

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE *HEALTH PROFESSIONS ACT*
being Chapter H-7 of the Revised Statutes of Alberta, 2000

AND IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF

SHEREEN ELBAYOMY
Registration No. 9612

DECISION OF THE HEARING TRIBUNAL

January 28, 2019

DECISION OF THE HEARING TRIBUNAL

(1) Introduction

The Hearing Tribunal held a hearing into the conduct of Shereen Elbayomy. In attendance on behalf of the Hearing Tribunal were: Christopher Heitland, Pharmacist and Chairperson; Ted Szumlas, Pharmacist; Beverly Rushton, Pharmacist; June McGregor, Public Member. Julie Gagnon acted as independent legal counsel to the Hearing Tribunal. Bethany Schatz, student-at-law was present as an observer.

In attendance at the hearing were James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”); Paula Hale, counsel for the complaints director.

The hearing took place on the 29th day of November 2018 at the second-floor conference center, 8215 112 St. NW, Edmonton, AB. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

(2) Preliminary Matters

As per the Notice of Hearing (Exhibit #1), the commencement time for this Hearing was 9:30 a.m. on November 29, 2018. Ms. Elbayomy was not present at the start of the hearing. The Hearing Tribunal allowed Ms. Hale, legal counsel for the Complaints Director, to make an application to proceed with the hearing in the absence of the member. Margaret Morley, Hearings Director for the College, was called to testify concerning the College’s efforts to give notice to Ms. Elbayomy.

In early October 2018, Ms. Morley sent the Notice of Hearing, dated October 4, 2018, by regular and registered mail to Ms. Elbayomy’s home address and to the address for Metro Pharmacy (“Metro Pharmacy” or the “Pharmacy”), as Ms. Elbayomy was the owner and licensee of Metro Pharmacy. Ms. Morley obtained these addresses from the records maintained by the Registrar of the College. The registered mail to both addresses was returned. Ms. Morley also attempted to contact Ms. Elbayomy at Ms. Elbayomy’s cell phone number, Metro Pharmacy’s phone number, Metro Pharmacy’s fax number, and Ms. Elbayomy’s email address. This contact information was also obtained from the records maintained by the Registrar of the College. Ms. Morley was unable to contact Ms. Elbayomy by phone or fax as the numbers were all disconnected. In response to the email, Ms. Morley received an automated reply email, dated October 18, 2018, indicating that Ms. Elbayomy was out of the country and disconnected from her inbox (Exhibit #2).

In addition to the efforts of Ms. Morley, the College had the Notice of Hearing posted on its website since approximately October 9, 2018. The College also engaged [a process server], to effect personal service of the Notice of Hearing on Ms. Elbayomy. In the Affidavit of Attempted Service (Exhibit #2), he outlined that he attended both Ms. Elbayomy’s home address and Metro Pharmacy’s address on October 15, 2018. At Ms. Elbayomy’s home address, he spoke with the current occupant who advised that she had been renting there for the past five months and that she did not know anyone by the name of Shereen Elbayomy. At Metro Pharmacy’s address, [he] noted that the pharmacy was closed and was under renovations. He also spoke with a workman who

advised that the store was recently purchased from Ms. Elbayomy. [The process server] was not able to locate Ms. Elbayomy to effect service on her.

Pursuant to section 72(1) of the *Health Professions Act* (“HPA”), an investigated person must appear at a hearing before the Hearing Tribunal. However, the Hearing Tribunal may proceed in the absence of an investigated person under section 79(6) of the HPA if there is proof that the investigated person has been given notice to attend the hearing. The College, therefore, has the onus of proving that notice was given.

According to section 77(a) of the HPA, the hearings director must give the investigated person a notice to attend at least 30 days before the hearing. Pursuant to section 120(3) of the HPA, the requirement of notice is satisfied if it is given to a person by personal service or sent by registered mail to the person’s address as shown on the record of the registrar. Pursuant to section 41(1) of the Pharmacists and Pharmacy Technician Profession Regulation, a regulated member is required to provide the Registrar of the College with current contact information. The required contact information includes a home address, business mailing addresses, business telephone numbers and fax numbers, and an e-mail address. While the College has the onus to give an investigated member notice, the member has a corresponding duty to maintain current information with the College.

After hearing the evidence of Ms. Morley and the submissions from Ms. Hale, the Hearing Tribunal decided that there was sufficient evidence to proceed with the hearing. The Hearing Tribunal found that the College has satisfied its duty to give notice pursuant to section 120(3) of the HPA by sending the Notice of Hearing by registered mail to Ms. Elbayomy’s home address and to Metro Pharmacy’s address, both of which were found in the record of the Registrar. In exercising its discretion under section 79(6) of the HPA, the Hearing Tribunal found that on the balance of fairness to the member and the College’s duty to protect the public, the evidence weighed in favor of proceeding in absence of the member. The Hearing Tribunal recognized that Ms. Elbayomy may not have in fact received Notice of Hearing. However, the College exhausted all reasonable efforts to locate Ms. Elbayomy and provide notice to her. Furthermore, Ms. Elbayomy had a duty to provide the College with current contact information, which she failed to do. Additionally, the Hearing Tribunal was satisfied that Ms. Elbayomy could still exercise her right of appeal. In consideration of all of this, the Hearing Tribunal decided that the matter should proceed in absence of Ms. Elbayomy.

Counsel for the Complaints Director confirmed that there were no objections to the composition of the Hearing Tribunal or its jurisdiction to hear the matter.

(3) Allegations

The allegations that were considered by the Hearing Tribunal, as set out in the Notice of Hearing (Exhibit #1), are as follows:

IT IS ALLEGED THAT, between January 30, 2015 and February 28, 2017, while you were both a licensed Alberta pharmacist and the licensee of Metro Pharmacy (ACP Licence #2869), you:

1. Submitted approximately \$299,659.67 worth of claims for five nutritional supplements (Ensure Plus, Ensure Regular, Ensure High-Protein, Boost Oral Liquid and Glucerna Oral Liquid) and three drugs (Advair 250 mcg Metered Dose Aerosol, Levemir 100 unit/ml

Injection Cartridge, Symbicort 200 Turbuhaler Metered Inhalation Powder) to Alberta Blue Cross without being able to provide the required supporting invoices;

2. Created false dispensing records when you submitted claims for Ensure Plus, Ensure Regular, Ensure High-Protein, Boost Oral Liquid, Glucerna Oral Liquid, Advair 250 mcg Metered Dose Aerosol, Levemir 100 unit/ml Injection Cartridge and Symbicort 200 Turbuhaler Metered Inhalation Powder when Metro Pharmacy did not have the corresponding stock for those products to have been dispensed to patients;
3. Dispensed drugs on several occasions when you were not authorized to do so; including the dispensing of drugs for
 - a. approximately 13 prescriptions (for 31 original prescription numbers) in excess of the quantity authorized by the prescriber, for a total of \$15,937.92 worth of claims;
 - b. 2 miscellaneous compound prescriptions and 1 prescription for PMS Clonazepan-R 0.5 mg tablet when you were not authorized by the prescriber to do so, for a total of \$725.66 worth of claims;
 - c. approximately 5 prescriptions (totaling 32 different drugs) before the date authorized on the original prescriptions or in the absence of the prescriber's authorizing signature, for a total of \$4,667.78 worth of claims;
 - d. approximately 4 prescriptions involving 7 different drugs where the drug provided was not the drug that was authorized, for a total of \$4,124.36 worth of claims;
4. Failed to create or retain original prescriptions for approximately 23 prescriptions that were dispensed, for a total of \$25,330.65 worth of claims; and
5. Failed or refused to cooperate with the investigation into this matter when you did not respond to the Complaints Director as requested on May 30, 2018, June 12, 2018, July 3, 2018 and July 13, 2018.

(4) List of Exhibits

The following exhibits were entered during the hearing:

Exhibit #1 – Notice of Hearing dated October 4, 2018

Exhibit #2 – Attempted Service of Notice of Hearing

Exhibit #3 – Investigation Records of Mr. Krempien

Exhibit #4 – Alberta Blue Cross Documents re Compliance Verification Review

Exhibit #5 – Record of Decision dated October 1, 2018

(5) Summary of Evidence

James Krempien, Complaints Director for the College, was the only witness that was called to give evidence. In support of his evidence, Mr. Krempien relied on the Investigation Records (Exhibit

#3) and on documentation from Alberta Blue Cross regarding a Compliance Verification Review of Metro Pharmacy (Exhibit #4).

On May 30, 2018, Mr. Krempien received two letters of complaint from Alberta Blue Cross (“ABC”) in relation to Metro Pharmacy and Shereen Elbayomy, the owner and licensee of Metro Pharmacy (Exhibit #3, Tab 1). The first letter of complaint was from [the Operations Manager] at Alberta Blue Cross, and the second letter was from [an ABC Pharmacy Consultant]. The basis of these complaints was a Compliance Verification Review (“Review”) that ABC conducted concerning the claims submitted by Metro Pharmacy between January 30, 2015 and February 28, 2017. ABC conducted the onsite portions of the Review on December 13, 2016 and June 5, 2017. Mr. Krempien conducted an investigation into the complaints. As part of his investigation, Mr. Krempien received and reviewed a copy of all of the documentation that ABC collected as part of its Review (Exhibit #4).

Included in the Review documents was a final report, dated May 18, 2018, which summarized ABC’s findings and expectations resulting from the Review (Exhibit #4, Tab B). The final report was sent to Ms. Elbayomy at the address for Metro Pharmacy. Prior to the final report, ABC sent out a draft report, dated February 13, 2018, so that Ms. Elbayomy had an opportunity to respond to ABC’s findings and provide additional information, clarification, and documentation (Exhibit #4, Tab B). ABC received a response to the draft report and adjusted its findings in the final report accordingly. In the response, Metro Pharmacy admitted to the following:

“This is a written confirmation that the pharmacy has ceased claiming drug products that exceed the drug product quantity available for claims submitted to ABC, Claiming for additional fees before receiving the appropriate doctor authorization, claiming drug product without retaining the original prescription documentation, however the pharmacy could not provide the original Rx’s on the date of visit on June 5th because of time if it is acceptable pharmacy can fax missed Rx’s, claiming drug product quantities beyond that authorized by the prescriber, Claiming for drug product that not considered interchangeable without written confirmation from prescriber regardless the patient’s preference and previous patient records, Claiming prior to authorization date of prescription, Claiming without appropriate verification and documentation of verbal authorization from prescriber’s office.”

In the final report, ABC acknowledged receipt of the above confirmation and indicated that the total overpayment to the Pharmacy as found by the Review was \$388,483.79. Mr. Krempien testified that, to his knowledge, ABC had not received any amount from Metro Pharmacy or Ms. Elbayomy. Throughout his investigation, Mr. Krempien relied on the findings in the final report and on the supporting documentation from the Review.

Allegations 1 and 2

Allegations 1 and 2 correspond to the information gathered by ABC in relation to Item 1 in the final report. In the Review, ABC found that between January 30, 2015 and February 28, 2017 there were eight drug products where the Pharmacy made claims to ABC that were not supported by the Pharmacy’s inventory and historical purchase invoices from their wholesaler. The eight drug products included Ensure Plus, Ensure Regular, Ensure High-Protein, Boost Oral Liquid, Glucerna

Oral Liquid, Advair 250 mcg Metered Dose Aerosol, Levemir 100 unit/ml Injection Cartridge and Symbicort 200 Turbuhaler Metered Inhalation Powder. For each drug product, ABC determined the total quantity claimed by the Pharmacy to ABC and the total quantity available to the Pharmacy as supported by the Pharmacy's inventory and purchase invoices. ABC then calculated the amount of overpayment that the Pharmacy received from ABC as a result of the claims submitted by the Pharmacy for quantity that was unsupported. The total amount of overpayment for all eight drug products was \$299,659.67. This finding is supported by the Review documentation found in Exhibit #4 at Tab A5, pages 817 to 988.

Mr. Krempien further explained that in submitting claims to ABC for the quantity of drug product that was unsupported, the Pharmacy also created false dispensing records. The dispensing records would have showed that a patient had received a drug product even though that was impossible because the Pharmacy did not have the supporting inventory. The patient would not have received the drug product, but it would still appear on the patient's record.

Allegation 3(a)

Allegations 3(a) corresponds to the information gathered by ABC in relation to Item 4 in the final report. ABC's findings in the Review was that the total quantity claimed by the Pharmacy for approximately 31 original prescription numbers was in excess of the quantity that was authorized by the prescriber. Therefore, the Pharmacy had dispensed the excess drug product without any authorization from the prescriber or pharmacist adaptation from any pharmacist practicing at Metro Pharmacy. The total amount of overpayment for these claims was \$15,937.92. This finding is supported by the Review documentation found in Exhibit #4 at Tab A3, pages 366 to 641.

Mr. Krempien further testified that the pharmacy could have contacted the prescriber to obtain authorization for more drug product. In addition, for some drug product, a pharmacist could have authorized more with his or her signature. However, neither of these authorization options were exercised by Ms. Elbayomy, and, instead, the drug product was dispensed without authorization.

Allegation 3(b)

Allegations 3(b) corresponds to the information gathered by ABC in relation to Item 7 in the final report. As part of its Review, ABC contacted certain prescribers to determine if prescriptions had been authorized. ABC's Review found that for approximately 3 original prescription numbers, the pharmacy made claims for drug product where the prescriber indicated that the drug product was not verbally authorized. Therefore, the pharmacy had dispensed this drug product without any authorization. The total amount of overpayment for these claims was \$725.66. This finding is supported by the Review documentation found in Exhibit #4 at Tab A2, pages 315 to 365.

Allegation 3(c)

Allegations 3(c) corresponds to the information gathered by ABC in relation to Item 6 in the final report. Another finding of the Review was that for approximately 5 prescriptions (for 32 different drugs), the pharmacy submitted claims to ABC prior to the date the prescription was authorized or in absence of the prescriber's authorizing signature. Again, this meant that the pharmacy had dispensed this drug product without authorization. The total amount of overpayment for these

claims was \$4,667.78. This finding is supported by the Review documentation found in Exhibit #4 at Tab A6, pages 989 to 1171.

Mr. Krempien explained that the practice of dispensing drug product prior to the date of authorization likely arose in the case of a patient who had a ongoing need or chronic therapy. The patient would have been required to go through an assessment prior to obtaining a prescription for more drug product, but the pharmacy dispensed the drug product in advance of that assessment and authorization. Again, for some drug product, a pharmacist could have authorized more with his or her signature, but this was not done.

Allegation 3(d)

Allegations 3(d) corresponds to the information gathered by ABC in relation to Item 5 in the final report. The Review also found that the pharmacy had submitted claims to ABC for approximately 7 original prescription numbers where the drug product was not in accordance with what was authorized by the user. The pharmacy, therefore, was dispensing drug product that it was not authorized to do. The total amount of overpayment for these claims was \$4,124.36. This finding is supported by the Review documentation found in Exhibit #4 at Tab A4, pages 642 to 816.

Mr. Krempien further testified that a pharmacist can substitute drug product in certain circumstances, but there is a process that needs to be followed. The pharmacist needs to conduct an assessment, take responsibility for the adapted prescription, write out the prescription, and give notice of the prescription to the original prescriber. This process was not followed in this case, and, therefore, the pharmacy substituted drug product without authorization.

Allegation 4

Allegations 4 corresponds to the information gathered by ABC in relation to Item 3 in the final report. A final finding of the Review was that for approximately 23 original prescription numbers the pharmacy failed to provide original prescription documentation to support claims to ABC. Therefore, the pharmacy either failed to create or failed to retain the original prescription documentation. The total amount of overpayment for these claims was \$25,330.65. This finding is supported by the Review documentation found in Exhibit #4 at Tab A1, pages 41 to 314.

Allegation 5

Mr. Krempien attempted to contact Ms. Elbayomy and Metro Pharmacy on several occasions during his investigation. The first attempt was by a letter, dated May 30, 2018, that was sent by regular and registered mail to Ms. Elbayomy at her home address (Exhibit #3, Tab 6). Mr. Krempien obtained this address from the Registrar of the College. In the letter, Mr. Krempien enclosed the two letters of complaint from ABC and informed Ms. Elbayomy that an investigation has been opened. The letter sent by registered mail was returned to the College on June 25, 2018. On May 30, 2018, Mr. Krempien also left a voicemail at Ms. Elbayomy's home phone number which he obtained from the College's Registrar.

On June 12, 2018, Mr. Krempien sent an email to Ms. Elbayomy at the email address provided by the Registrar. Attached to the email was the letter of May 30, 2018 and the enclosed letters of complaint from ABC (Exhibit #3, Tab 7). Mr. Krempien received an automated reply email, dated June 12, 2018, indicating that Ms. Elbayomy was out of the country and disconnected from her inbox (Exhibit #3, Tab 8).

On July 3, 2018, Mr. Krempien sent another letter by regular mail to Ms. Elbayomy's home address, updating her on the status of the investigation and enclosing the letter of May 30, 2018 and the letters of complaint from ABC (Exhibit #3, Tab 10). Mr. Krempien did not receive a reply to this letter. Mr. Krempien also sent an email to Ms. Elbayomy on July 3, 2018, attaching the letter of July 3, 2018 and the enclosed documentation (Exhibit #3, Tab 10). Again, Mr. Krempien received an automated reply email indicating that Ms. Elbayomy was out of the country and disconnected from her inbox (Exhibit #3, Tab 11).

On July 13, 2018, Mr. Krempien sent a final letter and email to Ms. Elbayomy updating her on the status of the investigation (Exhibit #3, Tab 12). Mr. Krempien did not receive a reply to the letter and received the same automated reply email (Exhibit #3, Tab 13).

At the conclusion of his investigation, Mr. Krempien determined that the complaints from ABC were not trivial or vexatious and that there was evidence of unprofessional misconduct. Therefore Mr. Krempien referred the matter to the Hearings Director in his Record of Decision, dated October 1, 2018 (Exhibit #5).

(6) Submissions by the Complaints Director

Based on Mr. Krempien's testimony and the supporting documentation, Ms. Hale asked the Hearing Tribunal to find that the allegations listed in the Notice of Hearing have been proven and that the conduct of Ms. Elbayomy amounts to unprofessional conduct. Ms. Hale reminded the Hearing Tribunal that the Complaints Director bears the onus of 1) proving the allegations in the Notice of Hearing, based on the civil standard of proof, which is a balance of probabilities; and 2) establishing that the proven facts constitute unprofessional conduct under the HPA.

Regarding the allegations, Ms. Hale submitted that the Hearing Tribunal could find that they had been proven by the testimony of Mr. Krempien and the contents of the documentation from ABC's Review.

For unprofessional conduct, Ms. Hale reviewed the definition in section 1(pp) of the HPA and submitted that the following provisions apply in this case:

- (ii) contravention of this Act, a code of ethics or standards of practice;
- (iii) contravention of another enactment that applies to the profession;
- (vii) failure or refusal
 - (B) to comply with a request of or co-operate with an investigator;
- (xii) conduct that harms the integrity of the regulated profession;

In the Notice of Hearing, there were allegations of breaches of each of the HPA, *Pharmacy and Drug Act*, Pharmacy and Drug Regulation, Food and Drug Regulations, Standards of the Practice for Pharmacists and Pharmacy Technicians, Standards for the Operation of Licensed Pharmacies, and the Alberta College of Pharmacy's Code of Ethics. A breach of any of these may constitute unprofessional conduct. There were also allegations in the Notice of Hearing that the conduct in this matter 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 and a pharmacy licensee. Ms. Hale made argument for unprofessional conduct relating to each of the allegations in the Notice of Hearing.

Allegation 1

Ms. Hale stated that submitting claims in excess of the pharmacy's inventory breached Principles 1(1), 10(1), and 10(2) of the College's Code of Ethics. Principle 1(1) requires a pharmacist to act in the best interest of each patient. Principle 10(1)1 requires compliance with the law and 10(2) addresses honest dealings with patients, other pharmacists, pharmacy technicians, health professionals, the college, contractors, and suppliers. Furthermore, Ms. Hale argued that the conduct showed a lack of integrity and honesty that is required by a Pharmacist.

Allegation 2

Ms. Hale noted that the conduct under Allegation 2 is related to the conduct under Allegation 1, but it is distinct because it specifically addresses the creation of false records. In addition to the breaches argued under Allegation 1, Ms. Hale submitted that the creation of false records breached Principle 1(12) of the Code of Ethics, Standards 1(1.1), 1(1.2), 18, and 18(18.6) of the Standards of Practice for Pharmacists and Pharmacy Technicians, and Standards 1(1.1), 1(1.2), 8, and 8(8.3) of the Standards for the Operation of Licensed Pharmacies.

Principle 1(12) of the Code prohibits a pharmacist's professional judgment to be impaired by personal or commercial benefits. Standards 1(1.1) and 1(1.2) for both pharmacists and pharmacies require compliance with the law. Standard 18 of the standards for pharmacists addresses the requirements to create and maintain patient records. Specifically, Standard 18(18.6) requires that a patient record must be accurate and current. Standard 8 of the standards for pharmacies also addresses record keeping and Standard 8(8.3) specifically requires that a licensee must retain prescription documentation for at least two years. Ms. Hale made particular note of the fact that both the standards for pharmacists and the standards for pharmacies had a specific standard dedicated to maintaining patient records. Ms. Hale further submitted that the conduct under this allegation showed a lack of integrity and honesty.

Allegation 3

Ms. Hale noted that the conduct under Allegation 3 relates to dispensing drugs without authorization, but that each subheading has a different expression of unprofessional conduct.

For Allegation 3(a), Ms. Hale submitted that dispensing prescriptions in excess of the authorized quantity breached Standard 7(7.1) of the Standards of Practice for Pharmacists and Pharmacy

Technicians. This Standard requires that a pharmacist must ensure that he or she is filling a prescription correctly.

For Allegation 3(b), Ms. Hale submitted that dispensing prescriptions without verbal confirmation of the authorization breached Standard 6(6.7) of the Standards of Practice for Pharmacists and Pharmacy Technicians. This standard requires a pharmacist to determine the completeness of a prescription prior to dispensing a prescription.

For Allegation 3(c), Ms. Hale submitted that dispensing prescriptions prior to the date of authorization or without an authorizing signature breached Standard 6(6.3) and 6(6.7) of the Standards of Practice for Pharmacists and Pharmacy Technicians. This standard requires a pharmacist to determine the currency of a prescription prior to dispensing a prescription.

Finally, for Allegation 3(d), Ms. Hale submitted that filling a prescription with a drug that was not authorized also breached Standards 1 (1.1) and 7(7.1) of the Standards of Practice for Pharmacists and Pharmacy Technicians.

Allegation 4

Ms. Hale submitted that the conduct breaches Standard 1(1.1) of the Standards of Practice for Pharmacists and Pharmacy Technicians and that failing to retain or create original prescription documentation also breached Standards 6(6.7) and 7(7.1). In addition, she submitted that it breached 8(8.1) of the Standards for the Operation of Licensed Pharmacies which requires a licensee to ensure that there is an effective system for the creation, maintenance, secure storage, and availability for retrieval of all required records.

Allegation 5

Ms. Hale argued that Ms. Elbayomy's failure to respond to the College's investigation was a serious breach of professional conduct. She noted that being a member of a self-regulated profession is a privilege and it is not a right. In addition, a primary responsibility of a member is to respond to his or her regulator. A self-regulated profession cannot operate to protect the public unless its members respond to their regulator. Therefore, Ms. Elbayomy's complete failure to communicate during the investigation is particularly concerning to the College.

(7) Hearing Tribunal Decision

The Hearing Tribunal reviewed and considered the exhibits presented and the evidence of Mr. Krempien, as well as the submissions of Ms. Hale. The Hearing Tribunal finds that the allegations in the Notice of Hearing have been proven on a balance of probabilities and that the conduct in each allegation constitutes unprofessional conduct.

(8) Hearing Tribunal Findings and Reasons

For each allegation, it is noted that Ms. Elbayomy, as the licensee of Metro Pharmacy, is responsible for the claims submitted to ABC, for the drugs dispensed to patients of the pharmacy and for creating and retaining appropriate records.

The Hearing Tribunal also considered the response provided by Ms. Elbayomy to ABC following receipt of the draft report, in which she acknowledged certain allegations of ABC and noted that she had ceased claiming drug products that exceed the drug product quantity available for claims submitted, ceased claiming for additional fees before receiving the appropriate doctor authorization, claiming drug product without retaining original prescriptions documentation, claiming drug product quantities beyond that authorized by the prescriber, and claiming prior to authorization date of prescription and documentation of verbal authorization from the prescriber.

Allegation 1

The evidence provided confirms that Ms. Elbayomy submitted claims for five nutritional supplements (Ensure Plus, Ensure Regular, Ensure High-Protein, Boost Oral Liquid and Glucerna Oral Liquid) and three drugs (Advair 250 mcg Metered Dose Aerosol, Levemir 100 unit/ml Injection Cartridge, Symbicort 200 Turbuhaler Metered Inhalation Powder) to Alberta Blue Cross without being able to provide the required supporting invoices. The claims submitted were for approximately \$299,659.67. The final report provides the details of these claims and the supporting documentation is found in Exhibit 4 (at Tab A5, pages 817 to 988). The Hearing Tribunal finds that on, a balance of probabilities, Allegation 1 is proven,

Ms. Elbayomy received substantial monetary benefits from submitting claims to ABC that she was not entitled to. She engaged in this behavior for an extended period of time and there is no evidence that she has made any efforts to pay the money back to ABC. The behavior is a breach of Ms. Elbayomy's duty under Principle 1(1) of the Code of Ethics to act in the best interest of her patients, Principle 10(1) to comply with the letter and spirit of the law governing the practice and operation of pharmacies and her duty under Principle 10(2) of the Code to be honest in the business dealings related to her profession and in the operation of her pharmacy. The Hearing Tribunal views this as a very serious breach of the Code.

In addition, the conduct harms the integrity of the profession. Pharmacists are expected to conduct themselves with honesty and integrity and the submission of claims for products that were never provided to patients seriously undermines the integrity of the profession. Ms. Elbayomy's conduct constitutes unprofessional conduct under section 1(1)(pp)(i) and (xii) of the HPA.

Allegation 2

The Hearing Tribunal also finds that Allegation 2 is proven on a balance of probabilities. In order to make a claim to ABC, a record must be created relating to a patient. Therefore, in making false claims to ABC, Ms. Elbayomy created false dispensing records, which form part of a patient's medical record. Inaccurate medical records have the potential to harm patients because other health professionals rely on those records when treating a patient. If a patient's record is incorrect, then they may not receive the proper treatment. Of particular concern in this case was inaccurate records for the drug products Advair 250 mcg Metered Dose Aerosol, which is indicated for use related to pulmonary conditions and Levemir 100 units/ml which is an insulin product used for diabetes.

The creation of false dispensing records is a breach of the requirement to maintain accurate records under both Standard 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians and Standard 8 of the Standards for the Operation of Licensed Pharmacies. In addition, as with

Allegation 1, the conduct seriously undermines the integrity of the profession. Ms. Elbayomy's conduct constitutes unprofessional conduct under section 1(1)(pp)(i) and (xii) of the HPA.

Allegation 3

The Hearing Tribunal finds that Allegation 3 (a), (b), (c), and (d) is proven on a balance of probabilities. A review of the final report and supporting documentation (Exhibit 4 at Tab A3, pages 366 to 641; Tab A2, pages 315 to 365; Tab A6, pages 989 to 1171; Tab A4, pages 642 to 816) confirms that drugs were dispensed on several occasions by Metro Pharmacy when Ms. Elbayomy was not authorized to do so. In some circumstances, Ms. Elbayomy could have authorized the drug product herself as a pharmacist, but she failed to either extend the original prescription by adapting or prescribing an emergency supply of the medications.

The Hearing Tribunal recognized that it is uncertain whether the patients actually received the drug product that was dispensed. However, regardless of whether the patients received the product, dispensing drug product without proper authorization is a breach of Standards 6(6.3) and 6(6.7) of the Standards of Practice for Pharmacists and Pharmacy Technicians which require a pharmacist to determine the currency and completeness of a prescription. It is also a breach of the requirement in Standard 7(7.1) to fill a prescription correctly. The requirement to fill prescriptions correctly and appropriately with proper authorization is at the heart of the competencies expected of a pharmacist. The breaches are serious and constitute unprofessional conduct. Ms. Elbayomy's conduct constitutes unprofessional conduct under section 1(1)(pp)(i) of the HPA.

Allegation 4

The Hearing Tribunal finds that Allegation 4 is proven on a balance of probabilities. The final report and supporting documentation (Exhibit 4 at Tab A1, pages 41 to 314) establishes that on multiple occasions, Ms. Elbayomy failed to create or retain original prescriptions.

By failing to retain the original prescriptions, Ms. Elbayomy again breached the requirement in Standard 6(6.7) for a pharmacist to determine the completeness of a prescription and the requirement in Standard 7(7.1) for a pharmacist to fill a prescription correctly. Furthermore, in failing to retain prescriptions, Ms. Elbayomy also breached the requirement in Standard 8(8.1) of the Standards for the Operation of Licensed Pharmacies for a licensee to maintain a record system. It is not possible for the Hearing Tribunal to determine if there were actual prescriptions in the first place, which is a very serious concern.

Maintaining accurate medical records is critical for patient safety and is a core competency expected of all pharmacists. The breaches by Ms. Elbayomy are serious and constitute unprofessional conduct. Ms. Elbayomy's conduct constitutes unprofessional conduct under section 1(1)(pp)(i) of the HPA.

Allegation 5

During the investigation, the College made multiple attempts to contact Ms. Elbayomy but she failed to respond. She did not respond to the letters, emails or phone call of Mr. Krempien in the course of his investigation. Ms. Elbayomy also failed to provide any reasons for her lack of communication.

Members of a profession are expected and required to comply with requests from their College. This is an integral part of the College's ability to self-regulate. The failure or refusal to comply with a College, seriously jeopardizes the College's ability to protect the public and ensure the competence of its members and undermines the integrity of the profession.

A failure or refusal to comply with an investigation is very serious conduct. Ms. Elbayomy's failure to communicate with the College constitutes unprofessional conduct under section 1(1)(pp)(vii)(B) of the HPA.

(9) Conclusions of the Hearing Tribunal

As a result of the Hearing Tribunal's findings of unprofessional conduct against Ms. Elbayomy, the Hearing Tribunal will need to determine what order it will make pursuant to Section 82 of the HPA. The Hearing Tribunal decided to first issue this written decision on the allegations before considering any submissions with respect to sanction. This was done to allow Ms. Elbayomy a final chance to make submissions in this matter and provide an explanation for her conduct.

The Hearing Tribunal hereby directs that this decision be sent to Ms. Elbayomy by regular mail, registered mail and by email. The Hearings Director is requested to schedule a time for the parties to provide submission on sanction. The parties will be allowed to provide written submissions on sanction, unless either the Complaints Director or Ms. Elbayomy request that the Hearing Tribunal be reconvened to hear oral submissions. If the parties are unable to agree on a proposed procedure and timing for submissions on sanction, the Hearing Tribunal will make further directions on this point.

DATED January 30, 2018

SIGNED ON BEHALF OF THE HEARING TRIBUNAL BY

[Christopher Heitland]

Christopher Heitland, Chair