

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*,
R.S.A., 2000, c. H-7**

-and-

**IN THE MATTER OF AN APPEAL BY SHEREEN ELBAYOMY PURSUANT TO
SECTION 87 of the *HEALTH PROFESSIONS ACT*
FROM DECISIONS OF THE HEARING TRIBUNAL OF THE ALBERTA COLLEGE
OF PHARMACY DATED JANUARY 30, 2019 and APRIL 4, 2019**

DECISION OF THE COUNCIL OF THE ALBERTA COLLEGE OF PHARMACY

April 24, 2020

1. INTRODUCTION

The Appeal Panel of the Council of the Alberta College of Pharmacy (“Appeal Panel”) convened to hear an appeal pursuant to section 87 of the *Health Professions Act* on January 28, 2020, at the Alberta College of Pharmacy located at 1100-8215 112 St. NW, Edmonton, Alberta.

In attendance were:

Members of Council:

Dana Lyons, Pharmacy Technician, Chairperson
Peter Eshenko, Pharmacist
Irene Pfeiffer, Public Member

Gregory Sim of Field Law attended as independent legal counsel for the Appeal Panel.

Also present were:

Shereen Elbayomy, Appellant
Nathan Whitling of Liberty Law, legal counsel for the Appellant
James Krempien, Complaints Director
Paula D. Hale of Shores Jardine, legal counsel for the Complaints Director
David N. Jardine of Shores Jardine, legal counsel for the Complaints Director

There were no objections to the composition of the Appeal Panel present to hear the appeal. There were no preliminary objections or jurisdictional issues brought forward by either party at the appeal hearing.

2. HISTORY

The Alberta College of Pharmacy Hearing Tribunal held a hearing to consider allegations of unprofessional conduct against Ms. Elbayomy on November 29, 2018. The Hearing Tribunal issued a decision dated January 30, 2019 finding Ms. Elbayomy guilty of unprofessional conduct on the allegations referred to a hearing, 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 Tubuhaler 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 Clonazepam-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;
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.

Ms. Elbayomy did not attend the hearing in person, or by counsel and the Complaints Director applied to the Hearing Tribunal to proceed with the hearing in her absence.

The Hearings Director, Ms. Morley testified about the efforts made to serve Ms. Elbayomy with notice of the hearing. Ms. Morley testified that she sent the Notice of Hearing to Ms. Elbayomy at her home address and to the address for Metro Pharmacy, of which Ms. Elbayomy was the owner and licensee. Ms. Morley testified that she used addresses from records maintained by the College's Registrar and sent the notices by regular and registered mail. The registered mail to both addresses was returned. Ms. Morley also testified that she called Ms. Elbayomy's cell phone number and the Metro Pharmacy phone number, she faxed the Metro Pharmacy fax number and she emailed Ms. Elbayomy's email address. These numbers and email address were also obtained from the records maintained by the Registrar but none of these methods were successful in contacting Ms. Elbayomy. The phone and fax numbers were disconnected and the

email addresses returned an automated reply indicating that Ms. Elbayomy was out of the country and disconnected from her inbox.

The Hearing Tribunal also heard evidence that the College had posted the Notice of Hearing on its website starting on October 9, 2018 and that the College had engaged a process server who attended at Ms. Elbayomy's home address and the Metro Pharmacy address. The Hearing Tribunal heard evidence that an individual at Ms. Elbayomy's home address told the process server she had been renting the premises for five months and that she did not know Ms. Elbayomy. At the Metro Pharmacy address the process server observed that the Pharmacy was closed and the building was under renovations. The process server had also been told that the store was recently sold by Ms. Elbayomy.

Based on this evidence, the Hearing Tribunal found that the Notice of Hearing had been given to Ms. Elbayomy in the manner required by the *Health Professions Act*, R.S.A. 2000, c. H-7 ("HPA"). Section 120(3) of the HPA provides that a requirement to give notice is satisfied if the notice is given by personal service or sent by registered mail to the person's address as shown on the record of the Registrar. The Hearing Tribunal noted that section 41(1) of the *Pharmacists and Pharmacy Technician Profession Regulation*, Alta Reg. 129/2006 requires regulated members of the College to provide the Registrar with current contact information, including a home address, business mailing address, business telephone numbers and fax numbers and an email address. The Hearing Tribunal held that while the College had an onus to give Ms. Elbayomy notice of the hearing, she had a corresponding duty to maintain current contact information with the College. Ms. Elbayomy had not complied with this duty. The Hearing Tribunal concluded that the College had exhausted all reasonable efforts to locate Ms. Elbayomy and notify her of the hearing. Balancing fairness to Ms. Elbayomy with the College's duty to protect the public, the evidence before the Hearing Tribunal weighed in favour of proceeding with the hearing despite Ms. Elbayomy's absence pursuant to section 79(6) of the HPA.

The Hearing Tribunal proceeded with the hearing and issued its decision on January 30, 2018 finding Ms. Elbayomy to have committed unprofessional conduct. The Tribunal directed that its decision be sent to Ms. Elbayomy by regular mail, registered mail and by email and that she be offered the opportunity to make submissions on sanctions. The Hearing Tribunal received submissions on sanctions from the Complaints Director but not from Ms. Elbayomy. On April 4, 2019 the Hearing Tribunal issued its decision on sanctions concerning Ms. Elbayomy.

Ms. Elbayomy engaged counsel and on May 3, 2019 she commenced an appeal of the Hearing Tribunal's decisions. Attached to Ms. Elbayomy's Notice of Appeal letter from her legal counsel were documents that were not part of the record of proceedings before the Hearing Tribunal:

1. May 28, 2018 letter from Shereen Elbayomy to CF-S of Alberta Blue Cross.
2. Emails between CF-S of Alberta Blue Cross and Metro Pharmacy et al. dated August 14, 2018.
3. TD Bank cheque details for three cheques from 1576701 Alberta Ltd. to Alberta Blue Cross dated August 30, 2018, December 30, 2018, March 30, 2019.

Application for a Partial Stay of Sanctions

Ms. Elbayomy applied for a partial stay of the Hearing Tribunal's sanctions orders and on July 2, 2019 the Registrar granted the partial stay request. This stayed orders for Ms. Elbayomy to pay fines within 90 days but left the remaining sanctions orders intact pending the outcome of this appeal.

Application to Adduce New Evidence

On July 19, 2019, Ms. Elbayomy applied, through her counsel for an order pursuant to section 89(4)(b) of the HPA directing the Hearing Tribunal to hear new evidence. The proposed new evidence would be the material attached to Ms. Elbayomy's May 3, 2019 Notice of Appeal, as well as her own testimony respecting the events described in that material.

In reasons issued September 9, 2019, the Appeal Panel denied Ms. Elbayomy's request to introduce new evidence, other than TD Bank cheque details for three cheques from 1576701 Alberta Ltd. to Alberta Blue Cross dated August 30, 2018, December 30, 2018, March 30, 2019. These demonstrated that Ms. Elbayomy had repaid ABC in the amount of \$69,517.19 on August 30, 2018 which was prior to the hearing, and that she has paid a further \$139,034.38 since the hearing.

3. ISSUES APPEALED

Ms. Elbayomy's submissions raised two grounds of appeal. Those grounds may be summarized as follows:

Ground 1: The Hearing Tribunal erred in law and jurisdiction by concluding that it had jurisdiction to proceed with the hearing in Ms. Elbayomy's absence despite the absence of proof that she had actual notice or actual knowledge of the proceedings before the Hearing Tribunal;

Ground 2: The Complaints Director failed to meet the expected duty of candour and utmost good faith as required by a party in an *ex parte* proceeding, and failed to bring evidence of particular importance to Ms. Elbayomy's case to the Hearing Tribunal's attention. These failures resulted in an unfair hearing and numerous unreasonable findings by the Hearing Tribunal.

4. STANDARD OF REVIEW

There are two standards of review developed by the courts to guide appeal bodies in decision making:

- a. Correctness – no deference is given and the appeal body can substitute its view if it considers that the Hearing Tribunal made an error; and

- b. Reasonableness – a deferential standard, which recognizes that there may not be a single correct answer to a question but a range of acceptable outcomes that are defensible based on the facts and the law. If the decision of the Hearing Tribunal falls within that range, it should not be disturbed, even if the appeal body would have decided the case differently.

Ms. Elbayomy submitted that the standard of review applicable to her first ground of appeal should be the correctness standard. She argued that the proper interpretations of sections of the HPA are pure questions of law and jurisdiction, to be determined in light of the applicable principles of statutory interpretation. She suggested that no deference should be given to the Hearing Tribunal's interpretations of these sections because these are pure questions of law, and because the Hearing Tribunal did not consider any of the legal authorities governing these issues.

The Complaints Director did not agree that the correctness standard should apply to the Hearing Tribunal's interpretation of the HPA. He argued there is a degree of deference owed to the Hearing Tribunal's interpretations of the HPA. The Complaints Director also argued that the selection of the standard of review would not matter in this case since the Hearing Tribunal's interpretations of the HPA were both reasonable and correct.

The Appeal Panel accepted that the proper interpretations of the relevant sections of the HPA are questions of law. It is not necessary to determine which standard of review applies to those interpretations given the Complaints Director's position that the Hearing Tribunal's interpretations are both reasonable and correct. The Appeal Panel applied the more rigorous correctness standard for the purposes of this decision.

In relation to her second ground of appeal, Ms. Elbayomy submitted that a deferential standard of review would apply to the Hearings Tribunal's findings of fact, while little or no deference would apply to the Hearing Tribunal on questions of procedural fairness.

The Complaints Director's submissions on the applicable standard of review referred to *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270 and *Nelson v. Alberta Association of Registered Nurses*, [2005] A.J. No. 821. In both cases the Alberta Court of Appeal considered the standard of review applicable in an appeal from a first level disciplinary tribunal to an appellate administrative tribunal. In *Zuk* the Court concluded the applicable standard of review was the reasonableness standard. The Court came to the same conclusion in *Nelson* and emphasized the following points:

- a) The role of the appellate tribunal was not to retry the case but to determine whether the discipline tribunal's decision was reasonable;
- b) The discipline tribunal's conclusions would be reasonable if there was some basis for them in the evidence;
- c) The appellate tribunal should not re-weigh and re-assess the evidence because that was the role of the discipline tribunal;

- d) The appellate tribunal should not substitute its interpretation of practice standards for the interpretation of the discipline tribunal unless the discipline tribunal's interpretation was untenable; and
- e) The appellate tribunal should consider the whole of the reasons for the decision in their totality in deciding whether the decision was reasonable.

The Complaints Director argued that Ms. Elbayomy's second ground of appeal incorrectly characterized the Hearings Tribunal's factual findings as fairness issues, in an attempt to avoid the deferential reasonableness standard of review. The Complaints Director submitted that Ms. Elbayomy could argue the Hearing Tribunal's findings were based on evidence that is improper, incorrect or unreliable, but the Appeal Panel should review those points on the standard of reasonableness.

The parties agreed that the Hearing Tribunal's findings of fact would attract the deferential reasonableness standard of review. This was borne out by the *Zuk* and *Nelson* cases from the Alberta Court of Appeal. Those cases also stand for the propositions that the Hearing Tribunal's interpretations and applications of practice standards and its conclusions about unprofessional conduct and sanctions should be reviewed using the reasonableness standard. The Appeal Panel will therefore apply the reasonableness standard to the Hearing Tribunal findings of fact, its conclusions that the allegations of unprofessional conduct were proven and its sanctions orders.

The parties also agreed that questions of whether the Hearing Tribunal process was fair should be reviewed to determine whether the process met the level of fairness that the law requires. The Appeal Panel accepts this, but identified no issues of fairness in the proceedings before the Hearing Tribunal or in Ms. Elbayomy's submissions for this appeal for the reasons described below.

5. SUBMISSIONS

Ground (1)

Ms. Elbayomy's Submissions

Ms. Elbayomy submitted that the Hearing Tribunal found in its merits decision that she was served with the Notice of Hearing for the purposes of section 120(3) of the *Health Professions Act*. The Tribunal then exercised its discretion to proceed with the hearing in her absence pursuant to section 79(6).

The Hearing Tribunal had relied on evidence from the College's Hearings Director, Ms. Morley that she had sent the Notice of Hearing by regular and registered mail to Ms. Elbayomy's home address and to the address of Metro Pharmacy but the registered mail sent to both addresses was returned. A process server subsequently determined that Ms. Elbayomy had moved away from her home address and closed the Pharmacy. Phone and fax numbers were disconnected and emails resulted in an automatic reply stating Ms. Elbayomy was out of the country and disconnected from her inbox. There was no

evidence before the Hearing Tribunal, such as a signature, that Ms. Elbayomy had ever acknowledged receipt of the Notice of Hearing

The Hearing Tribunal did not find that Ms. Elbayomy had actual notice of the proceedings before the Hearing Tribunal, whether by registered mail or otherwise. In fact, the Tribunal acknowledged that Ms. Elbayomy may not have received the Notice of Hearing and may not have known it was happening. The Hearing Tribunal nevertheless found as a fact that the College had “exhausted all reasonable efforts to locate Ms. Elbayomy and provide notice to her” and it exercised its discretion to proceed with the hearing under section 79(6) of the HPA. This was contrary to the principles of natural justice and a manifest error of law.

Section 24 of the Alberta *Interpretation Act* provides that references in an enactment to registered mail includes mail in respect of which “the addressee or a person on behalf of the addressee is required to acknowledge receipt of the mail by providing a signature”. The point of laws such as section 120(3) of the *Health Professions Act* which provides that service may be effected by “certified or registered mail” as opposed to “regular mail” is to require that signature. This ensures the notice is actually given to the addressee. Service cannot be effected by merely sending registered mail to a vacant building where it is received by no one. In this case there was no such signature and so the legal requirements of section 120(3) were not met and the Hearing Tribunal had no jurisdiction to proceed to exercise its discretion to proceed with the hearing under section 79(6). The Hearing Tribunal’s failure to interpret section 120(3) in light of sections 23 and 24 of the *Interpretation Act* resulted in the denial of natural justice to Ms. Elbayomy.

Ms. Elbayomy’s right to notice of the proceedings before the Hearing Tribunal was of fundamental importance and could only be abrogated by clear and unmistakable statutory language. Legislative intent to eliminate a notice requirement should not be presumed: *Hegeman v. Carter et al.*, 2008 NWTSC 24 at paras. 27-28. Further, any ambiguities in the governing statute must be resolved in favour of the preservation of the notice requirement: *L’Alliance des Professeurs Catholiques de Montreal v. La Commission des Relations Ouvrieres de la Province de Quebec*, [1953] 2 S.C.R. 140 at p. 154. The right to notice is part of the *audi alteram partem* principle, a rule of natural justice that applies wherever the governing statute is silent on the question of notice of proceedings: *Cooper v. Wandsworth Board of Works* (1863), 14 C.B. (N.S.) 180 and *Canadian Transit Co. v. Canada (Public Service Staff Relations Board)*, [1989] 3 F.C. 611 (C.A.) at para. 16. In this case it would be impossible for the proceedings to have been fair to Ms. Elbayomy since she had no notice of those proceedings.

Ms. Elbayomy referred the Appeal Panel to several previous cases that considered the requirements for service by registered mail. In *R. v. London County Quarter Sessions Appeals Committee; Ex parte Rossi*, [1956] 1 Q.B. 682, the Court explained that when service is allowed by registered mail and the notice is returned undelivered, then any court judgment or order obtained by default is irregular and may be set aside. See also *Morguard Trust Co. v. Doonanco* (1980), 32 A.R. 384 (Q.B.(M.)).

In *Hopper v. Foothills (M.D. No. 31)* (1976), 1 A.R. 129 (C.A.), the Appellate Division of the Alberta Supreme Court considered a provision of the Alberta *Expropriation*

Procedure Act providing that a document may be served by registered mail and that the document was deemed to be served on the date it was so mailed. The majority of the Court emphasized that the right to notice was fundamental and concluded the word “deemed” raised only a rebuttable presumption of actual service. In other words evidence that the document was not actually received would overcome the presumption of service.

Ms. Elbayomy also referred to other cases that she said stood for the proposition that service by certified or registered mail requires actual receipt of the notice as evidenced by a signature. She argued that merely sending the notice by certified or registered mail is, as a matter of law, insufficient.

Ms. Elbayomy distinguished two cases from the Alberta Court of Appeal; *E.J.S. Holdings Ltd. v. Calgary* (1982), 41 A.R. 439 (C.A.) and *Cwalina Estate v. Parkland County*, 2013 ABCA 343. Ms. Elbayomy argued that in *E.J.S. Holdings*, the governing statute did not require that the notice be served or given, only that it be sent by registered mail. Since the statute did not require service, only that the notice be sent, actual receipt of the notice was not necessary. Ms. Elbayomy argued that in *Cwalina*, the statute merely required that a notice be sent by mail, not registered mail. The Court held that a requirement to send a notice does not require actual receipt.

Ms. Elbayomy argued that section 120(3) of the *Health Professions Act* did not say that notice could just be sent to her registered address without more. The Hearings Director was required by section 77(a) of the *Act* to “give” her the notice to attend. The Hearing Tribunal only had discretion to proceed with the hearing if there was proof that Ms. Elbayomy had been given this notice, which could happen through personal service or by sending the notice by certified or registered mail. Ms. Elbayomy submitted that this language required the notice to actually have been “given” or served upon her.

Ms. Elbayomy concluded that the evidence before the Hearing Tribunal did not meet the legal requirements of section 120(3) properly interpreted, since the evidence confirmed that she never received notice of the hearing. The Hearing Tribunal therefore had no jurisdiction to proceed with the hearing pursuant to section 79(6) and its decisions are null and void.

Ms. Elbayomy said that she had notified the College she was shutting her pharmacy down and she left the Country. There was no urgency to this matter and no harm if the College would have had to wait to locate her to notify her of the hearing. In response to the Complaints Director’s written submissions, she said the sky would not fall if the Appeal Panel adopted her interpretation of section 120(3) of the *Health Professions Act*.

Ms. Elbayomy suggested the Appeal Panel should not lose sight of its humanity and common sense and it should consider the big picture. She said she was the subject of extremely serious findings which may be false, and that she had lost the ability to practice her profession through a possible miscarriage of justice. She suggested the Appeal Panel could rectify this by referring the matter for a new, fair hearing at which she could have the opportunity to call evidence, be represented by counsel and to tell her side of the story.

Complaints Director's Submissions

The Complaints Director's submissions described his attempts to reach Ms. Elbayomy as part of the investigation of the complaints about her claims to ABC. The Complaints Director submitted that on May 30, 2018 he sent a letter by registered mail to the residential address Ms. Elbayomy had provided to the College as part of her registration information. This letter provided Ms. Elbayomy with notice of the complaints from ABC as well as copies of them and requested her response. This letter was returned to the College as "unclaimed" on June 25, 2018.

The Complaints Director also telephoned Ms. Elbayomy on May 30, 2018 at the number she had provided to the College as part of her registration information and left a voice message for her about the complaint and a request for her to call him. The Complaints Director submitted that Ms. Elbayomy did not return this call.

On June 12, 2018 the Complaints Director emailed Ms. Elbayomy at the email address she provided to the College as part of her registration information. He attached a copy of his May 30, 2018 letter to his email and he explained it had originally been sent by registered mail. His email also explained that he had tried to telephone Ms. Elbayomy and that he had left her a voice message. The Complaints Director submitted that four hours after sending the June 12, 2018 email, he received an "Automatic Reply: Out of Country" providing no indication of when Ms. Elbayomy would be returning and stating:

Hello,

Thank you for your email. I'm currently out of country. I'll be disconnected from my inbox. I'll be sure to reply to your message when I wade through my inbox upon my return.

Best regards,

Shereen

The Complaints Director submitted that on July 3, 2018 he emailed and mailed a letter to Ms. Elbayomy via Canada Post regular mail. The Complaints Director explained that he again received an automatic reply to his email but the letter sent by regular mail was not returned.

The Complaints Director's submissions reproduced the automatic reply he received to his July 3, 2018 email. This automatic reply had identical language to the automatic reply received on June 12, 2018 but the formatting was slightly different. The automatic reply received on July 3, 2018 had additional spacing between the word "Hello" and the body of the email, and between the body of the email and "Best regards," The automatic reply received on July 3, 2018 also had an additional space between the word "return" and the period that followed it.

The Complaints Director did not suggest that these differences were significant so the Hearing Tribunal has noted them but drawn no inferences from them.

On July 13, 2018 the Complaints Director again mailed a letter by regular mail and emailed Ms. Elbayomy, this time attaching a copy of a letter to one of the Complainants from ABC stating that he may continue the investigation without Ms. Elbayomy's input if she did not respond. The Complaints Director submitted that he again received an automatic reply to this email and the copy of his letter sent by regular mail was not returned

The Complaints Director submitted that he spoke with one of the Complainants from ABC on July 30, 2018 and she relayed that ABC had no contact with Ms. Elbayomy since May 17, 2018 and that Ms. Elbayomy's Pharmacy had made no payments towards its debt to ABC as of June 1, 2018.

On October 1, 2018 the Complaints Director sent Ms. Elbayomy a copy of his Record of Decision to refer the matters of the complaints about her to a hearing by registered and regular mail. The Complaints Director submitted that the letter sent by registered mail was returned to the College marked "unclaimed" while the letter sent by regular mail was returned marked as "moved".

The Complaints Director then submitted that at the hearing, the College's Hearings Director gave evidence of her attempts to serve Ms. Elbayomy with the Notice of Hearing. The Hearings Director testified she sent the Notice of Hearing to Ms. Elbayomy's residential address but it was returned. The Hearings Director testified that her cell phone and fax numbers were disconnected and an attempt to email Ms. Elbayomy resulted in the same automatic response that the Complaints Director received. The Notice of Hearing was posted to the College's website on October 9, 2018.

The Complaints Director then submitted that after the Hearing Tribunal issued its merits decision on January 30, 2019 the Hearings Director attempted to serve the merits decision on Ms. Elbayomy by registered, regular mail and email. The registered and regular mail was returned with the notation "moved". The email resulted in a notification that the email address "was not found at gmail.com".

The Complaints Director explained that he submitted his written submissions on sanctions to the Hearing Tribunal on February 28, 2019 and on April 4, 2019 the Hearing Tribunal issued its decision on sanctions. The Hearings Director received Ms. Elbayomy's notice of appeal from her legal counsel on May 3, 2019.

The Complaints Director asked the Appeal Panel to reject Ms. Elbayomy's interpretation of section 79(6) and 120(3) of the HPA in favour of an interpretation that conforms to the purpose and intent of the HPA and protects the public and integrity of the profession. The Complaints Director argued that the proper approach to statutory interpretation requires the Appeal Panel to read the provisions of the HPA in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the enactment, its objects and the intention of the Legislature: *Rizzo v. Rizzo Shoes*, [1998] 1 S.C.R. 27 at para. 21.

The Complaints Director submitted that the purpose of the HPA, like all professional legislation is to enable the College to regulate the profession in a way that protects and

serves the public. This is explicitly stated in section 3 of the HPA. Sections 33(1) and (3) of the HPA further mandate the College's Registrar to establish registers and to require regulated members to provide certain information for those registers. Sections 41(1) and (2) of the *Pharmacists and Pharmacy Technicians Profession Regulation*, AR 129/2006 require regulated members of the College to provide information including the following in their initial application for registration and within 14 days of a change in the information:

home address and business telephone numbers and fax numbers;

business mailing address;

email address;

employer's name or place of business

Similar obligations exist for Licensees and Proprietors under the *Pharmacy and Drug Act*, R.S.A. 2000, c. P-13. Contact information must be kept current so that the College can communicate effectively with its regulated members about changes that impact the profession and the public, including changes to the laws applying to and impacting regulated members. The Complaints Director submitted that Ms. Elbayomy had failed to comply with her positive regulatory obligations to maintain current contact information. Had she met those obligations the College would have been able to notify her of the investigation and the hearing and the issues resulting in this appeal would not have occurred.

The Complaints Director then argued that section 77(a) of the HPA which required the Hearings Director to "give" Ms. Elbayomy a Notice to Attend, and section 79(6) which permitted the Hearing Tribunal to proceed with the hearing in Ms. Elbayomy's absence upon proof that she had been "given" a Notice to Attend, should be interpreted in accordance with section 120(3). Section 120(3) provides that a document or notice that is required to be "given" under Part 4 of the HPA to any person is "sufficiently given" if it is "sent to the person by certified or registered mail at that person's address as shown on the register or record of the registrar."

The Complaint Director argued that the HPA only required the Notice to Attend to be "sent" by registered mail to Ms. Elbayomy at her address on file with the College. It was not necessary to prove that anyone acknowledged receipt of the Notice. The Complaints Director submitted that this interpretation takes into consideration the HPA's public protection mandate and is consistent with its objectives as well as natural justice.

The Complaints Director submitted that the interpretation advocated by Ms. Elbayomy would lead to the absurd result that a regulated member could avoid a disciplinary hearing for an unlimited time by simply leaving the jurisdiction or deciding not to accept registered mail. This could delay hearings for years while the regulated member continues to practice in Alberta or elsewhere. This would subvert the purpose of the HPA.

The Complaints Director responded to the case law referenced in Ms. Elbayomy's submissions by noting that none of her cases were in the professional regulatory context and none of them arose in a context where the subject of the hearing was required to provide contact information to a regulator or agency. Common law requirements for notice in the name of natural justice are subordinate to express legislation and in this case the HPA expressly abridged Ms. Elbayomy's common law rights to notice of the hearing in very specific circumstances: where notice was provided using the address provided by the regulated member to the College. The Complaints Director pointed out that the legislation in those other cases did not have provisions equivalent to section 120(3) of the HPA.

The Complaints Director argued that section 120(3) should be interpreted to allow a Hearing Tribunal the discretion to proceed with a hearing absent proof of actual service of the Notice to Attend on the regulated member, provided the Notice was sent to the regulated member's address on the College's register. This interpretation gives meaning to the provisions mentioned above which require regulated members of the College to maintain up to date contact information.

The Complaints Director also refuted Ms. Elbayomy's suggestion that common law requirements for actual notice superseded the Complaints Director's interpretation of the HPA. The Complaint Director referred to Macaulay, Sprague and Sossin, *Practice and Procedure Before Administrative Tribunals* and to Brown and Evans, *Judicial Review of Administrative Action in Canada*. These texts explain that where a person provides an administrative agency with an address for service, the agency is then entitled to rely upon that address. Those who miss notices through their own omission to update their address, or through deliberate evasion cannot subsequently complain about a lack of natural justice.

The Complaints Director emphasized that section 120(3) of the HPA provides that notice is "sufficiently given" if it is "sent" by registered mail to the address "as shown on the register or record of the registrar." The emphasis is on the notice being "sent". The Complaints Director then referred to several decisions from the Alberta, Manitoba and Ontario Courts and argued that they held that a statutory requirement to send a document does not require proof of receipt: *E.J.S. Holdings Ltd. v. Calgary (City)*, 1982 ABCA 237; *Cwalina Estate v. Parkland (County)*, 2013 ABCA 343; *Mullen v. Flin Flon (City) et al.*, 2000 MBCA 104 and *Elliott v. Toronto (City)*, 1999 CanLII 1073 (ONCA).

The Complaints Director also referred to previous decisions in which section 120(3) of the HPA had been engaged to proceed with the hearing in the regulated member's absence, upon proof of notice being sent. These were the cases of Sinan Hadi and Calvin Boey. A similar case concerning Andrew Wong, decided under a similar provision of the predecessor *Pharmaceutical Profession Act* was also referenced. The Complaints Director submitted that if the Tribunals in the Hadi, Boey and Wong cases had adopted Ms. Elbayomy's interpretation of the HPA then those Tribunals would have been precluded from dealing with those matters. That would have been contrary to the purpose and intent of the governing legislation.

The Complaints Director concluded in relation to this first ground of appeal noting that section 120(3) of the HPA balances Ms. Elbayomy's right to notice of the hearing with the protection of the public by placing the onus on her to maintain current contact information with the College. In this case Ms. Elbayomy failed to meet her professional and regulatory obligations and she should not be allowed to benefit from that failure. The risk of a notice being sent to an outdated address is outweighed by the purpose and intent of the HPA to protect the public

Ground 2

Ms. Elbayomy's Submissions

Ms. Elbayomy submitted that having prevailed upon the Hearing Tribunal to proceed in the absence of any actual notice to her, the Complaints Director became the proponent of an *ex parte* proceeding. That is, the Complaints Director was seeking an order imposing sanctions on another party, without actual notice and in the absence of any opposition. The Complaints Director was therefore subject to a duty of candour and utmost good faith: *Duke Energy Corp. v. Duke/Louis Dreyfus Canada Corp.*, 1998 ABCA 196 at para. 4. This duty exists to ensure the decision-maker is aware of evidence, arguments and other considerations that might support the position of the absent party. The failure to comply with the duty raises the spectre of an uninformed decision and a miscarriage of justice.

Ms. Elbayomy's submissions then identified aspects of the Complaints Director's submissions to the Hearing Tribunal that she alleged had failed to meet the duty of candour and utmost good faith in that they failed to bring the Hearing Tribunal's attention to aspects of the record that supported Ms. Elbayomy's position. She argued that this led the Hearing Tribunal to make unreasonable findings that were unsupported by, or contrary to the evidentiary record. Ms. Elbayomy also suggested that on an aggregate level these unreasonable findings rendered the hearing unfair.

All Reasonable Efforts to Contact Ms. Elbayomy

Ms. Elbayomy first took issue with the Complaints Director's submission to the Hearing Tribunal that the College had made all reasonable efforts to notify Ms. Elbayomy of the time, date and location of the hearing. Ms. Elbayomy submitted that the College's Hearings Director and the Complaints Director had attempted to contact her at [REDACTED]@gmail.com, which was her email address on the College's register. This email address generated an automatic reply indicating that Ms. Elbayomy was out of the country and "disconnected from my inbox". Despite this automatic reply the College continued to send correspondence to Ms. Elbayomy using this email address. In addition, the Complaints Director testified that during the ABC audit, Ms. Elbayomy "stops communicating, full stop, with both Blue Cross...".

Ms. Elbayomy argued that these submissions to the Hearing Tribunal were unfair in the context of an *ex parte* proceeding. Ms. Elbayomy argued that the evidence before the

Hearing Tribunal showed that she had notified ABC on May 17, 2018 that she was closing her pharmacy and she provided a new email address to contact her: [REDACTED]15@gmail.com. This was referenced in notes of a call between Ms. Elbayomy and ABC which were provided to the Complaints Director during his investigation and which were marked as part of Exhibit 4 before the Hearing Tribunal. The Complaints Director did not bring this new email address to the Hearing Tribunal's attention, nor was there any evidence that the College made any attempts to contact Ms. Elbayomy at this email address. Further, as demonstrated by the cheque details from Ms. Elbayomy to ABC admitted as new evidence she had not stopped all communications with ABC. She had continued to correspond with ABC to make payments.

The Complaints Director therefore provided false information respecting Ms. Elbayomy's cooperation with ABC. The Hearing Tribunal relied on these false representations when it exercised its discretion under s. 79(6) of the HPA to proceed with the hearing. The Hearing Tribunal was not aware that Ms. Elbayomy had provided ABC with a new email address to contact her, or that she was in contact with ABC for the purpose of making payments. These false representations led to unreasonable findings and compromised the fairness of the proceedings. Ms. Elbayomy also suggested that if the Hearing Tribunal had been made aware of the relevant factors it would most likely have directed that the hearing be adjourned so that further efforts to contact Ms. Elbayomy be made.

The Submission of False Claims to ABC

Allegation 1 was that Ms. Elbayomy submitted approximately \$300,000 worth of claims to ABC for drugs and nutritional supplements without being able to provide the required supporting invoices. Before the Appeal Panel, Ms. Elbayomy argued that the Complaints Director had neglected to refer the Hearing Tribunal to her response to this allegation in the ABC investigation. Ms. Elbayomy referred to her June 23, 2017 fax to ABC in Exhibit 4. In her fax, Ms. Elbayomy explained that all of the nutritional products for which claims had been submitted were purchased from Superstore using the Pharmacy's business credit card. The credit card statements were available for ABC to review but the Pharmacy had not kept the Superstore receipts. The Pharmacy was able to retrieve copies of its invoices from McKesson, but this was not possible for purchases from Superstore. Ms. Elbayomy suggested that at worst she had failed to keep her Superstore receipts. She had not submitted false or fraudulent claims. She also submitted that her failure to retain the Superstore receipts as required by her contract with ABC did not entail any automatic finding of unprofessional conduct.

Ms. Elbayomy submitted that in a fair hearing, the Hearing Tribunal would have at least considered the possibility that her only failing was in failing to retain original receipts and instead relying on credit card statements. The Complaints Director had failed to refer the Hearing Tribunal to Ms. Elbayomy's June 23, 2017 fax to ABC and had failed to otherwise investigate the nature of her side of the dispute so the Hearing Tribunal had no opportunity to consider those exculpatory considerations. Instead the Tribunal accepted the Complaints Director's "unilateral and uninformed conclusion" that Ms. Elbayomy had intentionally submitted false claims to ABC.

Pharmaceutical Products Not Being Received by Member

Ms. Elbayomy said that the Complaints Director had testified to the Hearing Tribunal that she made claims where patients did not get the medication. Ms. Elbayomy also said the Complaints Director testified that ABC had documentation from its plan members that they did not receive products for which the Pharmacy billed ABC on their behalf. Ms. Elbayomy said the Complaints Director's testimony was false. ABC had no evidence that its plan members had not received the products for which claims were submitted. There was no evidence of any patients not receiving products paid for by ABC. These false representations led to unreasonable and unsupported findings.

Creation of False Dispensing Records

Ms. Elbayomy argued that the Hearing Tribunal relied upon the Complaints Director's evidence that patients did not actually receive products for which claims were submitted and that the dispensing records associated with those claims were therefore false. She argued that the Complaints Director's evidence was false. Dispensing records for nutritional products do not show up in the Netcare system because they do not have drug identification numbers. They only have pseudo-product identification numbers. The Complaints Director did not point this out to the Hearing Tribunal and the Tribunal's resulting finding was unreasonable and the hearing was unfair.

Quantification of Unsupported Claims

Ms. Elbayomy argued that the Hearing Tribunal relied upon the Complaints Director's testimony that she was missing "about \$300,000 worth of invoicing" and found that her conduct led to a substantial monetary benefit for her Pharmacy. However the \$300,000 figure included the Pharmacy's costs of purchasing the nutritional supplements from Superstore and the Pharmacy's dispensing fees claimed from ABC. A more accurate quantification of the missing Superstore receipts was in the range of \$60,000 to \$70,000.

Ms. Elbayomy repaid ABC the sum of nearly \$300,000. This included the dispensing fees and the Pharmacy's actual, out-of-pocket costs to purchase the nutritional supplements from Superstore. Rather than disgorging unwarranted benefits received by the Pharmacy, the nearly \$300,000 paid by Ms. Elbayomy's Pharmacy represented a severe financial penalty. This was not brought to the Hearing Tribunal's attention.

Admissions Respecting Poor Record Keeping

Ms. Elbayomy argued that the Complaints Director had testified that she admitted to not keeping accurate records of which nutritional products were dispensed to the Pharmacy's patients. Ms. Elbayomy asserted that this testimony was false as she did not admit to failing to keep accurate records. On the contrary, on March 27, 2017 she had provided ABC with a written explanation and copies of the Pharmacy's records for the nutritional supplement claims and these were part of Exhibit 4. Her explanation included handwritten annotations of the specific nutritional products on ABC's list of impugned claims. The annotations were derived from the Pharmacy's Drug Usage Reports. This March 27, 2017 response to ABC was not investigated by the Complaints Director or brought to the Hearing Tribunal's attention.

Ms. Elbayomy submitted that the Complaints Director's mischaracterization of the record confirmed the unfairness of the hearing and the unreasonableness of the Hearing Tribunal's findings.

Dispensing Medication on the Basis of a Later Prescription

Allegation 3(c) was that Ms. Elbayomy dispensed drugs when she was not authorized to do so, including dispensing 5 prescriptions totalling 21 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.

Ms. Elbayomy argued that the Hearing Tribunal relied on the Complaints Director's testimony that she dispensed medications before the date authorized on the prescription and without performing any assessment and claimed to ABC for doing so in finding this allegation proven. She argued that the Complaints Director's evidence was false.

Ms. Elbayomy had advised ABC that her Pharmacy received a valid transfer report from the Old Scona Pharmacy on August 25, 2016 and this was the date the medication was dispensed. ABC had wrongly concluded that transfer report was sent to Ms. Elbayomy's Pharmacy one month later, on September 24, 2016, based on an erroneous date in the fax header. Ms. Elbayomy sought confirmation from Old Scona Pharmacy about the correct date of the transfer report and Old Scona Pharmacy confirmed it was actually dated August 25, 2016. The Complaints Director did not investigate this issue himself or bring the confirmation from Old Scona Pharmacy this to the Hearing Tribunal's attention and it was never considered.

Dispensing Medication Without a Signed Prescription

Ms. Elbayomy argued that the Complaints Director had testified that she filled a prescription without an authorized prescriber's signature. The Complaints Director agreed that the prescription could have been given verbally, but he testified that Ms. Elbayomy had not suggested that it was. The Complaints Director asserted that Ms. Elbayomy instead said that a proper prescription was received by fax.

Ms. Elbayomy argued that the Complaints Director's testimony was false. Ms. Elbayomy faxed a letter to ABC on April 16, 2018 in which she explained that she had in fact received a verbal authorization from the physician prescriber. The faxed letter stated that the "authenticity of Rx has been verified as the pharmacy contacted the prescriber office many times on that day by phone and fax regarding patient next appointment and refills and the Rx is faxed from the Dr. office." The Hearing Tribunal was falsely advised that Ms. Elbayomy had not received a verbal prescription.

Failing to Provide Original Prescription Document for 23 Claims

Ms. Elbayomy argued that the Complaints Director testified that she had failed during an ABC inspection to produce prescription documentation for some 23 claims. Ms. Elbayomy pointed out that the ABC report stated "the pharmacy indicated that due to time constraints they were unable to provide prescription documentation during the on-

site visit of June 5, 2017. The pharmacy indicated they could provide the documentation.” Ms. Elbayomy suggested the ABC inspection was a “snap inspection” requiring the immediate production of all records. The pharmacy did have the documentation to support all of the claims, but it was not immediately provided to ABC upon demand. The Complaints Director did not bring this to the Hearing Tribunal’s attention.

The Complaints Director also failed to advise the Hearing Tribunal that there were actually only 22 claims, not 23 or more claims. Further, 15 of those 22 claims concerned the same patient on the same day. Finally, the Pharmacy disagreed with ABC about what constituted the required prescription documentation for three of the claims.

Ms. Elbayomy argued that fairly presented, the issue before the Hearing Tribunal required it to determine whether Ms. Elbayomy’s failure to immediately provide the documents demanded by ABC at the time of the inspection was of so serious a nature as to rise to the level of unprofessional conduct. The Hearing Tribunal was not asked to consider this issue, or the differences between Ms. Elbayomy’s contractual obligations to ABC and her professional obligations.

Dispensing Drugs Not Listed on a Prescription

Ms. Elbayomy argued that the Complaints Director testified based on his reading of the ABC report, that she had dispensed drugs that were not listed on a prescription. This testimony was false. ABC did not find that Ms. Elbayomy dispensed drugs that were not listed on the prescription. ABC only found that the prescription was insufficient since the prescriber had left the quantity box blank. The Complaints Director did not bring this to the Hearing Tribunal’s attention.

Failing to Pay Money to ABC

Ms. Elbayomy argued that the Complaints Director testified that as of November 29, 2018 she had not repaid any amounts to ABC despite her promise to do so. The Complaints Director also testified that Ms. Elbayomy had left the Country and “that is the last the College hears of her”.

Ms. Elbayomy asserted that this testimony was false. The Appeal Panel decided to allow Ms. Elbayomy’s application to introduce new evidence with respect to the TD Cheque Details. These confirm that three months prior to the Complaints Director’s testimony, Ms. Elbayomy had repaid the sum of \$69,517.19 to ABC. She therefore was in touch with ABC. The Complaints Director also neglected to advise the Hearing Tribunal that ABC had paid \$110,00 into its solicitor’s trust account as a holdback for further outstanding claims by the Pharmacy.

Superficial Participation in the ABC Audit

Ms. Elbayomy argued that the Complaints Director had said that Ms. Elbayomy participated only superficially in the ABC audit.

Ms. Elbayomy asserted that this was also false. The record before the Hearing Tribunal evidenced extensive and ongoing cooperation by Ms. Elbayomy throughout the ABC audit. For example, Exhibit 4 at pages 2272 to 2296 reflects extensive and effective telephone communications between Ms. Elbayomy and ABC on a wide variety of issues. Nothing suggests she was evasive or uncooperative. Ms. Elbayomy participated in ABC's on-site visits on December 13, 2016 and June 5, 2017. She did not fail to provide records to ABC. Exhibit 4 was largely comprised of the extensive documentation she provided to ABC, including pharmacy records, Netcare documents, prescriber authorizations, patient assessments and detailed written explanations.

Failing to Cooperate with the College

Ms. Elbayomy asserted that the Hearing Tribunal found that she failed to comply with the investigation because she failed to respond to the Complaints Director's emails. This was unreasonable because there was no evidence and no finding that Ms. Elbayomy ever actually received notice of the complaint, investigation or the hearing.

Further, Ms. Elbayomy argued that the Complaints Director failed to advise the Hearing Tribunal that she had left a new email address with ABC. The Complaints Director failed to attempt to contact Ms. Elbayomy at that new email address. Had he done so it is likely that Ms. Elbayomy would have been aware of the College's investigation and cooperated with it. Ms. Elbayomy argued that if a mere failure to maintain current contact information on the register constitutes unprofessional conduct, that issue was never determined by the Hearing Tribunal as there was no such allegation. Instead Ms. Elbayomy was charged with failing to cooperate with an investigation she knew nothing about.

Admission of Wrongdoing

Ms. Elbayomy argued that the Complaints Director testified that her response to the ABC report was "an admission" to ABC's findings. The Complaints Director had failed to mention that Ms. Elbayomy's response to ABC's findings had been demanded by ABC as a condition of their contractual relationship on February 13, 2018 and March 7, 2018. Further, a fulsome review of the communications between Ms. Elbayomy and ABC as reflected throughout Exhibit 4 confirmed that she did not agree with ABC's findings. The Complaints Director failed to bring the nature and extent of Ms. Elbayomy's disagreements with the ABC report to the Hearing Tribunal's attention.

Contents of the May 17, 2018 Call to ██████████ of ABC

Ms. Elbayomy argued that the Complaints Director testified that she promised but failed to make payments to ABC in a May 17, 2018 call. This testimony was false. Ms. Elbayomy in fact did make payments to ABC. Other aspects of the Complaints Director's evidence about the details of the May 17, 2018 call were also wrong. In addition, the Complaints Director neglected to advise the Hearing Tribunal that Ms. Elbayomy had provided a new email address to ABC in the May 17, 2018 call.

Ms. Elbayomy concluded her submissions on her second ground appeal by asserting that the hearing before the Hearing Tribunal was grossly unfair and a mockery of natural justice. The Hearing Tribunal was not presented with a balanced assessment of the record before it, and consequently reached a decision that failed to consider Ms. Elbayomy's side of the issues.

Ms. Elbayomy suggested that the Appeal Panel should quash the Hearing Tribunal's merits decision in its entirety and refer the matter to the Hearings Director to schedule a rehearing before a differently constituted Hearing Tribunal. Ms. Elbayomy also requested to defer her appeal from the Hearing Tribunal's sanctions decision until the Appeal Panel had disposed of the appeal from the merits decision.

Complaints Director's Submissions

Alleged "Ex parte hearing"

The Complaints Director did not agree that the hearing before the Hearing Tribunal was an "*ex parte*" hearing. An *ex parte* hearing occurs when one party in civil litigation appears in court and asks the Court to make an order affecting another party without any notice to that other party. The rules and principles applicable to *ex parte* hearings have no application in this case, where the Hearing Tribunal concluded that notice was sufficiently given to Ms. Elbayomy to proceed with the hearing in her absence pursuant to section 79(6) and 120(3) of the HPA.

The Complaints Director did not have a duty of "utmost good faith" to point out information to the Hearing Tribunal. The Complaints Director put every document generated by the investigation and every ABC audit document before the Hearing Tribunal and answered the Hearing Tribunal's questions to the best of his knowledge and in good faith. It is a legal fallacy to suggest that Ms. Elbayomy's failure to fulfill her professional obligations to maintain accurate, current contact information requires the Complaints Director to ensure that all evidence Ms. Elbayomy would have highlighted was specifically mentioned to the Hearing Tribunal.

All Reasonable Efforts to Contact Ms. Elbayomy

In this section of his argument, the Complaints Director refuted Ms. Elbayomy's suggestion that he misled the Hearing Tribunal by suggesting she was not communicating with ABC after May 17, 2018 and by suggesting she had not paid the money owing to ABC. The Complaints Director asserted that there are no records in the materials provided to him by ABC showing any contact between Ms. Elbayomy and ABC after May 17, 2018. In addition, the Complaints Director testified that on July 30, 2018, he spoke with Ms. [PB] of ABC and his notes of the call confirmed that ABC had reported no contact with Ms. Elbayomy since May 17, 2018 and that she had made no payments towards her debt to ABC as of June 1, 2018. The Complaints Director's evidence before the Hearing Tribunal was based on his knowledge and there was no attempt to withhold any available information. In fact, the Complaints Director explained that he had referred the Hearing Tribunal to ABC documents documenting the May 17,

2018 telephone call between Ms. Elbayomy and Mr. [J] of ABC and to Ms. Elbayomy's stated intention to pay the amount owing to ABC.

The Complaints Director also pointed out that the Appeal Panel admitted as new evidence three cheques from 1576701 Alberta Ltd. to ABC dated August 30, 2018, December 30, 2018 and March 30, 2019. The Complaints Director asserted that the existence of the cheques was unknown to the College or the Complaints Director until after Ms. Elbayomy commenced this appeal. The Complaints Director was therefore honest and accurate in his testimony to the Hearing Tribunal based on the information he had at the time.

The Complaints Director responded to Ms. Elbayomy's argument that he had failed to contact her using the email address referenced in Mr. [J]'s notes of their May 17, 2018 telephone conversation, and that he had failed to bring this email address to the Hearing Tribunal's attention. The Complaints Director argued that Ms. Elbayomy had failed to update her contact information at the College, as she was required by the legislation to do. Ms. Elbayomy was attempting to shift responsibility for her own failures onto the Complaints Director and this should be rejected by the Appeal Panel.

The Complaints Director then noted that Ms. Elbayomy had offered no explanation for the automatic replies that he and the Hearings Director received when they attempted to email Ms. Elbayomy using the email address registered with the College. The automatic replies stated that Ms. Elbayomy would be "disconnected from her inbox", but this was a gmail account and accessible from anywhere. Further, Ms. Elbayomy's position was that she had provided a different email address to ABC to use to contact her, so it may be assumed that she was expecting to have access to the internet.

The Submission of False Claims to Blue Cross

The Complaints Director responded to Ms. Elbayomy's argument that he had referred to the ABC audit findings and testified that he came to the same conclusions. The Complaints Director argued that he drew a common-sense inference based on objective evidence that the Pharmacy had billed ABC for drug products it never had. The Complaints Director argued this was a reasonable inference for him to make and pointed out that the Hearing Tribunal conducted its own review of the evidence and came to the same conclusion.

The Complaints Director also responded to Ms. Elbayomy's suggestion that he had failed to draw the Hearing Tribunal's attention to one page of a 27 page fax she sent from her Pharmacy to ABC on June 23, 2017. This page of the fax suggested that her Pharmacy had purchased nutritional products from Superstore using a business credit card, but no receipts were retained. The Complaints Director argued that this fax did not account for all of the discrepancies identified by ABC. The Complaints Director submitted that he had presented the entire ABC audit file to the Hearing Tribunal and he was not obligated to draw the Tribunal's attention to specific documents that Ms. Elbayomy would have wished to highlight. The Complaints Director also submitted that Ms. Elbayomy's Superstore explanation lacked any supporting documentation and lacked credibility. It couldn't explain the discrepancies for Advair, Symbicort or Levemir injections which are

not sold over the counter. It also failed to address the April 16, 2018 letter Ms. Elbayomy had provided to ABC that stated, in part:

This is a written confirmation that the pharmacy has ceased claiming drug products that exceed the drug quantity available for claims submitted to ABC...

Pharmaceutical Product Not Being Received by a Member

The Complaints Director responded to Ms. Elbayomy's submission that he had testified about an allegation of products paid for by ABC not having been delivered to the patients. In fact ABC had not found this to have occurred. The Complaints Director submitted that his testimony about this part of the ABC audit was mistaken, but there was no corresponding allegation in the Notice of Hearing and no corresponding finding of unprofessional conduct for Ms. Elbayomy to appeal.

False Dispensing Records

The Complaints Director responded to Ms. Elbayomy's argument that he gave false evidence suggesting that she had created false dispensing records. The Complaints Director had testified that records of dispensing nutritional products were uploaded to Netcare when in fact they are not. The Complaints Director acknowledged that his testimony on that point was incorrect, but submitted that Ms. Elbayomy still created false dispensing records. Records showing that a nutritional product or drug was dispensed when the Pharmacy did not have sufficient inventory to dispense are necessarily false. Ms. Elbayomy created patient records showing products and drugs were dispensed in excess of the inventory that her Pharmacy had. In addition, the issues were not limited to nutritional products. There were also false dispensing records created for 3 drugs which would have been uploaded to Netcare. Whether or not the records were uploaded to Netcare does not change the false nature of the dispensing records.

Quantification of Claims

The Complaints Director responded to Ms. Elbayomy's submission that he had used the quantum of money that ABC found owing as a proxy measurement for the magnitude of the discrepancy between her Pharmacy's claims and the inventory she actually had. Ms. Elbayomy had argued that in fact, the value of the missing invoices and receipts would be in the range of \$60,000 to \$70,000 rather than \$300,000. The Complaints Director did not agree with Ms. Elbayomy's submission. He argued that the approximately \$300,000 figure included the wholesale costs of the drugs and nutritional products, any permitted upcharges and the dispensing fees. ABC had paid claims for which it was later determined that the Pharmacy lacked sufficient inventory. The Complaints Director also disagreed with Ms. Elbayomy's suggestion that she was "out of pocket" for the drugs and nutritional products. He argued that the Hearing Tribunal concluded that the unsupported claims represented drugs and products that were never acquired by the Pharmacy.

Admissions Respecting Poor Record Keeping

The Complaints Director responded to Ms. Elbayomy's submission that he had falsely testified before the Hearing Tribunal that Ms. Elbayomy admitted that she and the Pharmacy were not keeping accurate records. The Complaints Director referred to several pieces of evidence from the record to support his testimony. He referred to an April 16, 2018 letter from Ms. Elbayomy to ABC in which she stated:

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 for drug product quantities beyond that authorized by the prescriber, claiming for drug product that not (sic) considered interchangeable without written confirmation from prescriber regardless the (sic) 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.

The Complaints Director also referred to a document Ms. Elbayomy created as part of the ABC audit in which she wrote "lack of experience has lead to random and inadvertent technical errors that consequently created a shortage in the inventory". The Complaints Director also referred to the ABC final audit report acknowledging that Ms. Elbayomy's Pharmacy was changing its practices to address issues with missing prescriptions, invalid prescription documentation and unauthorized verbal prescriptions. The Complaints Director explained that all of these were record keeping issues.

Dispensing Medication on the basis of a Later Prescription

The Complaints Director responded to Ms. Elbayomy's submission that he provided false testimony in relation to allegation 3, that Ms. Elbayomy dispensed medication without any kind of assessment or prescription, and relied on a prescription issued after the fact. The Complaints Director argued that Ms. Elbayomy's submission was misleading because it applied to only one of four sub-allegations of allegation 3 and because ABC had considered Ms. Elbayomy's explanation and rejected it.

Dispensing Medication without a Signed Prescription

The Complaints Director responded to Ms. Elbayomy's submission that he gave false and misleading testimony to the Hearing Tribunal about an original prescription Rx #1059196. The Complaints Director submitted that Ms. Elbayomy had dispensed a drug according to a prescription that was not signed by a prescriber. It was therefore not a valid written prescription. While Ms. Elbayomy advised ABC that she had verified the prescription with the prescriber's office by phone, fax and notes, she did not document receipt of a

verbal prescription in the manner required by the College's Standards of Practice for Pharmacists and Pharmacy Technicians. These standards require that verbal prescriptions be reduced to writing and signed by the Pharmacist. The Complaints Director's testimony correctly pointed out to the Hearing Tribunal that Ms. Elbayomy had neither a valid written prescription, nor a valid verbal prescription before she dispensed the medication.

Failing to Provide Original Prescription Documentation for 23 Claims

The Complaints Director responded to Ms. Elbayomy's submission that he falsely testified that she had failed during an ABC inspection to produce prescription documentation for some 23 claims. The Complaints Director submitted that he correctly testified that Ms. Elbayomy was unable to produce 23 original prescription documents. He also explained that the Complaints Director set out the evidence for the Hearing Tribunal which made its own decision based on the evidence.

Dispensing Drugs Not Listed on a Prescription

The Complaints Director responded to Ms. Elbayomy's submission that he falsely testified that she dispensed drugs that were not listed on a prescription. Ms. Elbayomy submitted that ABC had not found that she did that. ABC only found that the prescription was insufficient because the prescriber left the quantity box blank. The Complaints Director submitted that ABC concluded that there was no quantity and thus no valid prescription. The Complaints Director had also testified before the Hearing Tribunal that the prescription wasn't valid in his opinion either.

Failure to Pay Money Owed to ABC

The Complaints Director responded to Ms. Elbayomy's submission that he falsely testified that she had not repaid any amounts to ABC despite her promise to do so. The Complaints Director reiterated that his testimony was based on the information provided to him by ABC at the time. He agreed that based on the TD cheque details accepted by the Appeal Panel as new evidence, Ms. Elbayomy had paid \$69,517.19 to ABC on August 30, 2018, prior to the hearing. The Complaints Director also responded to Ms. Elbayomy raising ABC's intention to hold back further payments her Pharmacy, explaining that there was no reason for him to investigate ABC's statement.

Superficial Participation in the ABC Audit

The Complaints Director responded to Ms. Elbayomy's submission that he falsely said that she participated only superficially in the ABC audit. Counsel for the Complaints Director acknowledged that "superficial" was a poor choice of words during her introduction. ABC encountered challenges in the audit but Ms. Elbayomy did participate. There was no finding by ABC of a failure to respond.

Failing to Cooperate with the College

The Complaints Director responded to Ms. Elbayomy's submission that she could not have been found to have failed to cooperate with the College in the absence of any evidence that she actually received the communications from the Complaints Director or Hearings Director. The Complaints Director submitted that his investigation of a substantial complaint was impacted because Ms. Elbayomy failed to respond. Her lack of cooperation may have stemmed from not receiving communications, but that occurred because she ignored her clear professional and regulatory obligations.

Admission of Wrongdoing

The Complaints Director responded to Ms. Elbayomy's submission that her response to the ABC final audit report was an admission of wrongdoing. He submitted that regardless of who drafted the acknowledgement document, Ms. Elbayomy chose to sign it. Further, she repaid monies to ABC despite any concerns she may have had about the results of the audit.

Contents of the May 17, 2018 Call to [REDACTED] of ABC

The Complaints Director responded to Ms. Elbayomy's submission that he falsely testified that she promised to make payments to ABC and then didn't make those payments, and that he had neglected to advise the Hearing Tribunal that Ms. Elbayomy provided a new email address to ABC in a May 17, 2018 call. The Complaints Director submitted that Mr. [J] of ABC made notes of this call and those notes appear on page 2296 of Exhibit 3. Those notes indicate Ms. Elbayomy told Mr. [J] "she was still willing to pay what she owes..." That is not materially different from the Complaints Director's testimony to the Hearing Tribunal and it does not suggest any lack of candour.

The Complaints Director submitted that the only argument advanced by Ms. Elbayomy in relation to her second ground of appeal that is worth considering is with respect to the newly admitted evidence. The Complaints Director argued this newly admitted evidence is only relevant to her appeal of sanctions. He explained that the fact that Ms. Elbayomy had made efforts to repay her unsupported claims does not alter the unprofessional nature of her proven conduct.

The Complaints Director concluded that Ms. Elbayomy had failed to establish any valid basis to challenge the Hearing Tribunal's merits decision that found her guilty of unprofessional conduct. The Complaints Director requested the Appeal Panel to dismiss Ms. Elbayomy's appeal of the merits decision.

6. DECISION

The Hearing Tribunal's finding of unprofessional conduct on allegation 5 is quashed. The Hearing Tribunal's findings of unprofessional conduct on allegations 1, 2, 3 and 4 are confirmed.

7. REASONS FOR DECISION

Ground 1:

The Hearing Tribunal carefully considered the submissions of Ms. Elbayomy and of the Complaints Director in coming to its decision to dismiss this ground of appeal.

There is no dispute that Ms. Elbayomy never actually acknowledged receipt of a notice or correspondence in relation to the hearing, nor did anyone else on her behalf. The issue is whether sections 77(a), 79(6) and 120(3) gave the Hearing Tribunal the discretion to proceed in her absence without proof that she actually received the notice to attend the hearing.

Sections 77(a), 79(6) and 120(3) of the HPA provide as follows:

77 The hearings director must

- (a) at least 30 days before the hearing, give the investigated person a notice to attend and give reasonable particulars of the subject matter of the hearing,

79

(6) Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may

(a) proceed with the hearing in the absence of the investigated person, and

(b) act or decide on the matter being heard in the absence of the investigated person.

120

- (3) If a document or notice is required to be given under Part 4 by a complaints director, complaint review committee, hearings director, hearing tribunal or college to any person other than a complaints director, complaint review committee, hearings director, hearing tribunal or college, the document or notice is sufficiently given if it is given by personal service to the person or sent to the person by certified or registered mail at that person's address as shown on the register or record of the registrar.

Section 79(6) required proof that Ms. Elbayomy had been given a notice to attend as required by section 77(a) in order for the Hearing Tribunal to exercise its discretion to proceed with the hearing in her absence. The Appeal Panel must determine the correct interpretation of the words "give" in section 77(a) and "given" in section 79(6).

Section 120(3) provides this interpretation. It states unambiguously that if a document or notice is required to be “given” under Part 4 of the HPA by the Complaints Director or the Hearings Director to any person which would include an investigated person, the document or notice is “sufficiently given” if it is “sent to the person by certified or registered mail at that person’s address as shown on the register or record of the registrar.”

Section 120(3) defines what is sufficient to meet the requirement for a notice to attend a hearing to be “given”. It defines “sufficiently given” as including “sent” by “registered mail” to the address shown on the College’s register.

The Appeal Panel has considered sections 77(a), 79(6) and 120(3) of the HPA in the context of the entire scheme created by the HPA and the *Pharmacists and Pharmacy Technicians Profession Regulation*.

The HPA requires at section 3 that the College govern the profession of Pharmacy in a manner that protects and serves the public interest. The College is mandated to provide direction to and regulate the practice of the profession by its regulated members. It must establish, maintain and enforce standards of registration, continuing competence and of the practice of the profession. It must also establish, maintain and enforce a code of ethics. The Appeal Panel considers that in order to effectively carry out these objectives, the College must maintain accurate and current personal and business contact information for all of its regulated members.

The HPA and the *Pharmacists and Pharmacy Technicians Profession Regulation* accomplish this by requiring individuals who are qualified and who intend to provide professional services within the practice of Pharmacy to be regulated members of the College and to provide the Registrar with information about themselves, including personal and business contact information. They are also required to update that information with the College within 14 days of changes to it.

These requirements ensure that when documents or notices are sent by the College using that contact information, they will be received by their intended recipient; the regulated member who bears the onus of ensuring the contact information they provide to the College is accurate and current. The regulated member bears a corresponding risk of missing a notice if they fail to provide accurate and current contact information.

Section 120(3) of the HPA provides that a document or notice is “sufficiently given” if it is given by specified means. It is the means of giving the document or notice that determines the sufficiency of giving it, not whether or not there is proof that the intended recipient actually received it. If it were otherwise then there would be no need for section 120(3) to specify that the certified or registered mail be sent to the person’s address as shown on the register. The Appeal Panel considers it significant that the legislature chose in section 120(3) to require only that the notice be “sent” and not that the intended recipient have acknowledged receipt.

This interpretation is consistent with the entire legislative scheme created by the HPA and the *Pharmacists and Pharmacy Technicians Profession Regulation*, including the

provisions requiring regulated members of the College to provide accurate, current personal and business contact information to the College and to update it when changes occur.

The Appeal Panel considered that section 120(3), properly interpreted, limited Ms. Elbayomy's common law right to notice of the proceedings to a degree. Ms. Elbayomy's right to notice of the proceedings was limited in that section 120(3) prescribed means other than actual personal service by which notice of the hearing could be "sufficiently given." Those additional means included certified or registered mail to Ms. Elbayomy's address as shown on the College's register. It was within the legislature's jurisdiction to create those additional means for notice to be sufficiently given. It was then open to the Hearing Tribunal to conclude that notice of the hearing had been sent to Ms. Elbayomy's address by registered mail and that notice had therefore been sufficiently given for the purposes of section 79(6) of the HPA.

The Appeal Panel considered Ms. Elbayomy's submission regarding sections 23 and 24 of the Alberta *Interpretation Act*. Section 23 provides rules for the interpretation of service by regular, prepaid mail. Section 24 defines "registered mail or certified mail" to mean any form of mail for which the addressee or a person on behalf of the addressee is required to acknowledge receipt of the mail by providing a signature. Ms. Elbayomy argued that section 24 of the *Interpretation Act* required the Hearing Tribunal to interpret the reference to "certified or registered mail" in section 120(3) of the HPA as requiring an acknowledgment of receipt in order for the Notice to be "sufficiently given". Ms. Elbayomy argued that the effect of section 24 of the *Interpretation Act* was that service cannot be effected by merely sending registered mail to a vacant building where it is received by no one. She argued that the whole point of the reference to "certified or registered mail" in section 120(3) was to ensure that the Notice to Attend was actually given to Ms. Elbayomy.

The Appeal Panel considered this argument but ultimately rejected it. Section 120(3) of the HPA provides that a document or notice is "sufficiently given" if it is given by personal service, or alternatively it can be "sent" by "certified or registered mail". The Appeal Panel accepts that the terms "certified mail" and "registered mail" mean types of mail for which the addressee or a person on her behalf are required to acknowledge receipt. The Appeal Panel does not accept that including certified mail and registered mail as means by which a document or notice may be sent under section 120(3) of the HPA means that the document or notice will only be "sufficiently given" if the intended recipient of the document or notice or someone on their behalf cooperates and signs for it. That would frustrate the legislature's intention to create additional means other than actual personal service by which notice could be "sufficiently given."

Ms. Elbayomy argued that there was no urgency and "the sky would not fall" if her interpretation was accepted and the College had to wait to locate her in order to proceed with the hearing. The Appeal Panel did not accept this. The Appeal Panel interprets the College's mandate outlined in section 3 of the HPA to include proceeding with discipline matters in a reasonably timely manner. Indefinite delays while regulated members of the College are unable to be contacted would tend to undermine public confidence in the regulation of the Pharmacy profession. Indefinite delays could also prejudice the

Complaints Director's or the Investigated Member's ability to advance their case, and could in some cases result in a stay of proceedings. This too would be contrary to the public interest and could undermine public confidence in the College.

In this case the Hearings Director did not just send the Notice to a vacant building. The evidence was that the Notice was sent by registered mail to Ms. Elbayomy's residential address and to the Pharmacy's business address, both of which were registered with the College. The College also engaged a process server to attempt personal service on Ms. Elbayomy but he was unable to locate her. The College posted the Notice of Hearing on its website. Ms. Elbayomy's cell phone and fax numbers were tried but they were disconnected and an attempt to email her resulted in the same automatic response that the Complaints Director had previously received. This evidence, together with the Complaints Director's evidence of his unsuccessful attempts to reach Ms. Elbayomy led the Hearing Tribunal to conclude that the College had exhausted all reasonable efforts to locate Ms. Elbayomy to provide her with notice of the hearing.

It is true that the Hearing Tribunal's findings against Ms. Elbayomy are serious, but the lack of actual notice of the hearing resulted from her own failure to provide the College with accurate, current contact information. Had she met her own statutory, regulatory obligations then she would have received notice of the hearing. There was no breach of natural justice or procedural fairness and no miscarriage of justice.

The Appeal Panel has reviewed all of the legal cases cited by the parties. Other than the Hadi and Boey cases from previous Hearing Tribunals of the College, none of the cases interpreted section 77(a), 79(6) or 120(3) of the HPA. The Appeal Panel therefore found the cases to be of limited utility. The cases did demonstrate that statutory provisions requiring a document or notice to be sent by registered mail do not necessarily mean that proof of receipt is also required. The two are different and if the legislature had intended to require proof of receipt then it could have so specified: *E.J.S. Holdings Ltd. v. Calgary (City)*, 1982 ABCA 237 at paras. 10-11 and *Cwalina Estate v. Parkland (County)*, 2013 ABCA 343 at para. 33.

The Hearing Tribunal made no errors in its interpretation of sections 77(a), 79(6) and 120(3) of the HPA. Its decision was correct. The Hearing Tribunal had the discretion to proceed with the hearing on proof that Ms. Elbayomy had been given a notice to attend the hearing by sending that notice registered mail to her address on the College's register. Proof that Ms. Elbayomy or someone on her behalf acknowledged receipt of the notice was not required. The Hearing Tribunal did not lack jurisdiction to proceed with the hearing and its decisions are not void.

Ground 2

Many of Ms. Elbayomy's submissions under her second ground of appeal attacked the Complaints Director's testimony and submissions before the Hearing Tribunal, rather than the findings of the Hearing Tribunal itself. The Appeal Panel has considered all of Ms. Elbayomy's submissions, and the possibility that errors in the Complaints Director's evidence and submissions may have confused or misled the Hearing Tribunal, but section 87(1) of the HPA provides that this appeal is from the decision of the Hearing Tribunal.

There is no ability to appeal from the testimony or submissions of the Complaints Director.

Alleged “Ex parte” hearing

The Appeal Panel does not accept Ms. Elbayomy’s suggestion that the Complaints Director was the proponent of an *ex parte* proceeding. An *ex parte* proceeding is a proceeding brought without notice to the other party. The HPA contains no provision permitting a hearing to proceed without notice to the regulated member of the profession, but that is not what occurred in this case. The HPA does prescribe a mechanism in section 79(6) by which the Hearing Tribunal could exercise its discretion to proceed with the hearing in Ms. Elbayomy’s absence, upon proof that she was given a notice to attend in accordance with section 120(3). Notice was given to Ms. Elbayomy in accordance with section 120(3), but she had failed her statutory obligation to update her contact information with the College and she may not actually have received it. It is important to note that when a Hearing Tribunal exercises its discretion to proceed with a hearing in the regulated member’s absence under section 79(6), the HPA does not provide for any heightened duty or candour or good faith upon the Complaints Director. Ms. Elbayomy provided no authority for her suggestion that the Complaints Director was subject to this heightened duty and the Appeal Panel declined to find that it applied.

Whether the College made all reasonable attempts to contact the Appellant

Ms. Elbayomy took issue with the Complaints Director’s submission to the Hearing Tribunal that the College had exhausted all reasonable efforts to notify her of the hearing. The Hearing Tribunal did find as a fact that the College had exhausted all reasonable efforts to locate Ms. Elbayomy and provide her with notice, but its reasons explain its basis for that conclusion. Those reasons review the steps the College took to locate and notify Ms. Elbayomy. They include sending the Notice of Hearing by regular and registered mail to Ms. Elbayomy’s home address and the address of her Pharmacy for which she was the owner and licensee and which addresses were registered with the College. The College also tried to contact Ms. Elbayomy using the phone numbers she had provided to the College but those numbers were all disconnected. The College tried to email Ms. Elbayomy using the email address she had provided to the College. In addition, the College posted the Notice of Hearing on its website and engaged a process server to effect personal service of the Notice of Hearing on Ms. Elbayomy, but he swore an affidavit outlining that he attended at Ms. Elbayomy’s home address and the address of her Pharmacy and he found no sign of her at either location. Based on the evidence before it the Hearing Tribunal came to a reasonable finding of fact.

The Appeal Panel notes that the Complaints Director and the College only attempted to contact Ms. Elbayomy using the email address registered with the College, [REDACTED] 245@gmail.com, and that the Complaints Director did not advise the Hearing Tribunal that Ms. Elbayomy had provided another gmail address to ABC during a telephone call. The Appeal Panel does not accept that this rendered the hearing or the Hearing Tribunal’s decision unfair or unreasonable. As described above, it was incumbent on Ms. Elbayomy to provide accurate, current contact information to the College. It was not the College’s duty to question the accuracy of contact information

provided by its regulated member. That would be very impractical and it would undermine the College's ability to regulate the profession. The Complaints Director and the College were entitled to rely on the contact information in the College's register. Even if the Complaints Director was aware of Ms. Elbayomy's other gmail account he was not obliged to use it or to bring it to the Hearing Tribunal's attention.

The Appeal Panel also notes that despite the Complaints Director's understanding that ABC had not heard from Ms. Elbayomy since May 17, 2018, she was actually in contact with ABC and making payments to ABC. The Appeal Panel does not accept that the Complaints Director's erroneous understanding led the Hearing Tribunal to make an unreasonable or unfair decision to proceed in Ms. Elbayomy's absence. The Hearing Tribunal's reasons for proceeding in her absence do not rely on her lack of contact with ABC.

The Submission of False Claims to ABC

Allegation 1 was that Ms. Elbayomy submitted approximately \$300,000 worth of claims for five nutritional supplements and three drugs to ABC without being able to provide the required supporting invoices demonstrating that she had the nutritional supplements and drugs to dispense.

The Hearing Tribunal found this allegation proven. It held that Ms. Elbayomy received substantial monetary benefits from ABC's payment of claims she was not entitled to, over an extended period of time, contrary to the College's Code of Ethics. The Tribunal held that Ms. Elbayomy's conduct also harmed the integrity of the Pharmacy profession.

The Hearing Tribunal had an ample evidentiary basis on which to conclude that Ms. Elbayomy had submitted approximately \$300,000 worth of claims for nutritional supplements and for drugs without being able to provide the supporting invoices for the products. The complaint letter from ABC explained that it had audited Ms. Elbayomy's Pharmacy and found that for five nutritional product and three drugs the total quantity claimed exceeded the total quantity available for claims submitted to ABC. ABC concluded that depending on the nutritional supplement or drug, between 40% and 93% of the Pharmacy's claims could not be supported. Further, in response to the ABC audit findings, Ms. Elbayomy had written a letter to ABC in which she confirmed that "the pharmacy has ceased claiming drug products that exceed the drug quantity available for claims submitted..."

Before the Appeal Panel, Ms. Elbayomy argued that the Complaints Director neglected to refer the Hearing Tribunal to her explanation that the Pharmacy acquired nutritional supplements from Superstore, but the Pharmacy had omitted to retain the Superstore receipts. She suggested that the Hearing Tribunal's lack of awareness of this explanation rendered its finding unreasonable and the hearing unfair. The Appeal Panel did not accept this.

As above, the Complaints Director did not have a heightened duty of candour or good faith at the hearing in the absence of Ms. Elbayomy. Ms. Elbayomy's explanation that she acquired nutritional supplements from Superstore was located on page 9 of a 27 page

fax from her Pharmacy to ABC dated June 23, 2017. The fax was entered into evidence as part of Exhibit 3 and it was available for the Hearing Tribunal to review. If Ms. Elbayomy had attended the hearing she could have given further evidence about her Superstore arguments, but she was not present. The Complaints Director may not have pointed out the Superstore explanation to the Hearing Tribunal but the Appeal Panel does not accept that he was obligated to do so.

Whether or not the Hearing Tribunal weighed Ms. Elbayomy's Superstore explanation to ABC, it does not make the Hearing Tribunal's finding of unprofessional conduct unreasonable or unfair. Allegation 1 was that she submitted claims for nutritional supplements and drugs to ABC without being able to supply the required supporting invoices. Ms. Elbayomy's Superstore explanation could not account for the discrepancies in the drug claims, Advair, Levemir or Symbicort as these are not sold over the counter. Her Superstore explanation did not purport to account for all of the discrepancies in the nutritional supplements, as it stated that the Pharmacy "has made purchases of nutritional products from the Superstore on multiple occasions when they had it on sale." Further, Ms. Elbayomy acknowledged that she was not able to provide the Superstore invoices, or receipts. She suggested that she could produce the Pharmacy's business credit card statements but credit card statements would not document what was purchased or in what quantities. There was therefore no documentation supporting Ms. Elbayomy's explanation that she acquired nutritional supplements from Superstore and the Hearing Tribunal was entitled to discount that assertion. The Hearing Tribunal's finding of unprofessional conduct as alleged in allegation 1 was solidly grounded in the evidence and reasonable.

Pharmaceutical Products Not Being Received by Member

Ms. Elbayomy argued that the Complaints Director had falsely testified that she submitted claims to ABC for dispensing medications to patients who did not receive them. She said that there was no evidence that any patients had not received products or medications. The Complaints Director explained that his testimony was referencing the ABC final audit report which confirmed that no patients had been denied their pharmaceutical products. The Appeal Panel notes there was no allegation and the Hearing Tribunal made no finding that any patients did not receive their pharmaceutical products.

Creation of False Dispensing Records

Allegation 2 was that Ms. Elbayomy created false dispensing records when she submitted claims for nutritional supplements and drugs when the Pharmacy did not have the corresponding stock for those products to have been dispensed to patient.

The Hearing Tribunal found this allegation proven. It held that before making a claim to ABC, a Pharmacist must create a record relating to a patient. Ms. Elbayomy made false patient dispensing records because she made patient dispensing records in support of claims to ABC that could not be supported by the Pharmacy's documented stock. Those false patient dispensing records formed part of the patient's health records. Inaccurate health records have the potential to cause harm because other health professionals rely on

those records when treating the patient. The Hearing Tribunal held that of particular concern in this case were the false dispensing records for Advair 250 mcg Metered Dose Aerosol, which is indicated for pulmonary conditions and Levemir 100 units/ml which is an insulin product used for diabetes. The Hearing Tribunal held that creating false dispensing records is a breach of Standard 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians and Standard 8 of the Standards for the Operation of Licensed Pharmacies. The Hearing Tribunal also held that Ms. Elbayomy's conduct seriously undermines the integrity of the pharmacy profession and constitutes unprofessional conduct.

This was a reasonable finding. It was supported by the evidence described above, in relation to allegation 1 and the Hearing Tribunal's concerns about the possible consequences of false health records.

Ms. Elbayomy argued that the Complaints Director had falsely testified that dispensing records for nutritional supplements are posted to Netcare. He failed to bring this to the Hearing Tribunal's attention and the Tribunal's finding of unprofessional conduct was rendered unreasonable and the hearing was unfair.

The Complaints Director acknowledged that his testimony was incorrect on this point, but he submitted that his error would make no difference. The Appeal Panel agreed. Whether or not the dispensing records were uploaded to Netcare, records suggesting that nutritional supplements and drugs have been dispensed when the Pharmacy does not have those nutritional supplements and drugs to dispense means those records are false. The Hearing Tribunal found Ms. Elbayomy's conduct to have breached the Standards of Practice for Pharmacists and Pharmacy Technicians and the Standards for the Operation of Licensed Pharmacies. The Tribunal also found Ms. Elbayomy's conduct to have undermined the integrity of the profession. The Tribunal's reasons for its decision did not depend on the false dispensing records being uploaded to Netcare. In addition the allegation pertained to nutritional supplements and drugs. There was no dispute that the false dispensing records for the drugs were uploaded to Netcare.

Quantification of Unsupported Claims

Ms. Elbayomy took issue with the Complaints Director's evidence that the value of claims submitted to ABC without being able to provide the required supporting invoices was approximately \$300,000. She argued that this led the Hearing Tribunal to find that the Pharmacy received a substantial monetary benefit.

Ms. Elbayomy argued that the \$300,000 figure included the Pharmacy's out-of-pocket costs to purchase the nutritional supplements from Superstore, as well as its other wholesale costs and dispensing fees claims from ABC. She said that a more accurate estimate of the quantification of the missing invoices or receipts was something in the range of \$60,000 to \$70,000, yet she was required to repay the approximate sum of \$300,000. This meant that rather than disgorging unwarranted financial benefits obtained from ABC, she was required to pay to ABC the costs she had incurred to buy nutritional supplements from Superstore as well as the fees charged by her Pharmacy for the services

its employees had performed. Ms. Elbayomy submitted that this represented a severe penalty imposed by ABC that was not pointed out to the Hearing Tribunal.

The Appeal Panel considered Ms. Elbayomy's argument but was unable to accept it. The retail or wholesale costs that would be shown on receipts or invoices to Ms. Elbayomy's Pharmacy to acquire nutritional supplements and drugs are only one part of the claims paid by ABC that were the subject of its audit. When claims are made to ABC they include the Pharmacy's retail or wholesale costs for the product or drug dispensed, any permitted upcharge and the dispensing fee. ABC in turn pays these claims, including reimbursement of the Pharmacy's costs. In this case the ABC audit determined that between 40% and 93% of the claims for dispensing nutritional supplements and drugs were unsupported by the required receipts or invoices documenting the necessary stock. This meant that Ms. Elbayomy's Pharmacy submitted claims to ABC for dispensing nutritional supplements and drugs it did not actually have and could not actually have dispensed. Ms. Elbayomy provided no evidence that her Pharmacy was actually out-of-pocket for purchasing nutritional supplements from Superstore. ABC calculated the quantification of the unsupported claims it had paid to Ms. Elbayomy's Pharmacy as approximately \$300,000. The Complaints Director testified to the findings in the ABC final audit report. The Hearing Tribunal was entitled to rely on this evidence and its findings and decision are reasonable and fair.

Admissions Respecting Poor Record Keeping

Ms. Elbayomy argued that the Complaints Director falsely testified that she admitted to failing to keep accurate records of which nutritional products were dispensed. Ms. Elbayomy maintained that she never admitted this. She submitted that on March 27, 2017 she provided ABC with a written explanation, copies of the Pharmacy's records and handwritten annotations of the specific nutritional products that were dispensed derived from the Pharmacy's Drug Usage Reports. Ms. Elbayomy asserted that the Complaints Director had refused to investigate her explanation or bring it to the Hearing Tribunal's attention. She argued that the Hearing Tribunal relied on the Complaints Director's false testimony in reaching its decision on the merits.

The Complaints Director responded to this issue by pointing out a letter Ms. Elbayomy had written to ABC, handwritten comments she provided to ABC and the ABC final audit report, all of which acknowledged that the Pharmacy had record keeping deficiencies. The Complaints Director's testimony that Ms. Elbayomy had admitted she and the Pharmacy were not keeping accurate records therefore had a reasonable basis in the evidence on the record.

The Appeal Panel considered this issue but was unable to accept Ms. Elbayomy's argument. She argued that the Hearing Tribunal relied on the Complaints Director's testimony to reach its decision on the merits but she did not explain where or how the Hearing Tribunal had relied on it. She did not identify any specific error in the Hearing Tribunal's decision. There was no allegation in the Notice of Hearing and no finding by the Hearing Tribunal that Ms. Elbayomy failed to keep accurate records of which nutritional supplements were dispensed to which patients. The Appeal Panel has

carefully reviewed the Hearing Tribunal's decision but was unable to discern anywhere that the Tribunal may have made an error based on the Complaints Director's testimony.

Dispensing Medication on the Basis of a Later Prescription

Ms. Elbayomy next took issue with the Hearing Tribunal's finding on allegation 3(c). Allegation 3(c) alleged that Ms. Elbayomy dispensed drugs on several occasions when she was not authorized to do so; including approximately 5 prescriptions (totalling 32 different drugs) before the date authorized on the original prescription or in the absence of the prescriber's authorizing signature, for a total of \$4,667.78 worth of claims.

The Hearing Tribunal found allegation 3(c) proven and to constitute unprofessional conduct. It reviewed the ABC final audit report and found that the evidence confirmed that drugs were dispensed by Ms. Elbayomy's Pharmacy when she did not have authorization to do so.

Ms. Elbayomy argued that the Hearing Tribunal relied on the Complaints Director's testimony that she had dispensed medications before the date authorized on the prescription and without performing any assessment and then submitted claims to ABC. Ms. Elbayomy argued that the Complaints Director's testimony was false. She said she advised ABC that her Pharmacy received a valid transfer report from Old Scona Pharmacy on August 25, 2016 and this was the date that she dispensed the medication. ABC wrongly concluded the transfer report was actually sent one month later, on September 24, 2016, based on an erroneous date in the fax header. Ms. Elbayomy contacted Old Scona Pharmacy and confirmed the transfer report was actually dated August 25, 2016 and not September 24, 2016. She said the Complaints Director failed to investigate her explanation of this issue or bring it to the Hearing Tribunal's attention.

The Complaints Director responded that Ms. Elbayomy's argument failed to acknowledge that ABC had already considered and rejected her explanation, and that it only applied to one of the five transactions referenced in allegation 3(c) with a value of \$129.49, being prescription #1059196. There were four other transactions for which Ms. Elbayomy provided no explanation. ABC had considered Ms. Elbayomy's explanation but it found that she provided no documentation that she had verified the prescription at the time she submitted the claim to ABC. As a result, she was not authorized to dispense the medication and the claim to ABC was invalid.

The Hearing Tribunal's decision to find allegation 3(c) proven and to constitute unprofessional conduct was reasonable. The allegation was that Ms. Elbayomy dispensed drugs when she was not authorized to do so, before the date authorized or in the absence of the prescriber's authorizing signature. Ms. Elbayomy's explanation that for one drug, she sought to verify her authorization to dispense the drug later, after she had already dispensed it meant that she did dispense the drug when she was not authorized to do so. The Hearing Tribunal's findings of fact and its conclusion that the allegation was proven and amounted to unprofessional conduct were reasonable.

Dispensing Medication Without a Signed Prescription

Ms. Elbayomy also argued that the Complaints Director falsely testified that she filled prescription #1059196 without an authorized prescriber's signature. The Complaints Director acknowledged that Pharmacists can fill prescriptions given verbally, but he testified that Ms. Elbayomy had never suggested the prescription was given verbally. Ms. Elbayomy argued that she faxed a letter to ABC on April 16, 2018 explaining that the prescription was given to her verbally. Her letter said the "authenticity of Rx has been verified as the pharmacy contacted the prescriber office many times on that day by phone and fax regarding patient next appointment and refills and the Rx is faxed from the Dr. office. There is no overpayment of \$129.49." Ms. Elbayomy asserted that the Hearing Tribunal was falsely advised that Ms. Elbayomy had not received a verbal prescription.

The Complaints Director responded that his testimony was accurate. He explained that Ms. Elbayomy had dispensed a drug according to a written prescription which lacked an authorized prescriber's signature. Her letter to ABC said that she verified the authenticity of the prescription by communicating with the prescriber's office. Ms. Elbayomy suggested this constituted verbal authorization for the written prescription, but this was not correct. The Complaints Director explained that a prescription can be in writing bearing the signature of an authorized prescriber, or it can be given verbally. A verbal prescription is required by the College's standards to be reduced to writing and signed by the Pharmacist. Ms. Elbayomy has never suggested that she did so. The Complaints Director submitted that he correctly testified that Ms. Elbayomy had neither a valid written and signed prescription, nor a valid verbal prescription when she dispensed the medication.

As above, the Hearing Tribunal's determination that Ms. Elbayomy dispensed drugs when she was not authorized to do so, before the date authorized or in the absence of the prescriber's authorizing signature, was reasonable. Ms. Elbayomy's explanation that she dispensed the drug pursuant to the prescription after communicating with the prescriber's office to verify its authenticity is inconsistent with the evidence of the College's standards. The Hearing Tribunal did not have evidence that Ms. Elbayomy obtained a signed copy of the prescription before dispensing, or that she documented a valid verbal prescription before dispensing the drugs. The Tribunal's conclusion that Ms. Elbayomy dispensed the drug when she was not authorized to do so was therefore supported by the evidence and reasonable. There is no basis to find that the Hearing Tribunal's conclusions or findings of unprofessional conduct were unreasonable.

Failing to Provide Original Prescription Document for 23 Claims

Allegation 4 was that Ms. Elbayomy failed to create or retain original prescriptions for approximately 23 prescriptions that were dispensed, for a total of \$25,330.65 worth of claims. The Hearing Tribunal found this allegation proven and to constitute unprofessional conduct. The Tribunal held that the ABC final audit report established that on multiple occasions Ms. Elbayomy failed to create or retain original prescriptions. It held that this breached the College's standards and most importantly, that it was not possible to determine if there were actually prescriptions in the first place. The Tribunal described this as a very serious concern and explained that maintaining accurate health records is critical for patient safety and a core pharmacy competency.

Ms. Elbayomy argued that the Complaints Director testified that she had failed to produce the prescriptions in support of 23 claims during a “snap inspection” by ABC for its audit. In fact, the pharmacy did have documentation to support all of the claims, but it explained to ABC that the documentation was not immediately provided upon demand due to time constraints. Ms. Elbayomy said this did not rise to the level of unprofessional conduct. Ms. Elbayomy also said that the Complaints Director failed to bring this to the Hearing Tribunal’s attention, and that the Complaints Director failed to advise the Hearing Tribunal that there were only 22 claims, not 23 or more claims. Further, 15 of those 22 claims concerned the same patient on the same day. Finally, Ms. Elbayomy submitted that she disagreed with ABC about what constituted the required prescription documentation for three of the claims.

The Complaints Director responded that in the ABC final audit report, Appendix “L” was a list of claims submitted to ABC for which the prescription documents were found to have been missing. Appendix “L” listed 24 prescriptions but ABC only sought recovery for 23. The Complaints Director asserted that his testimony about 23 missing prescriptions was accurate. The Complaints Director then asserted that he set out the evidence for allegation 4 and the Hearing Tribunal deliberated and made its own decision.

The Hearing Tribunal’s finding of unprofessional conduct on allegation 4 was reasonable. The ABC final report demonstrated, and Ms. Elbayomy acknowledged that she did not produce documentation in support of 23 prescriptions listed in Appendix “L”. Ms. Elbayomy characterized the ABC audit inspection as a “snap inspection” and she said she didn’t produce the requested records “on demand” due to time constraints, but the Complaints Director explained that it was not a snap inspection. Ms. Elbayomy had advance notice that ABC would be coming to the Pharmacy as part of its audit. Being unable to produce records that are required by the College’s standards to be kept is inconsistent with compliance with those standards. The Appeal Panel does not accept that Ms. Elbayomy’s explanation to ABC that she did not have time to comply with its documentation requests during the inspection was necessary for the Hearing Tribunal to consider, such that its decision would be rendered unreasonable by the omission to mention it. The Appeal Panel also notes that while Ms. Elbayomy asserted that 15 of the prescriptions were for the same patient, they all had distinct prescription numbers and were subject to the same documentation requirements. It was open to the Hearing Tribunal to find as a fact that Ms. Elbayomy and her Pharmacy had failed to create or retain the original prescription documentation and its findings are entitled to deference.

Dispensing Drugs Not Listed on a Prescription

Ms. Elbayomy argued that the Complaints Director falsely testified that she had dispensed drugs that were not listed on a prescription. Ms. Elbayomy said that ABC did not find that she dispensed drugs that were not listed on the prescription, only that the prescription was insufficient since the quantity was left blank. The Complaints Director had failed to bring this to the Hearing Tribunal’s attention.

The Complaints Director responded that he had testified that the ABC audit concluded the lack of an authorized quantity meant the prescription was invalid. This was reflected

in the ABC final audit report at page 1981, referring to the College's *Standards of Practice for Pharmacists and Pharmacy Technicians*. ABC confirmed that there was an overpayment to Ms. Elbayomy's Pharmacy for this claim. The Complaints Director also testified that the prescription was invalid in his own view. Ms. Elbayomy did not identify how or where this issue resulted in any error by the Hearing Tribunal. The Appeal Panel does not accept that the Complaints Director's testimony or this issue rendered the Hearing Tribunal's decision unreasonable or unfair.

Failing to Pay Money to ABC

The Hearing Tribunal found that as of November 29, 2018 Ms. Elbayomy had made no efforts to repay ABC. Ms. Elbayomy argued that the Hearing Tribunal had relied on the Complaints Director's false testimony to this effect and to the effect that she had left the Country.

The Appeal Panel permitted Ms. Elbayomy to introduce new evidence that demonstrates that three months prior to the hearing she had repaid the sum of \$69,517.19 to ABC and that she subsequently made further payments. She was therefore in contact with ABC and the Complaints Director's evidence was false. Ms. Elbayomy also argued that the Complaints Director failed to advise the Hearing Tribunal that ABC had paid \$110,000 into its solicitor's trust account as a holdback of outstanding claims from the Pharmacy, and this was further evidence of contact between Ms. Elbayomy and ABC.

The Complaints Director responded that his testimony at the hearing was based on the information he had received from ABC at the time. He agreed that the new evidence admitted by the Appeal Panel confirmed Ms. Elbayomy's Pharmacy had made one payment of \$69,517.19 to ABC on August 30, 2018, which was prior to the hearing. The Complaints Director disputed that there was any reason for him to investigate ABC's \$110,000 holdback from Ms. Elbayomy's Pharmacy.

The Appeal Panel has considered the newly admitted TD cheque details which demonstrate that Ms. Elbayomy's Pharmacy had partially repaid ABC in the amount of \$69,517.19 prior to the hearing and that she made two further payments after the hearing. The Complaints Director also acknowledged in argument that there has been a fourth payment. This newly admitted evidence does not negate any of the Hearing Tribunal's findings of unprofessional conduct, or render them unreasonable, but the Appeal Panel will consider its impact on the sanctions against Ms. Elbayomy, given the Hearing Tribunal's reference to the lack of repayment in its reasons.

Superficial Participation in the ABC Audit

Ms. Elbayomy took issue with Counsel for the Complaints Director's suggestion that she only "superficially participated" in the ABC audit. She argued that she was fully cooperative with ABC. The Complaints Director acknowledged that "superficial" was a poor choice of words to describe Ms. Elbayomy's participation in the audit. While there were challenges during the audit Ms. Elbayomy did respond to ABC and participate.

The Hearing Tribunal did not find that Ms. Elbayomy failed to respond or cooperate with ABC so the choice of the word “superficial” in counsel’s submissions does not appear to have misled the Tribunal or rendered its decision unreasonable or unfair.

Failing to Cooperate with the College

Allegation 5 was that Ms. Elbayomy failed or refused to cooperate with the investigation into this matter when she did not respond to the Complaints Director as requested on May 30, June 12, July 3 or July 13, 2018.

The Hearing Tribunal found this allegation proven, holding that Ms. Elbayomy failed to respond on multiple occasions to letters, emails and phone calls and failed to provide any reasons for her lack of communications. The Hearing Tribunal held that members of a profession are expected and required to comply with requests from the regulatory College and this is an integral aspect of the College’s ability to regulate the profession. The failure or refusal to comply seriously jeopardizes the College’s ability to protect the public and ensure its regulated members’ competence. The Tribunal concluded that a failure or refusal to comply with an investigation is very serious conduct.

Ms. Elbayomy asserted that the Hearing Tribunal’s conclusion was unreasonable because there was no evidence and no finding that she ever actually received notice of the complaint, investigation or the hearing. Ms. Elbayomy reiterated her argument that she had provided a new gmail address to ABC but the College did not attempt to use it to contact her. She said that if the College had made those efforts she would have been aware of the investigation and cooperated. Ms. Elbayomy argued that if her failure to maintain current contact information with the College was unprofessional conduct, then that was never alleged or found by the Hearing Tribunal. The Hearing Tribunal should not have found allegation 5 proven based on a failure that was never the subject of an allegation.

The Complaints Director responded that Ms. Elbayomy’s lack of cooperation may have stemmed from her not receiving the communications, but this occurred because she ignored her clear professional and regulatory obligations to provide accurate, current contact information to the College.

The Appeal Panel agreed with Ms. Elbayomy’s argument on this point. Section 79(6) of the HPA is a mechanism by which the Hearing Tribunal can exercise its discretion to proceed with the hearing, even in the absence of actual notice to the regulated member. The Hearing Tribunal exercised that discretion in this case. An alleged failure to cooperate with an investigation is different. As the Hearing Tribunal noted it is a very serious allegation. The Appeal Panel was not prepared to accept that Ms. Elbayomy had failed or refused to cooperate with the College investigation into ABC’s complaint in the absence of evidence that she was actually aware that the investigation was occurring. There was no evidence that Mr. Elbayomy was actually aware that the Complaints Director was investigating her conduct. Absent that evidence, the Appeal Panel did not believe it was reasonable to find that she had failed to respond or to explain her lack of response. Ms. Elbayomy’s appeal of the finding of unprofessional conduct on allegation 5 is therefore allowed and that finding of unprofessional conduct is quashed.

Admission of Wrongdoing

Ms. Elbayomy argued that the Complaints Director testified that her response to the ABC audit report was “an admission” when in fact ABC had demanded her response as a condition of their contractual relationship. Ms. Elbayomy also submitted that a fulsome review of her communications with ABC demonstrated that she did not agree with ABC’s findings. The Complaints Director failed to bring this to the Hearing Tribunal’s attention.

The Complaints Director responded that while he did not mention that the language of Ms. Elbayomy’s acknowledgment was prepared by ABC and required by ABC, the fact remains that Ms. Elbayomy signed it. Further, Ms. Elbayomy had partially repaid ABC despite her suggestion that she did not agree with its findings.

Ms. Elbayomy did not identify how or where the Hearing Tribunal relied on the Complaints Director’s testimony on this point leading it to make an error. There was no evidence that Ms. Elbayomy was forced to provide her response to ABC, other than the normal commercial realities of pharmacy practice with a largely insured patient population. The Appeal Panel did not find that the Complaints Director’s testimony led to an unreasonable or fair decision by the Hearing Tribunal.

Contents of the May 17, 2018 Call to [REDACTED] of ABC

Ms. Elbayomy argued that the Complaints Director falsely testified that she promised but failed to make payments to ABC in a May 17, 2018 call. Ms. Elbayomy in fact had made a payment as demonstrated by the newly admitted TD cheque details. Ms. Elbayomy asserted that other aspects of the Complaints Director’s evidence about the May 17, 2018 call were also wrong. In addition, she asserted that the Complaints Director neglected to advise the Hearing Tribunal that she had provided her new email address to ABC in the May 17, 2018 call.

The Complaints Director responded that his testimony to the Hearing Tribunal was consistent with the notes from Ms. Elbayomy’s May 17, 2018 call with Mr. [J]. His testimony was also based on the information he had at the time, which was that Ms. Elbayomy had not yet made any payments to ABC. The Complaints Director disputed any lack of candour or good faith in his testimony to the Hearing Tribunal.

In Mr. [J]’s notes from Ms. Elbayomy’s May 17, 2018 call, he wrote that Ms. Elbayomy “indicated that she was still willing to pay what she owes” to ABC as a result of the audit. The Appeal Panel agreed with the Complaints Director that this is consistent with promising to repay ABC so his testimony was accurate. When he testified at the hearing, the Complaints Director had been advised by ABC that Ms. Elbayomy had made no payments towards her debt.

Ms. Elbayomy did not identify how or where the Hearing Tribunal relied on the Complaints Director’s testimony on this point leading it to make an error. The Hearing Tribunal’s finding that as of November 29, 2018 Ms. Elbayomy had made no efforts to repay ABC and the impact of the newly admitted TD cheque details were addressed

above. The fact that the Complaints Director did not point out that Ms. Elbayomy had a different gmail address was also addressed above.

8. CONCLUSION

The finding of unprofessional conduct in relation to allegation 5 in the Notice of Hearing is quashed. The other findings of unprofessional conduct are reasonable and confirmed. The parties requested to defer argument on the sanctions appeal pending the Appeal Panel's decision on the merits appeal. The Appeal Panel will receive submissions from the parties in relation to Ms. Elbayomy's appeal of the Hearing Tribunal's sanctions decision. The parties are requested to confer and within two weeks of the date of this decision propose a process for submissions and oral argument if desired for the sanctions appeal.

DATED this 24th day of April 2020

Signed by the Chair on behalf of the Council of the Alberta College of Pharmacy



Dana Lyons, Chair