

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
*THE HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**OSAZUWA KESTER EDMWONYI**  
Registration number: 6105

**DECISION OF THE HEARING TRIBUNAL**

March 21, 2022



4. On or about October 8, 2020, ■ without either of you or ■ advising ■, the licensee in place at the time:
  - a. ■ coordinated the scheduling and attended alone at the ■ and administered injections of vitamin B12 and/or the Flu Shot to approximately five individuals without the authorization to do so and when the individuals were not assessed by a pharmacist to determine the appropriateness of the injection,
  - b. ■ created inaccurate patient records for ■, ■, ■, ■, and ■ that listed ■ as the prescriber of the administered drug or vaccine, and
  - c. ■ submitted inaccurate claims to Alberta Blue Cross for pharmacy services that were not provided by a regulated member.

**IT IS ALLEGED THAT** your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist, pharmacy licensee and owner and proprietor,
- b. Undermined the integrity of the profession,
- c. Decreased the public's trust in the profession,
- d. Created the potential for patient harm, and
- e. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist, pharmacy licensee and owner and proprietor.

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

- Standards 1, 18, and 20, and Sub-sections 1.1, 1.2, 18.2, 18.3, 18.4, 18.6, 20.6, and 20.7 of the ACP Standards of Practice for Pharmacists and Pharmacy Technicians,
- Standards 1, 3, 4, 5, 8 and 14 and Sub-sections 1.1, 1.2, 3.4, 3.7(d), 3.8, 3.9, 3.15, 4.1(b), 5.11, 8.6(d), 8.6(f), 8.6(g), 14.1 and 14.2 of the ACP Standards of Practice of the Operation of Licensed Pharmacies,
- Principles 1(1, 2 and 7) and 10(1 and 9) of the ACP Code of Ethics, and
- Sections 10(1)(a, b, d(iv) and d(vi)) and 11(2) and 11(3) of the *Pharmacy and Drug Act*.

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

The matter proceeded by Admissions of Unprofessional Conduct, an Agreed Statement of Facts, and a Joint Submission on Sanction. Ms. Chisholm advised that the parties jointly agreed to amend Allegation 4(c) to match Mr. Edomwonyi's admissions. The amendment has been incorporated in the allegation set out above.

### **III. PRELIMINARY MATTERS**

There were no objections to the jurisdiction of the Hearing Tribunal to hear this matter or to the composition of the Hearing Tribunal. Neither party objected to the timeliness of service of the Notice of Hearing under Section 77(a) of the *Health Professions Act*. There were no applications made to hold any part of the hearing in private. Ms. Chisholm noted that all patients were referenced in the Notice of Hearing by initials only and asked that the Hearing Tribunal refer to specific patients only by initials as well. In this decision the Hearing Tribunal has referred to third parties by initials.

### **IV. EVIDENCE**

The Agreed Statement of Facts provided by the parties' stated:<sup>1</sup>

#### **Background**

1. At all relevant times, Mr. Edomwonyi was a registered member of the Alberta College of Pharmacy on the clinical pharmacist register and was a staff pharmacist and the owner and proprietor at Creekside Pharmacy (ACP License #2928) (the "Pharmacy"). Between September 28, 2015 and September 7, 2020, Mr. Edomwonyi was also the licensee of the Pharmacy.
2. On October 9, 2020, the Complaints Director considered information obtained from a phone call with Dr. [REDACTED] at the [REDACTED] (the "Clinic"). During his telephone conversation with Ms. [REDACTED], she indicated that [REDACTED] an unregulated pharmacy assistant employed by the Pharmacy, had arranged for and administered flu shots and injections to staff at the Clinic on October 8, 2020.
3. On October 20, 2020, the Complaints Director spoke with [REDACTED], the then licensee of the Pharmacy ([REDACTED] served as licensee of the Pharmacy between September 23, 2020 and March 12, 2021) and directed her to conduct an internal pharmacy investigation with respect to the information received by ACP about the injections administered by [REDACTED] at the Clinic on October 8, 2020.

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<sup>1</sup> Third parties' names in the Agreed Statement of Facts and Admissions of Unprofessional Conduct have been replaced with initials.

4. ■ then conducted an internal investigation and her response to the Complaints Director dated October 29, 2020 confirmed that:
  - a. ■ was not a registered pharmacist or pharmacy technician, despite the fact that she was listed as a pharmacy technician on the Pharmacy's website.
  - b. ■ administered vitamin B12 and flu shots to patients at the Clinic on October 8, 2020.
  - c. Mr. Edomwonyi had been aware that an on-site clinic was scheduled but forgot to advise ■. He was supposed to be able to attend but thought the on-site clinic was scheduled for October 15, 2020.
  - d. ■ tried to call Mr. Edomwonyi on October 8, 2020 when he did not attend the scheduled clinic.
  - e. ■ had no knowledge of the on-site clinic despite her name being on the dispensing and adjudication records. She was the pharmacist that had logged into the system on October 8, 2020 and all subsequent dispensing and adjudication records for the day were made under her name.
  - f. ■ reversed and cancelled the billings for the flu shots administered by ■ at the Clinic on October 8, 2020.
5. On November 3, 2020, the Complaints Director spoke with Dr. ■ over the phone. Dr. ■ advised that she was one of the owners of the Clinic and stated that she understood that ■ contacted one of the Clinic managers about setting up the on-site flu shots and injections at the Clinic in October 2020. She also advised that ■ had set up and independently performed flu shots and injections in late November or early December of 2019.
6. The Complaints Director treated the information from Dr. ■ and ■ as a complaint and directed an investigation into the conduct of Mr. Edomwonyi in his role as a pharmacist, the former licensee and the current owner and proprietor of the Pharmacy.
7. The Complaints Director appointed himself and Ms. Jennifer Mosher as investigators and the investigation resulted in this matter being referred to a hearing.

#### **Facts Relevant to the Complaint**

8. On November 3, 2020, the Complaints Director spoke with Mr. Edomwonyi. The Complaints Director summarized the complaints process and next steps. Mr. Edomwonyi indicated that he had no questions about the investigation or complaints process during that time. On that same day, the Complaints Director provided Mr. Edomwonyi with a letter summarizing the information he had compiled and requested a

written response to the complaint. The Complaints Director's letter advising about the investigation are attached as Exhibits "A" and "B" to this Agreed Statement of Facts.

9. Although the Complaints Director originally gave Mr. Edomwonyi a deadline of December 3, 2020 to provide a written response to the investigation, upon Mr. Edomwonyi's retaining legal counsel and legal counsel writing to the Complaints Director to request an extension, that deadline was extended to January 18, 2021.
10. On January 18, 2021, the Complaints Director received correspondence from Mr. Edomwonyi's legal counsel attaching Mr. Edomwonyi's written response to the investigation dated January 7, 2020. In his written response, Mr. Edomwonyi stated:
  - a. At the time of the October 8, 2020 incident, he was the owner of the Pharmacy and ■■■ was the licensee.
  - b. ■■■ was not a pharmacy technician but was previously employed in a medical office and although it was not an excuse for the incident, ■■■ has extensive experience with injections due to her personal experience with diabetes.
  - c. On October 6, 2020, ■■■ telephoned him to request that he attend the on-site clinic scheduled at the Clinic. She told him it was scheduled for October 8, 2020 but he mistakenly believed it was scheduled for October 15, 2020.
  - d. He forgot to advise ■■■ about the on-site clinic and takes responsibility for that.
  - e. On October 9, 2020, ■■■ phoned him about a call she had received from the Complaints Director regarding the on-site clinic that had taken place on October 8, 2020. He told ■■■ that he believed the on-site clinic was scheduled for October 15, 2020 and had forgotten to mention it to her.
  - f. ■■■ informed him that she had tried and failed to get in contact with him on October 8, 2020 and that she had administered flu shots and vitamin B12 shots to patients at the Clinic. He stated that his phone records show that he tried to contact ■■■ on October 8, 2020 but he did not recall speaking to her.
  - g. He accepted responsibility for the allegation that ■■■ an unregulated Pharmacy staff member, administered injections without proper authority or supervision.
  - h. He acknowledged that the patient records relating to the October 8, 2020 flu clinic were inaccurate, as ■■■ is listed as the administering pharmacist. He stated that while he did not complete the forms, he accepted responsibility for their creation and that ■■■ was not to blame. He also

accepted responsibility for the similarly inaccurate forms submitted to the Alberta Blue Cross.

- i. He was aware of only one other occurrence of this type of conduct, which took place on November 28, 2019 when [REDACTED] administered vitamin B12 shots to patients at the Clinic. He provided copies of patient records and consent forms related to the November 2019 and October 2020 incidents.
  - j. The patient records attached to his written response to the complaint support his admission that on November 28, 2019, [REDACTED] attended at the Clinic, and:
    - i. administered injections of vitamin B12 to two individuals without being authorized to do so and when the individuals were not assessed by a pharmacist to determine the appropriateness of the vitamin B12 injection, and
    - ii. created inaccurate patient records for two patients, [REDACTED], and [REDACTED], that listed Mr. Edomwonyi as the prescriber of the vitamin B12.
  - k. The patient records attached to his written response to the complaint support his admission that on or about October 8, 2020, [REDACTED]
    - i. coordinated the scheduling of and attended alone at the Clinic and administered injections of vitamin B12 and/or the flu shot to approximately five individuals without the authorization to do so and where the individuals were not assessed by a pharmacist to determine the appropriateness of the injection,
    - ii. created inaccurate patient records for [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] that listed [REDACTED] as the prescriber of the administered drug or vaccine; and
    - iii. submitted inaccurate claims to Alberta Blue Cross for pharmacy services by stating that the services claimed were provided by a regulated member. Attached as Exhibit "C" to this Agreed Statement of Facts is Mr. Edomwonyi's written response to the complaint dated January 7, 2020.
11. On February 19, 2021, investigator Jennifer Mosher spoke with [REDACTED] and her legal counsel. During the conversation, [REDACTED] indicated that:
- a. She has been employed as a pharmacy assistant at Creekside Pharmacy since September 17, 2017.
  - b. The on-site clinic had originally been booked for October 15, 2020, but for reasons she could not recall was rescheduled to October 8, 2020.

- c. When she arrived at the Clinic on October 8, 2020, Mr. Edomwonyi was not there. When she was unable to reach Mr. Edomwonyi by phone, she decided to administer the injections herself.
  - d. She administered the flu shot to approximately four to five patients and administered vitamin B12 injections to some as well. She procured both the flu shot and the vitamin B12 from the Pharmacy. She stated that no one at the Clinic objected to her administering the injections. She stated that the Clinic staff may have believed her to be a pharmacy technician.
  - e. When she returned to the Pharmacy, she entered the records into the Pharmacy's dispensing software. She indicated that whoever was logged into the software at the time was assigned as the vaccine prescriber. She stated that she placed the records in a folder to be checked but was unsure of what happened to the records after that.
  - f. She administered vitamin B12 injections at the Clinic on November 28, 2019. She informed Mr. Edomwonyi after the fact, and he lectured her about the incident and said that this was not how things worked in a pharmacy in comparison to being a physician's assistant.
  - g. She was on probation at the Pharmacy at the time of her conversation with Ms. Mosher.
12. On March 8, 2021, Ms. Mosher spoke with [REDACTED]. During that conversation, [REDACTED] indicated that:
- a. [REDACTED] had keys to the Pharmacy and procured the flu shot and vitamin B12 from the Pharmacy prior to the Pharmacy opening on October 8, 2020.
  - b. [REDACTED] could adjust the inventory levels at the Pharmacy. There was no inventory record of the vitamin B12, or flu shots being taken from the Pharmacy.
  - c. She was not aware [REDACTED] had previously administered injections at the Clinic in November 2019.
  - d. [REDACTED] was suspended after administering injections at the Clinic on October 8, 2020 and she returned to work on probation in January 2021.
  - e. [REDACTED] had been listed on the Pharmacy website as a "pharmacy technician" and [REDACTED] assumed she was a regulated technician.
  - f. Mr. Edomwonyi no longer had a role at the Pharmacy other than as an owner.
13. On March 11, 2021, Ms. Mosher spoke with Mr. Edomwonyi and his legal counsel, Mr. Ken Fitz. During the call, Mr. Edomwonyi indicated that:

- a. ■■■'s duties were "typical" of a pharmacy assistant, such as entering prescriptions, putting away orders, and inventory.
  - b. Mr. Edomwonyi was not aware of ■■■ presenting herself as a pharmacy technician. Her name tag did not include her job title, only her name.
  - c. ■■■ had a "generic" alarm code for the Pharmacy.
  - d. Mr. Edomwonyi did not know if ■■■ could make adjustments to the Pharmacy inventory in the dispensing software.
  - e. Mr. Edomwonyi was not aware of ■■■'s activities on the November 29, 2019 clinic until after the fact. He learned that ■■■ attended at the Clinic and administered vitamin B12 injections to patients. Mr. Edomwonyi did not find a discrepancy in the vitamin B12 inventory of the Pharmacy.
  - f. After Mr. Edomwonyi learned of the incident on November 29, 2019, he had a talk with ■■■ and explained that her actions were not proper procedure. He did not take ■■■'s keys, restrict her ability to change inventory in the dispensing software, investigate whether ■■■ used her alarm code to enter the Pharmacy unauthorized, put ■■■ on suspension or probation or issue her a reprimand.
  - g. Mr. Edomwonyi spoke with ■■■ about the flu clinic scheduled for October 15, 2020. He was not aware when or why the date changed to October 8, 2020.
  - h. Mr. Edomwonyi believed ■■■ procured the flu shot and vitamin B12 from the Pharmacy the morning of the on-site clinic. He was not involved in the procurement of the drugs from the Pharmacy. He understood, from a discussion with ■■■ that she had entered the related patient records into the Pharmacy dispensing system. There was no final check on the patient records and the transactions were ultimately cancelled by ■■■.
14. Mr. Edomwonyi acknowledges that he has received legal advice prior to entering this Agreed Statement of Facts and that he understands that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing.

## V. ADMISSION OF UNPROFESSIONAL CONDUCT

The admissions provided by Mr. Edomwonyi were as follows:

1. Pursuant to Section 70 of the *Health Professions Act*, Mr. Osazuwa Kester Edomwonyi wishes to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.

2. Mr. Edomwonyi acknowledges and admits that, between November 28, 2019 and September 23, 2020 while he was the licensee and proprietor of Creekside Pharmacy (ACP Licence #2928) (the "Pharmacy") and between September 23, 2020 and October 8, 2020 while he was an owner and the proprietor of the Pharmacy, he failed to provide appropriate supervision to the Pharmacy's unregulated employee, [REDACTED] such that:
  1. On or about November 28, 2019, [REDACTED] attended at [REDACTED] and:
    - a. administered injections of vitamin B12 to at least two individuals without being authorized to do so and where the individuals were not assessed by a pharmacist to determine the appropriateness of the vitamin B12 injection,
    - b. created inaccurate patient records for [REDACTED] and [REDACTED] that listed you as the prescriber of the vitamin B12,
  2. [REDACTED] was not required to wear a nametag that clearly differentiated her in her role as an unregulated pharmacy assistant from a regulated member,
  3. [REDACTED] was able to access and adjust the pharmacy inventory so that there was no record of her taking vitamin B12 or the Flu Shot from the pharmacy on or about November 28, 2019 or October 8, 2020, and
  4. On or about October 8, 2020, [REDACTED] without either of he or [REDACTED] advising [REDACTED], the licensee in place at the time:
    - a. [REDACTED] coordinated the scheduling and attended alone at the [REDACTED] and administered injections of vitamin B12 and/or the Flu Shot to approximately five individuals without the authorization to do so and when the individuals were not assessed by a pharmacist to determine the appropriateness of the injection,
    - b. [REDACTED] created inaccurate patient records for [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] that listed [REDACTED] as the prescriber of the administered drug or vaccine, and
    - c. [REDACTED] submitted inaccurate claims to Alberta Blue Cross for pharmacy services by stating that the services claimed were provided by a regulated member.
3. There is no evidence of patient harm as a result of the injections administered on November 28, 2019 and October 8, 2020 by [REDACTED] Nevertheless, Mr. Edomwonyi agrees and acknowledges that his conduct in these matters:

- Breached his statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist, pharmacy licensee, and owner and proprietor,
  - Undermined the integrity of the profession,
  - Decreased the public's trust in the profession,
  - Created the potential for patient harm, and
  - Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist, pharmacy licensee and owner and proprietor.
4. Mr. Edomwonyi further agrees and acknowledges that his conduct, as set out above, constitutes breaches of the following statutes and standards governing the profession of pharmacy:
- Standards 1, 18, and 20, and Sub-sections 1.1, 1.2, 18.2, 18.3, 18.4, 18.6, 20.6, and 20.7 of the ACP Standards of Practice for Pharmacists and Pharmacy Technicians,
  - Standards 1, 3, 4, 5, 8 and 14 and Sub-sections 1.1, 1.2, 3.4, 3.7(d), 3.8, 3.9, 3.15, 4.1(b), 5.11, 8.6(d), 8.6(f), 8.6(g), 14.1 and 14.2 of the ACP Standards for the Operation of Licensed Pharmacies,
  - Principles 1(1, 2 and 7) and 10(1 and 9) of the ACP Code of Ethics, and
  - Sections 1(1)(p)(i, ii, vi and ix), 10(1)(a, b, d(iv) and d(vi)) and 11(2) and 11(3) of the *Pharmacy and Drug Act* and
  - Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act*.
5. As Complaints Director, James Krempien, acknowledges that Mr. Edomwonyi has been fully cooperative throughout the investigation, hearing process and in developing this Admission of Unprofessional Conduct.
6. Mr. Edomwonyi acknowledges that he has received legal advice prior to entering into this Admission of Unprofessional Conduct and that he understands that if the Hearing Tribunal accepts his Admission 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*

## **VI. SUBMISSIONS ON MERIT**

Ms. Chisholm explained the basis for the allegations brought forward and how the complaint came before the Complaints Director. She explained each allegation in detail. She also highlighted that with respect to Allegation 4 (c), the Hearing Tribunal should consider the amended version of the allegation.

Ms. Chisolm explained, in detail, the Admission of Unprofessional Conduct and the Agreed Statement of Facts. She described the chronology of the events and the series of communications that occurred throughout the investigative process. She contended that the failure to maintain proper supervision created an environment where the events were allowed to unfold as they did.

Ms. Chisholm contended that Mr. Edomwonyi's failure to provide proper supervision and oversight for his unregulated staff amounted to breaches of the legislation, the Standards of Practice for Pharmacists and Pharmacy Technicians, the Standards for the Operation of Licensed Pharmacies and the Code of Ethics, as cited in the Notice of Hearing.

Ms. Chisholm noted that the Complaints Director would not intend to call witnesses in light of the Admission of Unprofessional Conduct and the Agreed Statement of Facts. The Hearing Tribunal would have to decide whether the amended allegations in the Notice of Hearing were proven on a balance of probabilities and whether Mr. Edomwonyi's admitted conduct constituted unprofessional conduct under the *Health Professions Act* and the *Pharmacy and Drug Act*.

Mr. Fitz explained that there was some confusion over the date of a clinic that Mr. Edomwonyi's pharmacy was providing. This confusion played a part in what transpired. Mr. Fitz pointed out that because of the confusion about the date, Mr. Edomwonyi was not present for the clinic and, as a result, did not provide oversight on the events on that day. His unregulated staff member proceeded to administer injections even though she had previously been cautioned not to do so. While Mr. Edomwonyi did not intend for the events to transpire as they did, he immediately took responsibility for the actions of his unregulated employee.

Mr. Fitz noted that in no way did Mr. Edomwonyi act for personal gain and that there was no suggestion that he did anything to create inaccurate records himself. He also highlighted that there was no patient that came to any harm. However, Mr. Edomwonyi recognized the potential for harm as a result of how the events unfolded.

Mr. Fitz reiterated that this was not an intentional act on the part of Mr. Edomwonyi. While it is unfortunate these events occurred, Mr. Edomwonyi took responsibility immediately when he was made aware. Mr. Fitz also noted that Mr. Edomwonyi was fully cooperative with the investigation.

## **VII. FINDINGS ON MERIT**

During the hearing on November 9, 2021 the Hearing Tribunal verbally advised the parties that it accepted the amended allegation and the Investigated Member's admissions of

unprofessional conduct. The facts as admitted by the Investigated Member support the admissions.

Mr. Edomwonyi was the licensee for Creekside Pharmacy on November 28, 2019 when the facts in Allegation 1 and 2 occurred. The Standards for the Operation of Licensed Pharmacies at Standards 3.4, 3.8 and 3.9 required Mr. Edomwonyi to ensure that the pharmacy's staff were properly supervised, including ensuring they did not engage in restricted activities. The administration of vaccines or anything by invasive procedures on body tissues are restricted activities that may not be performed in Alberta without express legal authorization. Mr. Edomwonyi's supervision failure also led to the creation of inaccurate patient records listing Mr. Edomwonyi as the prescriber of vitamin B12 for certain patients that were treated by [REDACTED]. This contravened Standard 18.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians. Mr. Edomwonyi was also obliged to ensure that all unregulated pharmacy staff wear nametags that clearly differentiate them from regulated pharmacy staff members.

Mr. Edomwonyi had ceased to be the licensee by the time of the facts in allegation 4, but he remained responsible as a result of Standard 14.2 as the proprietor to take steps to ensure the licensee was capable of ensuring compliance with the Standards. Mr. Edomwonyi was also required by Standards 20.6 and 20.7 of the Standards of Practice for Pharmacists and Pharmacy Technicians to supervise [REDACTED] at all relevant times. Mr. Edomwonyi's failure of supervision again led to the creation of inaccurate patient records contrary to the standards, as well as inaccurate drug benefit claims being submitted to Alberta Blue Cross for pharmacy services that a pharmacist did not provide. The failure to comply with these standards is included in the definition of unprofessional conduct in the *Health Professions Act*.

Allegation 3 alleged that Mr. Edomwonyi's failure to provide adequate supervision allowed [REDACTED] to access and adjust the pharmacy inventory so that there was no record of her taking vitamin B12 or the flu shot from the pharmacy on or about November 28, 2019 or October 8, 2020. The Hearing Tribunal considered that this contravened Standards 8.6(d), (f) and (g) of the Standards for the Operation of Licensed Pharmacies. Mr. Edomwonyi was the licensee on November 28, 2019. He did not ensure that the pharmacy's systems included sufficient security so that only authorized persons could access the inventory and the inventory records, and so that an accurate audit trail for persons using the system and removing inventory would be created. By October of 2020 Mr. Edomwonyi was no longer the licensee but he remained responsible as the proprietor. The failure to comply with these standards was also unprofessional.

Overall, the Hearing Tribunal was satisfied that Mr. Edomwonyi's admitted and proven conduct in Allegations 1, 2, 3 and 4 was unprofessional conduct pursuant to the *Health Professions Act* and misconduct under the *Pharmacy and Drug Act*. The public relies on regulated members of the pharmacy profession to know and abide by its legislation and standards. The failure to do so undermines public confidence in the profession and harms the integrity of the profession in the public's eyes. In this case the Hearing Tribunal felt that Mr. Edomwonyi's conduct breached his statutory and regulatory obligations and demonstrated a lack of judgment for a pharmacist. His conduct in Allegations 1, 2, 3 and 4 also undermined the integrity of the profession.

### **VIII. SUBMISSIONS ON SANCTION**

Mr. Chen advised the Hearing Tribunal that the Complaints Director and Mr. Edomwonyi prepared a Joint Submission on Sanctions. This joint submission specified that:

1. Mr. Edomwonyi's practice permit shall be suspended for 3 months, to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision.
2. Mr. Edomwonyi shall pay a total fine of \$2,500. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fine shall be paid within 1 year of the date Mr. Edomwonyi receives a copy of the Hearing Tribunal's written decision.
3. Mr. Edomwonyi 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.
4. Mr. Edomwonyi shall be responsible for payment of the costs of the investigation and hearing to a maximum of \$10,000. 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. Edomwonyi receives a copy of the Hearing Tribunal's written decision.

Mr. Chen submitted that the Hearing Tribunal's decision on sanctions should reflect sanctioning principles, as they apply to this case, that serve the following purposes: the protection of the public, the maintenance of the integrity of the profession, the fairness to the investigated member, and deterrence to Mr. Edomwonyi specifically and the profession more generally.

He suggested that the Hearing Tribunal may find it useful to consider the factors set out in the case of *Jaswal v. Newfoundland Medical Board* in determining whether the four purposes above were served.

Mr. Chen submitted that the unprofessional conduct was serious in nature and that Mr. Edomwonyi's failure to properly supervise an unregulated employee warrants serious sanction. The legislative framework created by the Legislature for the pharmacy profession does not contemplate unregulated individuals engaging in the practice of pharmacy or performing restricted activities. Further, Mr. Chen highlighted the Complaints Director's concern that this supervisory breakdown occurred after Mr. Edomwonyi's discovery of similar conduct by █████ in 2019 and his failure to prevent it from happening again.

Mr. Chen pointed out that Mr. Edomwonyi is an experienced pharmacist and licensee so the conduct cannot be excused by any lack of experience.

As a mitigating factor, Mr. Chen stipulated that the Complaints Director is not aware of any prior findings of unprofessional conduct against Mr. Edomwonyi. Further, Mr. Chen acknowledged Mr. Edomwonyi's recognition that his behavior was unacceptable by the ethical and professional standards expected of a pharmacist through his admission of the allegations in the Notice of Hearing. He also acknowledged that Mr. Edomwonyi was cooperative throughout the investigation and allowed the proceedings to occur in an efficient and timely manner.

Mr. Chen noted that while there is no evidence that any patient came to harm as a result of the injections administered by [REDACTED] Mr. Edomwonyi acknowledged that his conduct created the potential for patient harm.

Mr. Chen spoke of the need for sanctions to provide a specific and general deterrent and to maintain public confidence in the pharmacy profession. He said this was particularly important in this case given the profession's role in managing the COVID-19 pandemic. Mr. Chen submitted that the proposed sanctions serve these purposes. He pointed out that self-regulating professions must send a clear message that appropriate sanctions will be levied if there is a failure to uphold the statutory and regulatory obligations to the College as an Alberta pharmacist, pharmacy licensee or owner.

Mr. Chen suggested that the sanctions proposed in the Joint Submission on Sanction are appropriate and compared a recent decision of a Hearing Tribunal.

In reviewing the Joint Submission on Sanction, Mr. Chen noted that any suspension is serious and functions as a deterrent and a penalty. The combination of a suspension and a fine serve as a specific and general deterrent. They emphasize that there are serious consequences in failing to properly supervise pharmacy staff as a licensee, proprietor, or owner.

Mr. Chen suggested that the requirement to provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee for three years is important to ensure that similar conduct is not repeated.

With respect to Order 4, Mr. Chen submitted that it is appropriate that the profession as a whole should not be for paying the costs of the disciplinary proceedings of a member whose conduct was determined to be unprofessional. At the same time, the cap of \$10,000 recognizes the cooperation that Mr. Edomwonyi has demonstrated throughout the investigation and hearing process.

Mr. Chen encouraged the Hearing Tribunal to accept the Joint Submission on Sanction. While he acknowledged the Hearing Tribunal's autonomy, he referred to *R. v. Anthony-Cook* that is often applied to disciplinary proceedings. This case defines a "public interest test" for decision-makers evaluating a joint-submission on sanctions. The public interest test says that the decision-maker should not depart from a joint submission on sanctions unless the proposed sanctions would bring the administration of justice into disrepute or would be contrary to the public interest. This is an undeniably high threshold.

Mr. Chen concluded by saying that the joint submission in this case meets the sentencing principles as well as the public interest test set out in *R. v. Anthony-Cook* and that it protects the public and the integrity of the profession.

Mr. Fitz said that because of the unique fact pattern in this case, it is difficult to compare other decisions. He acknowledged that the purpose of the process is to ensure that the College's role of protecting the public and the integrity of the profession is satisfied. He also acknowledged the role of the Hearing Tribunal in ordering specific and general deterrents.

Mr. Fitz also referred to *R. v. Anthony-Cook* and highlighted that the Hearing Tribunal should accept the Joint Submission on Sanction as proposed.

Mr. Fitz submitted that it is clear from the facts of the case that there was no intent on the part of Mr. Edomwonyi for the events to transpire as they did. However, Mr. Fitz acknowledged that Mr. Edomwonyi does bear responsibility for the actions of his employees, even if what had transpired wasn't intentional on his part.

Mr. Fitz pointed out that no patient came to any harm, but he acknowledged the need for the Hearing Tribunal to consider the potential for harm. He also highlighted the fact that Mr. Edomwonyi has no prior record of complaints or incidents and that there is no evidence to suggest that there is anything in his past to indicate a future concern. It was Mr. Edomwonyi's failure to properly supervise and prevent the reoccurrence of the 2019 conduct that was agreed to justify the suspension in this case.

He noted that Mr. Edomwonyi has been cooperative throughout the investigation and the hearing and that he took personal responsibility for what had occurred.

Mr. Fitz indicated that he felt that the Joint Submission on Sanction struck an acceptable balance that serves the interests of the public, the integrity of the profession, and specific and general deterrence.

## **IX. ORDERS**

The Hearing Tribunal assessed the Joint Submission on Sanction for appropriateness of sanction and effectiveness as a deterrent for Mr. Edomwonyi and the profession at large. The submissions by both parties were reviewed.

At the conclusion of the hearing on November 9, 2021 the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanctions. This written decision confirms the decision of the Hearing Tribunal and provides reasons. We acknowledge that deference should be provided to joint submissions on sanctions, and we ought not to depart from the Joint Submission unless we consider the sanctions to bring the administration of justice into disrepute or be contrary to the public interest.

The Hearing Tribunal considered that sanctions must serve several purposes: public protection, maintenance of the profession's integrity, fairness to Mr. Edomwonyi and specific and general deterrence. The Hearing Tribunal considered several factors before arriving at a decision.

Mr. Edomwonyi has practiced as a pharmacist in Alberta for many years. He also served as a licensee from 2015 to 2020. He was the proprietor at Creekside Pharmacy at all relevant times. Mr. Edomwonyi ought to have reasonably been expected to understand his obligations in the oversight of his staff. In particular, he should have recognized the consequence of inadequate supervision after the first occurrence in 2019. While no patient came to any apparent harm in this case, without consequential change in supervisory consistency and effectiveness, the potential for harm in the future could be significant. This case illustrates the importance of supervision in all aspects of the practice of pharmacy.

Mr. Edomwonyi's conduct spanned over 9 months. He failed or was unable to impose adequate supervision of ■■■ following the November 2019 incident and this was very concerning to the Hearing Tribunal. The Hearing Tribunal considered this to be an aggravating factor.

The Hearing Tribunal also considered that Mr. Edomwonyi has been a regulated member of the College since 2001 and he has no prior record of unprofessional conduct. He also took responsibility for the events that occurred and cooperated fully with the investigation. Mr. Edomwonyi's agreements on facts and admissions spared the need for any witnesses to testify and made the hearing much simpler. These are mitigating factors.

Mr. Chen referred to the previous case of Alberta College of Pharmacy and Crough. In that case from 2016 a registered pharmacist injected multiple patients without the training and authorization to do so and failed to create appropriate records. The Hearing Tribunal ordered Mr. Crough to receive a reprimand, a fine, to provide no further injections without authorization and to pay the costs of the investigation and hearing. The Hearing Tribunal considered the Crough case, but the facts of this case are different. In this case Mr. Edomwonyi failed to supervise an unregulated individual performing injections. The Tribunal considered this to be more serious unprofessional conduct. Mr. Edomwonyi's demonstrated pattern of this unprofessional conduct in 2019 and again in 2020 justified significant sanctions.

The fine of \$2,500 is significant, particularly when considered along with the order for Mr. Edomwonyi to pay the investigation and hearing costs up to \$10,000. The 3-month suspension from practice will also have a significant impact on Mr. Edomwonyi as well as a deterrent effect on the profession at large. The Tribunal has also considered the financial impacts that a 3-month suspension from practice will have on Mr. Edomwonyi.

The Hearing Tribunal also recognized the value of the requirement to provide a copy of the Hearing Tribunal's written decision to any future pharmacy employer or licensee that Mr. Edomwonyi works for as a pharmacist for three years and the Alberta College of Pharmacy's ability to make discipline decisions public. This serves as an educational tool for the profession, a deterrent for Mr. Edomwonyi and the profession, and an important safeguard for the public.

The public must have the confidence that all Alberta pharmacists and pharmacies 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 Tribunal was satisfied that the jointly proposed sanctions will maintain that public confidence.

The Hearing Tribunal applied the public interest test and finds the joint submission on sanctions to be appropriate. The jointly proposed sanctions serve the purposes of sanctions in professional discipline cases and protect the public interest. The Hearing Tribunal accepts the Joint Submission on Sanction and makes the following orders under Section 82 of the *Health Professions Act*.

1. Mr. Edomwonyi's practice permit shall be suspended for three (3) months, to be served on dates acceptable to the Complaints Director and completed within six months from the date the Hearing Tribunal issues its written decision.
2. Mr. Edomwonyi shall pay a total fine of \$2,500. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fine shall be paid within one (1) year of the date Mr. Edomwonyi receives a copy of the Hearing Tribunal's written decision.
3. Mr. Edomwonyi 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 three (3) years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
4. Mr. Edomwonyi shall be responsible for payment of the costs of the investigation and hearing to a maximum of \$10,000. 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. Edomwonyi receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the hearing tribunal by the Chair on March 21, 2022

Per:   
Richard Hackman (Mar 21, 2022 08:39 MDT)

Rick Hackman