- c. Had the potential to decrease the public’s trust in the profession; and
- d. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and pharmacy licensee.

IT IS ALLEGED THAT the conduct of Mr. Dela Cruz constitutes a breach of the following statutes and standards governing the practice of pharmacy:

- Standards 1 and 18, and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;

- Standards 1 (sub-standards 1.1 and 1.2) and 8 (sub-standards 8.1(a), 8.1(b) and 8.3(a)) of the Standards for the Operation of Licensed Pharmacies;
- Principles 1(1, 12) and 10 (1, 2 ,3) of the Alberta College of Pharmacy's Code of Ethics;
- Sub-Section 12(1) of the Pharmacy and Drug Regulation; and
- Sub-Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*.

All of which may constitute unprofessional conduct under sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under sub-sections 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

5. The matter proceeded by Admission of Unprofessional Conduct and an Agreed Statement of Facts. Through the Admission of Unprofessional Conduct, the Investigated Member admitted to the Allegations set out above.

III. PRELIMINARY MATTERS

6. The hearing for Mr. Emmanuel Dela Cruz proceeded concurrently with the conduct hearing of Mr. Nadim Khan. However, separate decisions have been issued for each investigated member.
7. There were no objections made with regard to the timeliness of service of the Notice of Hearing.
8. The parties confirmed there were no objections to the composition of the Hearing Tribunal or with regard to the jurisdiction of the Hearing Tribunal to hear this matter.
9. Pursuant to section 78 of the *Health Professions Act*, the hearing was open to the public. No applications were made to have the hearing held in private.

IV. EVIDENCE

10. An Agreed Exhibit Book, which included the Notice of Hearing, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, was entered as Exhibit 1 by agreement of the parties.
11. The following is the brief chronology as presented in the Agreed Statements of Facts.

Brief Chronology

12. At all relevant times, Mr. Dela Cruz was a registered Alberta pharmacist and the licensee of the Pharmacy. Mr. Dela Cruz was first registered as a clinical pharmacist with the Alberta College of Pharmacy on August 30, 2016.
13. Mr. Dela Cruz was the licensee of the Pharmacy from February 2, 2017 to June 20, 2018.
14. Mr. Khan was the licensee of the Pharmacy from June 21, 2018 to October 21, 2018.
15. On December 20, 2019, the Complaints Director received a letter from a team manager with Claims Audit and Investigation Services for Alberta Blue Cross (“ABC”). The letter indicated that ABC had received claims submitted by the Pharmacy, and other pharmacies, and had determined there were claims submitted to ABC that may represent a breach of the Alberta College of Pharmacy’s Code of Ethics, Standards of Practice for Pharmacists and Pharmacy Technicians and Standards for the Operation of Licensed Pharmacies.
16. On December 20, 2019, the Complaints Director also received a letter from an analyst with Claims Audit and Investigation Services for ABC. The letter provided a summary of the findings from ABC’s review of the claims made by the Pharmacy during the period of February 1, 2017 to November 30, 2018 (the “Audit Period”). The letter indicated that the Pharmacy had submitted claims to ABC where the pharmacy service provided was ineligible or where the documentation was missing or invalid. This letter included details of the ineligible claims and missing or invalid documentation.
17. The Complaints Director treated the information from ABC as a complaint and commenced an investigation. On December 20, 2019, he appointed himself, Ms. Jennifer Mosher and Mr. Monty Stanowich as investigators.
18. As part of the investigation, Ms. Mosher received copies of the following from ABC: (A) Pharmacy services Ministerial Orders covering the Audit Period; (B) Pharmacy Services compensation guides that are available on ABC’s website; (C) the 2014 and 2018 ABC Pharmaceutical Services Provider Agreements covering the Audit Period; and (D) Pharmacy Benefacts, a Bulletin published by ABC referring to trial prescriptions and how to claim them.
19. On October 13 2020, Ms. Mosher met with Mr. Dela Cruz and his legal counsel. In her meeting notes, Ms. Mosher recorded the following, among other things:
 - a) Related to trial prescription claims for post-injection follow up, his practice of following up post-injection has not changed, but he no longer bills the service to ABC.
 - b) Related to trial prescription claims for initial access prescribing follow ups, he delivers the same quality of patient care and prioritizes patient relationships, but he no longer bills the services to ABC.

- c) He is aware that he can only bill one service per day per patient.
 - d) Outside of the ABC audit, he received no additional communication from the ABC that his billing practices were unacceptable and contrary to the Ministerial Order. Furthermore, his dispensing software and ABC's adjudication process allowed him to bill the claims.
20. Following the investigation, the Complaints Director referred the matter to a hearing.

Agreed Facts Supporting Allegations

21. During the Audit Period (February 1, 2017 to November 30, 2018), Mr. Dela Cruz was a registered Alberta pharmacist and licensee of the Pharmacy.

Allegation 1

22. Article 3.1 of the Pharmacy's agreement with ABC states:

The Provider will provide Pharmaceutical Services according to the applicable legislation/regulations of the jurisdiction in which the Pharmaceutical Service is provided and according to the provisions of this Agreement including, without limitation, according to the applicable Coverage.

23. As a pharmacist and licensee, Mr. Dela Cruz was expected to be aware of, and comply with, the applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta.

Particular 1a

24. Mr. Khan and Mr. Dela Cruz submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- a. 1,469 claims worth approximately \$29,380 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order.

25. Section 1 of the Alberta Health Ministerial Order states that:

"Trial Prescription" means a Determination by a Clinical Pharmacist to dispense a reduced quantity of a newly prescribed Drug in order to assess the patient's response and tolerance to the Drug before dispensing the balance of the Prescription.

26. Post-injection follow-ups and follow-ups to initial access do not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order.

Particular 1b

27. Mr. Khan and Mr. Dela Cruz submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:
 - b. 19 claims worth approximately \$380 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order.
28. Section 2(5) of the Alberta Health Ministerial Order provides that subject to specified exclusions, only one pharmacy service fee shall be payable per patient per day.
29. Mr. Khan and Mr. Dela Cruz submitted, or allowed for the submission of, 19 claims worth approximately \$380 for more than one pharmacy service per patient per day in the absence of an exclusion under the Alberta Health Ministerial Order.

Particular 1c

30. Mr. Khan and Mr. Dela Cruz submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:
 - c. 77 claims worth approximately \$4,120 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order.
31. Section 2(5) of the Alberta Health Ministerial Order provides that subject to specified exclusions, only one pharmacy service fee shall be payable per patient per day.
32. Mr. Khan and Mr. Dela Cruz submitted, or allowed for the submission of, 77 claims worth approximately \$4,120 for more than one pharmacy service per patient per day in the absence of an exclusion under the Alberta Health Ministerial Order.

Particular 1d

33. Mr. Khan and Mr. Dela Cruz submitted, or allowed for the submission of, claims to ABC when they should have known they were not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:
 - d. five claims worth approximately \$1,460 for Comprehensive Annual Care Plan ("CACP") Initial Assessments within 365 day of a Standard Medication Management Assessment ("SMMA") Initial Assessment, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order

34. Section 2(4) of the Alberta Health Ministerial Order provides that “[w]here a Fee has been paid for a [SMMA Initial Assessment for a patient], no Fee for [a CACP Initial Assessment] shall be claimed or payable within 365 days in respect of that [patient] by any Community Pharmacy”.

Allegation 2

35. Mr. Khan and Mr. Dela Cruz failed to create or maintain required and accurate pharmacy records for:
- a. 47 pharmacy service assessments where the Pharmacy’s documentation did not contain the rationale for writing the prescription;
 - b. 65 prescriptions that were not provided by the Pharmacy to support the claims to Alberta Blue Cross;
 - c. Six pharmacy service assessments where the Pharmacy did not provide the documentation to support the claims to Alberta Blue Cross;
 - d. 10 pharmacy service assessments where the prescription documentation did not include the date the service was performed;
 - e. 11 care plan assessments where the supporting documentation did not indicate that the patient met the required elements for a CACP or SMMA Initial Assessment; and
 - f. Eight care plan assessments where the CACP or SMMA Initial Assessment was missing the pharmacist’s signature or the updated CACP or SMMA was not re-signed by the pharmacist.
36. As Complaints Director, James Krempien, acknowledged that Mr. Dela Cruz was fully cooperative throughout the investigation and hearing process.
37. Mr. Dela Cruz acknowledged that he received legal advice prior to entering into the Agreed Statement of Facts and that he understood that the Hearing Tribunal may use this Agreed Statement or Facts as proof of the Allegations set out in the Notice of Hearing.

Admission of Unprofessional Conduct

38. Pursuant to section 70 of the *Health Professions Act*, Mr. Emmanuel Dela Cruz wished to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.
39. Mr. Dela Cruz acknowledged and admitted that while he was a registered Alberta pharmacist and the licensee of the Pharmacy, he and Mr. Khan:

- a. Submitted, or allowed for the submission of, claims to ABC when he should have known, he was not entitled under the Pharmacy's agreement with ABC to the fees claimed, the particulars of which include the submission of:
 - i. 1,469 claims worth approximately \$29,380 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order;
 - ii. 19 claims worth approximately \$380 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;
 - iii. 77 claims worth approximately \$4,120 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order; and
 - iv. five claims worth approximately \$1,460 for Comprehensive Annual Care Plan ("CACP") Initial Assessments within 365 days of a Standard Medication Management Assessment ("SMMA") Initial Assessment, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order.

- b. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:
 - i. 47 pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription;
 - ii. 65 prescriptions that were not provided by the Pharmacy to support the claims to ABC;
 - iii. Six pharmacy service assessments where the Pharmacy did not provide the documentation to support the claims to ABC;
 - iv. 10 pharmacy service assessments where the prescription documentation did not include the date the service was performed;
 - v. 11 care plan assessments where the supporting documentation did not indicate that the patient met the required elements for a CACP or SMMA Initial Assessment; and

- vi. Eight care plan assessments where the CACP or SMMA Initial Assessment was missing the pharmacist's signature or the updated CACP or SMMA was not re-signed by the pharmacist.

40. Mr. Dela Cruz agreed and acknowledged that his conduct in these matters:

- Breached his statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy licensee;
- Had the potential to undermine the integrity of the profession;
- Had the potential to decrease the public's trust in the profession; and
- Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.

41. Mr. Dela Cruz further agreed and acknowledged that his conduct, as set out above, constitutes breaches of the following statutes and standards governing the profession of pharmacy:

- Standards 1 and 18, and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 (sub-standards 1.1 and 1.2) and 8 (sub-standards 8.1(a), 8.1(b) and 8.3(a)) of the Standards for the Operation of Licensed Pharmacies;
- Principles 1(1, 12) and 10(1, 2, 3) of the Alberta College of Pharmacy's Code of Ethics;
- Sub-Section 12(1) of the Pharmacy and Drug Regulation; and
- Sub-Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*;

and that his conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct under sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under sub-sections 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

42. Mr. Dela Cruz acknowledged that he received legal advice prior to entering into this Admission of Unprofessional Conduct and that he understood that if the Hearing Tribunal accepted his Admissions of Unprofessional Conduct, the Hearing Tribunal may proceed to issue one or more orders set out in section 82(2) of the *Health Professions Act*.

V. **SUBMISSIONS ON THE ALLEGATIONS**

43. Ms. Costigan began her submission by referring to the admissions made by the Investigated Member in the Agreed Statement of Facts. Evidence from the ABC audit was cross-referenced for each Allegation in the Notice of Hearing and presented as Part B of the Agreed Statement of Facts.
44. Ms. Costigan explained that Allegation 1 had been proven. Article 3.1 of the Pharmacy's agreement with ABC states that the provider must provide pharmaceutical services according to the provisions of the agreement. As a pharmacist and licensee, Mr. Dela Cruz is expected to be aware of and comply with applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta. Mr. Dela Cruz submitted, or allowed the submission of claims to ABC when he should have known he was not entitled to the fees claimed. The pharmacy submitted claims for Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access, neither of which meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order. Mr. Dela Cruz also submitted, or allowed the submission of, claims for post-injection follow-ups that did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order and 19 claims for more than one pharmacy service per patient per day in the absence of an exclusion as defined by the Alberta Health Ministerial Order. The Investigated Member also submitted, or allowed the submission, of Comprehensive Annual Care Plan Initial Assessments within 365 days of a Standard Medication Management Assessment Initial Assessment, which is in breach of Article 3.1 of the Pharmacy agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order.
45. Ms. Costigan submitted that Allegation 2 had also been proven from the evidence provided by the ABC audit, in that there were multiple examples where Mr. Dela Cruz failed to create or maintain required and accurate pharmacy records.
46. Ms. Costigan explained that the Hearing Tribunal would have to decide whether the Allegations in the Notice of Hearing were proven on the balance of probabilities and whether Mr. Dela Cruz's conduct constituted unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drugs Act*.
47. Ms. Costigan concluded by stating that the agreed documents provided by the parties demonstrate that the admissions made are supported by the evidence and the conduct of Mr. Dela Cruz amounts to unprofessional conduct and misconduct. She ended her submission by stating the admission of the Investigated Member should be accepted by the Hearing Tribunal.
48. Mr. Code, legal counsel for the Investigated Member, stated that on behalf of his client he agreed with everything Ms. Costigan had said and that the admissions are conduct deserving sanction.
49. Mr. Code brought the Tribunal's attention to the Amended Notice of Hearing, paragraph 1. He highlighted that the document stated the Investigated Member "should

- have known”, not “knew” or “ought of have known”. He continued that there is no admission of knowledge of the mistakes the Investigated Member was making and no charge that he knew. Fraud, dishonesty, or willful misconduct was not alleged.
50. Mr. Code also submitted that the Amended Notice of Hearing states that the Allegations have the “potential to undermine the integrity of the profession” and the “potential to decrease the public’s trust in the profession”; it does not state that the Investigated Member’s conduct did do these things. Mr. Code told the Tribunal that Mr. Dela Cruz relied on ABC to notify him if the billing was incorrect. He stated there were two ways “to get this stuff right”; one is to read and review all of the documents, rules and requirements and the other is a “hit and miss method”. In this case, Mr. Code continued, the Investigated Member had “many misses” where his submissions to ABC were compensated for and were not corrected along the way. Therefore, Mr. Dela Cruz presumed that the claims were valid and compliant with all applicable rules and regulations.
51. Mr. Code submitted that the evidence showed the Investigated Member’s evolution of thinking, where at first, he denied the Allegations but has now come to admit he made the mistakes and improved his practices, processes and internal record keeping.
52. Mr. Code stated “They made a deal with Blue Cross, agreed to fully compensate them for everything that was claimed. Whether they were entitled to that money or not they made that deal”. In response to a question from the Tribunal, Mr. Code clarified what he meant by this statement. Mr. Code explained that in civil law, it may not be clear if the pharmacist would have to repay ABC the funds. He again stated that the money had been repaid to ABC.

VI. FINDINGS ON THE ALLEGATIONS

53. During the hearing on June 16, 2022, the Hearing Tribunal verbally advised the parties that after consideration of the submissions and the evidence presented, the Hearing Tribunal accepted the Agreed Statement of Facts and found that the evidence presented to the Tribunal was sufficient to determine that the Allegations outlined in the Amended Notice of Hearing were proven.
54. The Hearing Tribunal also verbally advised the parties that it accepted the Investigated Member’s Admission of Unprofessional Conduct and agreed that the conduct of Mr. Dela Cruz amounted to unprofessional conduct under the *Health Professionals Act* and misconduct under the *Pharmacy and Drug Act* and was deserving of sanction.
55. Mr. Dela Cruz was added to the clinical register of pharmacists of the Alberta College of Pharmacy on August 30, 2016. He was the licensee of the Pharmacy from February 2, 2017 to June 20, 2018. During this period of time, the relevant facts and events in Allegations 1 and 2 occurred.
56. Allegation 1 alleged that Mr. Dela Cruz submitted, or allowed for the submission, of Claims to ABC when he should have known he was not entitled to such claims under

- the Pharmacy's agreement with ABC. The Tribunal was provided with sufficient evidence from the ABC audit and the Agreed Statement of Facts to find Allegation 1a) through Allegation 1d) to be proven.
57. Standard 1 (sub-standards 1.1 and 1.2) of the Standard of Practice for Pharmacists and Pharmacy Technicians requires pharmacy professionals to comply with the law that governs their practices. It is a professional responsibility to be proficient in the law, regulations and contracts that govern the practice of pharmacy. The Tribunal believes that Mr. Dela Cruz did not fulfil this responsibility, chose not to educate himself or seek guidance, and followed through with a "hit and miss" strategy that does not comply with the Standards. The need for all pharmacists, but especially licensees, to be in compliance with the law is reiterated in Standard 1 (sub-standard 1.1 and 1.2) of the Standard for Operation of Licensed Pharmacies. Mr. Dela Cruz had a professional responsibility as a pharmacist and as licensee to be informed about the requirements for claiming compensation through the ABC, and he did not do so.
 58. The actions of the Investigated Member also breached the Alberta College of Pharmacy's Code of Ethics, Principle 1 (sub-standard 1 and 12) which states that all regulated members must act in the best interest of each patient and not allow professional judgement to be impaired by personal or commercial benefits. Principle 10 (sub-standards 1, 2, and 3) hold each regulated member to comply with the letter and spirit of the laws that govern practice, to be honest in all dealings, including contractors, and to seek and expect fair remuneration for professional services. The evidence presented to the Tribunal proves the Investigated Member acted in contravention of the Code of Ethics through the improper submission of claims to ABC.
 59. The Tribunal was very troubled that the Investigated Member claimed that he was never informed by ABC about the incorrect billings and stated this as the reason for the large number of infractions. As stated above, the guiding documents of Pharmacy practice clearly state there is a professional responsibility to understand the documents and contracts that govern the practice of pharmacy. The Tribunal does not agree that ABC holds any blame for the conduct of Mr. Dela Cruz.
 60. The Tribunal was provided a copy of the ABC Pharmacy Agreement and reviewed the section pertaining to Assessments for Trial Prescriptions. The pharmacist and public members on the Tribunal agreed that the definition provided was clearly explained and struggled to fully understand how it was interpreted the way it was by the Investigated Member.
 61. Allegation 2 alleged that Mr. Dela Cruz failed to create or maintain required and accurate pharmacy records. The Tribunal was provided with sufficient evidence from the ABC audit and the Agreed Statement of Facts to find Allegation 2a) through 2f) to be proven.
 62. Inaccurate record keeping is in direct violation of Standard 18 of the Standards of Practice for Pharmacist and Pharmacy Technicians, Standard 8 (sub-standard 8.1 and 8.3) of the Standards for the Operation of Licensed Pharmacies and Section 10(1) (sub-sections 10(1)(a) and 10(1)(d)(iv)) of the *Pharmacy and Drug Act*, which specifies that

it is the role of the licensee to ensure all requirement and standards for recording keeping are met. The Pharmacy and Drug Regulation, Section 12(1)¹ also states that the licensee must ensure records are created and maintained in accordance with the Standards for the Operation of Licensed Pharmacies. Inaccurate or missing pharmacy records put the public at risk due to missing health information that may be needed for other health-related purposes and inhibit the ability for a pharmacist and other staff at the pharmacy to provide proper patient care.

63. The failures to comply with the Standards of Practice, Standards for the Operation of Licensed Pharmacies and Principles of the Code of Ethics outlined above are serious, as is the failure to comply with the *Pharmacy and Drug Act* and Pharmacy and Drug Regulation.
64. The Tribunal wanted to highlight in this written decision that, although the wording in the Amended Notice of Hearing may state that these actions had the “potential” to do harm, the Tribunal disagrees with Mr. Code’s comments that these actions did not cause harm. ABC is part of the public. Improper submission of claims undermines the public’s trust in the profession and risks the compensation of professional services for all pharmacies. If brought to wide media attention, this unprofessional conduct may affect the public’s trust in pharmacy professionals. The Hearing Tribunal was satisfied that Mr. Dela Cruz’s conduct harmed the integrity of the profession and is detrimental to the best interests of the public.
65. The Hearing Tribunal was satisfied that Mr. Dela Cruz’s admitted and proven conduct in Allegations 1 and 2 was unprofessional conduct pursuant to section 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct undersection 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

VII. SUBMISSIONS ON SANCTION

66. The parties presented a Joint Submission on Sanction, which was entered as Exhibit 2.
67. The Joint Submission on Sanction for Mr. Dela Cruz was as follows:
 1. Mr. Dela Cruz shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Mr. Dela Cruz is responsible for the costs of the program.
 2. Mr. Dela Cruz’s practice permit shall be suspended for 3 months, with
 - i. 1 month to be served on dated acceptable to the Complaints Directs and completed within 6 months from the date the Hearing Tribunal issues its written decision; and

¹ Section 12 of the *Pharmacy and Drug Regulation* has since been repealed (AR 81/2022, section 11) but was in effect at the relevant time.

- ii. 2 months to be held in abeyance pending Mr. Dela Cruz's completion of Order 1 above.

If Mr. Dela Cruz fails to complete Order 1, the Complaints Director shall be at liberty to impose the remaining 2 month suspension on Mr. Dela Cruz's practice permit. If Mr. Dela Cruz successfully completes Order 1, the remaining 2-month suspension shall expire.

3. Mr. Dela Cruz shall pay fines of \$3,750 with respect to Allegation 1 and \$3,750 with respect to Allegation 2, for total fines of \$7,500. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fines shall be paid within 1 year of the date Mr. Dela Cruz receives a copy of the Hearing Tribunal's written decision.
 4. Mr. Dela Cruz shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which he is employed for a period of 3 years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
 5. If the Complaints Director refers concerns similar to the Allegations in the Notice of Hearing to a hearing under section 66(3) of the *Health Professions Act* within 5 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to direct that Mr. Dela Cruz not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from the date the Complaints Director provides notice to Mr. Dela Cruz of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the Allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.
 6. Mr. Dela Cruz shall be responsible for payment of 50% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Mr. Dela Cruz receives a copy of the Hearing Tribunal's written decision.
68. Mr. Chen reviewed the Joint Submission of Sanction for Mr. Dela Cruz. Mr. Chen advised the Tribunal that Mr. Dela Cruz has already completed both parts of the Program referred to in Order 1, and has provided the certificates of completion to the Complaints Director.
 69. Mr. Chen noted the length of time that Mr. Dela Cruz was a licensee of the pharmacy which was taken into account for the length of suspension.
 70. Mr. Chen explained that sanctions are understood to serve four purposes: protection of the public; maintaining the integrity of the profession; fairness to the investigated

- member; and deterrence, both specific to the member and generally to the profession at large.
71. Mr. Chen submitted there are a number of factors that are considered when deciding on proposed sanctions. Mr. Chen referred to the decision in *Jaswal v. Newfoundland Medical Board*. In the case of Mr. Dela Cruz, those factors were as follows:
- Mr. Dela Cruz was first licensed in August 2016 and became the licensee of New Brighton Pharmacy in February 2017.
 - There are no prior findings of unprofessional conduct against Mr. Dela Cruz. This works in the Investigated Member's favor.
 - The conduct that has been found to be unprofessional conduct happened many times over the period of 2 years. This was not a 'one off' scenario.
 - The Investigated Member has admitted to both Allegations and has taken responsibility for their conduct; he has been very cooperative throughout the investigation and has worked with the Complaints Director and counsel to reach the Agreed Statement of Facts, Admission of Unprofessional Conduct and the Joint Submission on Sanction.
72. Mr. Chen stated that the Complaints Director trusts that the orders in the joint submission are enough to achieve deterrence and protection of the public; that the proposed sanctions promote specific and general deterrence by reminding members of upholding their obligations as well as the consequences for failing to do so.
73. Mr. Chen then addressed the sanctions imposed in similar cases and highlighted that the range of sentencing is very similar to what the Joint Submission is proposing in this case. Mr. Chen explained that the addition of remedial education is new to this case in response to a previous Hearing Tribunal's written decision.
74. Mr. Chen closed his submission by reviewing the law on Joint Submissions, including the public interest test from *R v. Anthony-Cook*. Joint submissions must meet the public interest test, which states that a decision maker should not depart from a joint submission on sanction unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest. Mr. Chen asked the Tribunal to accept the Joint Submission, based on the factors reviewed and having been agreed upon by the Complaints Director and the Investigated Member to be reasonable, appropriate and fair.
75. Mr. Code submitted that the Joint Submission has considered all of the purposes and principles of sanctioning and is reasonable and appropriate based on the facts and admission of guilt by Mr. Dela Cruz. He ended his submissions requesting the Tribunal accept the Joint Submission.

76. Counsel confirmed that in respect of Order 5, the parties agreed that the Hearing Tribunal had the jurisdiction to make such an order and that both parties had agreed to this Order.

VIII. FINDINGS ON SANCTION

77. The Tribunal reviewed the proposed Joint Submission on Sanctions for Mr. Dela Cruz for appropriateness of sanction and effectiveness as a deterrent for Mr. Dela Cruz and the profession at large. The submissions of both parties were considered as well.
78. The Hearing Tribunal also considered the submissions and agreement of the parties with respect to Order 5, that the Hearing Tribunal had the jurisdiction to make such an order and that both parties had agreed to this Order.
79. At the conclusion of the hearing on June 16, 2022, the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanction. This written decision confirms the decision of the Hearing Tribunal and provides reasons.
80. The Hearing Tribunal noted that sanctions must serve the following purposes: public protection, maintenance of the profession's integrity, fairness to Mr. Dela Cruz, and specific and general deterrence.
81. The Hearing Tribunal reviewed the proposed Joint Submissions on Sanction and agreed that the orders proposed meet the public interest test and should be accepted.
82. The Tribunal agreed with the mitigating factors as submitted by Mr. Chen, specifically that there have been no prior findings of unprofessional conduct for the Investigated Member and that Mr. Dela Cruz and his counsel were very cooperative throughout the investigative and negotiation processes.
83. The conduct of Mr. Dela Cruz was outside the expected conduct of a pharmacist and requires sanctioning to promote deterrence, not only for Mr. Dela Cruz, but all pharmacists. The self-regulatory nature of the profession of pharmacy relies on the integrity and professionalism of its members.
84. Pharmacists are expected to inform themselves regarding all documents and contracts that govern their work as a pharmacist. Mr. Dela Cruz chose not to do this and the consequences of his actions are the sanctions being imposed by this Hearing Tribunal.
85. There are clear requirements in the governing documents for the creation and keeping of patient records. Not abiding by these requirements had led to the sanctions being imposed on Mr. Dela Cruz.
86. The Tribunal would like to acknowledge the importance of the addition of remedial education in the Joint Submission. This addition not only illustrates the importance of evolving sanctions for similar cases to meet the principles of public safety and

- deterrence, but also highlights the importance of a Hearing Tribunal's work in making recommendations.
87. The public must have confidence that all Alberta pharmacists and licensees operate in accordance with the legislation that relates to the practice of pharmacy in Alberta and the Standards and Code of Ethics set forth by the Alberta College of Pharmacy. The public must be confident that failure to uphold the trust will be met with significant consequences. The suspension and fines address this.
 88. Requiring Mr. Dela Cruz to provide a copy of the Hearing Tribunal's decision to any pharmacy employer or licensee of a pharmacy where he is employed for a period of 3 years and the ability of the Complaints Director to direct that Mr. Dela Cruz not serve as an owner, proprietor, or licensor of a pharmacy for a period of time if similar Allegations are referred to a hearing serve to protect the public interest and act as a deterrent to Mr. Dela Cruz specifically, but also the profession more generally.
 89. The Hearing Tribunal noted the joint agreement that Mr. Dela Cruz pay half of the full costs of the investigation and hearing with Mr. Khan paying the other half. The Hearing Tribunal found this was an appropriate case to order the full payment of costs by the two investigated members.
 90. The Hearing Tribunal considered the cases that were provided and compared to the sanctions being proposed. The Hearing Tribunal concluded that the sanctions proposed in the Joint Submission on Sanction are appropriate.
 91. The Hearing Tribunal applied the public interest test and finds the joint submission on sanction to be appropriate. The jointly proposed sanctions serve the purposes of sanctions in professional discipline cases and protect the public interest.
 92. The Tribunal discussed the lack of attendance of Investigated Member at the Hearing. Mr. Code did state that Mr. Dela Cruz could be reached and could be in attendance if requested, however no explanation was provided for his absence other than Mr. Code saying "Our understanding was that [his] attendance was not necessary and that [he] can attend through me. [Mr. Dela Cruz is] in Calgary, [Mr. Dela Cruz is] available". Mr. Dela Cruz's choice not to attend did not affect the Tribunal's final decision. However, the Hearing Tribunal views that an investigated member's attendance at a hearing is important, from the perspective of accountability and transparency.

IX. ORDERS

93. The Hearing Tribunal accepts the Joint Submission on Sanction for Mr. Dela Cruz and makes the following orders under Section 82 of the *Health Professions Act*:
 1. Mr. Dela Cruz shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Mr. Dela Cruz is responsible for the costs of the program.

2. Mr. Dela Cruz's practice permit shall be suspended for 3 months, with
 - i. 1 month to be served on dated acceptable to the Complaints Directs and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
 - ii. 2 months to be held in abeyance pending Mr. Dela Cruz's completion of Order 1 above.

If Mr. Dela Cruz fails to complete Order 1, the Complaints Director shall be at liberty to impose the remaining 2-month suspension on Mr. Dela Cruz's practice permit. If Mr. Dela Cruz successfully completes Order 1, the remaining 2-month suspension shall expire.

3. Mr. Dela Cruz shall pay fines of \$3,750 with respect to Allegation 1 and \$3,750 with respect to Allegation 2, for total fines of \$7,500. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fines shall be paid within 1 year of the date Mr. Dela Cruz receives a copy of the Hearing Tribunal's written decision.
4. Mr. Dela Cruz shall provide a copy of the Hearing Tribunals written decision to any pharmacy employer or licensee of a pharmacy in which he is employed for a period of 3 years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
5. If the Complaints Director refers concerns similar to the Allegations in the Notice of Hearing to a hearing under section 66(3) of the *Health Professions Act* within 5 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to direct that Mr. Dela Cruz not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from the date the Complaints Director provides notice to Mr. Dela Cruz of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the Allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.
6. Mr. Dela Cruz shall be responsible for payment of 50% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Mr. Dela Cruz receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the hearing tribunal by the Chair on October 3, 2022.

Per: 
Anita McDonald (Oct 3, 2022 10:53 MDT)
Anita McDonald, Chair