

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**ROSEVIMIN GAMBOA**  
Registration number 6492

**DECISION OF THE HEARING TRIBUNAL**

October 3, 2022

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Rosevimin Gamboa, Registration #6492 (“Ms. Gamboa” or the “Investigated Member”). In attendance on behalf of the Hearing Tribunal were Anita McDonald (pharmacist and Chair), Rick Hackman (pharmacist), Pat Matusko (public member), and Dave Rolfe (public member).
2. The hearing took place on June 16, 2022 via video conference. The hearing was held under the terms of Part 4 of the *Health Professions Act*.
3. Also in attendance at the hearing were Aman Costigan and Raymond Chen, representing the Complaints Director; James Krempien, the Complaint's Director for the Alberta College of Pharmacy; Julie Gagnon, independent legal counsel to the Hearing Tribunal; and Brett Code, legal counsel for the Investigated Member. The Investigated Member was not in attendance.

## **II. ALLEGATIONS**

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

IT IS ALLEGED THAT, between December 1, 2017 and September 30, 2018, while Mr. Nadim Khan and Ms. Rosevimin Gamboa were registered Alberta pharmacists and licensees of Vista Pharmacy & Travel Clinic (ACP Licence #3441) (the “Pharmacy”), they:

1. Submitted, or allowed for the submission of, claims to Alberta Blue Cross when they should have known they were not entitled under the Pharmacy’s agreement with Alberta Blue Cross to the fees claimed, the particulars of which include the submission of:
  - a. 404 claims worth approximately \$8,060 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order; and
  - b. 214 claims worth approximately \$9,055 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy’s agreement with Alberta Blue Cross and Section 2(5) of the Alberta Health Ministerial Order;
2. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:
  - a. 44 prescriptions that were not provided by the Pharmacy to support the claims to Alberta Blue Cross;

- b. 14 prescriptions where the documentation provided by the Pharmacy was missing the prescriber's signature; and
- c. three pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription.

IT IS ALLEGED THAT the conduct of Ms. Gamboa in these matters:

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

IT IS ALLEGED THAT the conduct of Ms. Gamboa constitutes a breach of the following statutes and standards governing the practice of pharmacy:

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

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

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

### **III. PRELIMINARY MATTERS**

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

#### **IV. EVIDENCE**

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

##### **Brief Chronology**

12. At all relevant times, Ms. Gamboa was a registered Alberta pharmacist and the licensee of the Pharmacy. Ms. Gamboa was first registered as a clinical pharmacist with the Alberta College of Pharmacy on July 1, 2004.
13. Ms. Gamboa was the licensee of the Pharmacy from February 8, 2018 and continues to be the licensee of the pharmacy, as of the date of the hearing.
14. Mr. Khan was the licensee of the Pharmacy from December 1, 2017 to February 7, 2018.
15. On December 20, 2019, the Complaints Director received a letter from a team manager with Claims Audit and Investigation Services for Alberta Blue Cross (“ABC”). The letter indicated that ABC had received claims submitted by the Pharmacy, and other pharmacies, and had determined there were claims submitted to ABC that may represent a breach of the Alberta College of Pharmacy’s Code of Ethics, Standards of Practice for Pharmacists and Pharmacy Technicians and Standards for the Operation of Licensed Pharmacies.
16. On December 20, 2019, the Complaints Director also received a letter from an analyst with Claims Audit and Investigation Services for ABC. The letter provided a summary of the findings from ABC’s review of the claims made by the Pharmacy during the period of December 1, 2017 to September 30, 2018 (the “Audit Period”). The letter indicated that the Pharmacy had submitted claims to ABC where the pharmacy service provided was ineligible or where the documentation was missing or invalid. This letter

included details of the ineligible claims and missing or invalid documentation and Ms. Gamboa's response to the ABC findings.

17. The Complaints Director treated the information from ABC as a complaint and commenced an investigation. On December 20, 2019, he appointed himself, Ms. Jennifer Mosher and Mr. Monty Stanowich as investigators.
18. As part of the investigation, Ms. Mosher received copies of the following from ABC: (A) Pharmacy services Ministerial Orders covering the Audit Period; (B) Pharmacy Services compensation guides that are available on ABC's website; (C) the 2014 and 2018 ABC Pharmaceutical Services Provider Agreements covering the Audit Period; and (D) Pharmacy Benefacts, a Bulletin published by ABC referring to trial prescriptions and how to claim them.
19. On October 14 2020, Ms. Mosher met with Ms. Gamboa and her legal counsel. In her meeting notes, Ms. Mosher recorded the following, among other things:
  - a) In relation to the ABC audit, Ms. Gamboa felt "rushed" and was not given enough time to respond to the report. She conveyed that "they tried their best" to respond and that she was "shocked", "unnerved", and "had no idea what to do".
  - b) In relation to trial prescription claims, Ms. Gamboa no longer bills for Comprehensive Annual Care Plan ("CACP") follow-ups in this manner.
  - c) Ms. Gamboa now has her Addition Prescribing Authority, and she understands that if she prescribed for a patient, she can follow-up but not bill for that follow-up unless that patient has an existing CACP/Standard Medication Management Assessment.
  - d) She typically only prescribed for minor ailments.
  - e) She is aware she can only bill one service per day per patient.
  - f) She reviewed the Ministerial Order and she is "very careful" in how clinical pharmacy services are billed to ABC.
  - g) Outside of the ABC audit, she received no additional communication from ABC that her billing practices were unacceptable and contrary to the Ministerial Order. She noted that ABC has since "changed their system" to prevent such billing errors.
  - h) Her perspective, that her billing practices have changed, is consistent with ABC's perspective in that there has been a significant reduction in claims submitted for trial prescriptions.
20. Following the investigation, the Complaints Director referred the matter to a hearing.

### **Agreed Facts Supporting Allegations**

21. During the ABC Audit Period (December 1, 2017 and September 30, 2018), Ms. Gamboa was a registered Alberta pharmacist and licensee of the Pharmacy.

#### Allegation 1

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

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

23. As a pharmacist and licensee, Ms. Gamboa is expected to be aware of, and comply with, the applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta.

#### Particular 1a

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

- a. 404 claims worth approximately \$8,060 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order.

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

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

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

#### Particular 1b

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

- b. 214 claims worth approximately \$9,055 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of

the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order;

28. Section 2(5) of the Alberta Health Ministerial Order provides that subject to specified exclusions, only one pharmacy service fee shall be payable per patient per day.
29. Mr. Khan and Ms. Gamboa submitted, or allowed for the submission of, 214 claims worth approximately \$9,055 for more than one pharmacy service per patient per day in the absence of an exclusion under the Alberta Health Ministerial Order.

#### Allegation 2

30. Mr. Khan and Ms. Gamboa failed to create or maintain required and accurate pharmacy records for:
  - a. 44 prescriptions that were not provided by the Pharmacy to support the claims to ABC;
  - b. 14 prescriptions where the documentation provided by the Pharmacy was missing the prescriber's signature; and
  - c. Three pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription.
31. As Complaints Director, James Krempien, acknowledged that Ms. Gamboa was fully cooperative throughout the investigation and hearing process.
32. Ms. Gamboa acknowledged that she received legal advice prior to entering into the Agreed Statement of Facts and that she understood that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the Allegations set out in the Notice of Hearing.

#### Admission of Unprofessional Conduct

33. Pursuant to section 70 of the *Health Professions Act*, Ms. Rosevimin Gamboa wished to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.
34. Ms. Gamboa acknowledged and admitted that while she was a registered Alberta pharmacist and the licensee of the Pharmacy, she and Mr. Khan:
  - a. Submitted, or allowed for the submission of, claims to ABC when she should have known, she was not entitled under the Pharmacy's agreement with ABC to the fees claimed, the particulars of which include the submission of:
    - i. 404 claims worth approximately \$8,060 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-

ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order; and

ii. 214 claims worth approximately \$9,055 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order.

b. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:

i. 44 prescriptions that were not provided by the Pharmacy to support the claims to ABC;

ii. 14 prescriptions where the documentation provided by the Pharmacy was missing the prescriber's signature; and

iii. Three pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription.

35. Ms. Gamboa agreed and acknowledged that her conduct in these matters:

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

36. Ms. Gamboa further agreed and acknowledged that her conduct, as set out above, constitutes breaches of the following statutes and standards governing the profession of pharmacy:

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

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

37. Ms. Gamboa acknowledged that she received legal advice prior to entering into this Admission of Unprofessional Conduct and that she understood that if the Hearing Tribunal accepts her Admissions of Unprofessional Conduct, the Hearing Tribunal may proceed to issue one or more orders set out in section 82(2) of the *Health Professions Act*.

#### **V. SUBMISSIONS ON THE ALLEGATIONS**

38. The parties confirmed that the issues in this hearing were similar to issues in a prior hearing held the morning of June 16, 2022 and that submissions from that hearing would apply here as well. The parties confirmed that the transcript from the morning hearing on June 16, 2022 could be referenced for the purposes of the hearing involving Ms. Gamboa and in the Hearing Tribunal's decision or in the event of appeal.
39. Ms. Costigan began her submissions by detailing the basis for the Allegations brought forward. She referred to the admissions made by the Investigated Member in the Agreed Statement of Facts. Evidence from the ABC audit was cross-referenced for each Allegation in the Notice of Hearing and presented as Part B of the Agreed Statement of Facts.
40. Ms. Costigan explained that Allegation 1 had been proven. Article 3.1 of the Pharmacy's agreement with ABC states that the provider must provide pharmaceutical services according to the provisions of the agreement. As a pharmacist and licensee, Ms. Gamboa is expected to be aware of and comply with applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta. Ms. Gamboa submitted, or allowed the submission of claims to ABC when she should have known she was not entitled to the fees claimed. The pharmacy submitted claims for Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access, neither of which meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order. Ms. Gamboa also submitted, or allowed the submission of, 214 claims for more than one pharmacy service per patient per day in the absence of an exclusion as defined by the Alberta Health Ministerial Order.
41. Ms. Costigan submitted that Allegation 2 had also been proven from the evidence provided by the ABC audit, in that there were multiple examples where Ms. Gamboa failed to create or maintain required and accurate pharmacy records. Ms. Costigan contended that this amounted to breaches of the legislation, the Standards of Practice for Pharmacists and Pharmacy Technicians, the Standards for the Operation of Licensed Pharmacies and Code of Ethics, as cited in the Notice of Hearing.

42. Ms. Costigan commended Ms. Gamboa and Mr. Code for their cooperation in the investigative process and for their part in establishment of the Agreed Statement of Facts. The Hearing Tribunal would have to decide whether the Allegations in the Notice of Hearing were proven on the balance of probabilities and whether Ms. Gamboa's conduct constituted unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drugs Act*.
43. Ms. Costigan concluded that the agreed documents provided by the parties demonstrated that the admissions made are supported by the evidence and the conduct of Ms. Gamboa amounts to unprofessional conduct and misconduct. She ended her submissions by stating the admission of the Investigated Member should be accepted by the Hearing Tribunal.
44. Mr. Code, legal counsel for the Investigated Member stated that on behalf of his client he agreed with everything Ms. Costigan had said and that the admissions are conduct deserving of sanction.
45. Mr. Code brought the Tribunal's attention to the Amended Notice of Hearing, paragraph 1. He highlighted that the document stated the Investigated Member "should have known", not "knew" or "ought of have known". He continued that there is no admission of knowledge of the mistakes the Investigated Member was making and no charge that she knew. There was no allegation of fraud, dishonesty, or willful misconduct.
46. Mr. Code also submitted that the Amended Notice of Hearing states that the Allegations have the "potential to undermine the integrity of the profession" and the "potential to decrease the public's trust in the profession"; it does not state that the Investigated Member's conduct did do these things. Mr. Code submitted that Ms. Gamboa relied on ABC to notify her if the submitted billing was incorrect. He stated there are two ways "to get this stuff right": one is to read and review all of the documents, rules and requirements and the other is a "hit and miss method". In this case, Mr. Code continued, the Investigated Member had "many misses" where her submission to ABC were compensated for and were not corrected along the way. Therefore, Ms. Gamboa assumed that the claim was valid and in line with all of the rules and requirements.
47. Mr. Code submitted that the evidence showed the Investigated Member's evolution of thinking, where at first, she denied the Allegations but has now come to admit she made the mistakes and improved her practices, processes and internal record keeping.

## **VI. FINDINGS ON THE ALLEGATIONS**

48. During the hearing on June 16, 2022, the Hearing Tribunal verbally advised the parties that after consideration of the submissions and the evidence presented, the Hearing Tribunal accepted the Agreed Statement of Facts and found that the evidence presented to the Tribunal was sufficient to determine that the Allegations outlined in the Amended Notice of Hearing were proven.

49. The Hearing Tribunal also advised the parties that it accepted the Investigated Member's Admission of Unprofessional Conduct and agreed that the conduct of Ms. Gamboa amounted to unprofessional conduct under the *Health Professionals Act* and misconduct under the *Pharmacy and Drug Act* and was deserving of sanction.
50. Ms. Gamboa was first registered as a clinical pharmacist with the Alberta College of Pharmacy on July 1, 2004. Ms. Gamboa was a registered Alberta pharmacist and licensee of the Pharmacy from February 8, 2018 to present. During this period of time, the relevant facts and events in Allegations 1 and 2 occurred.
51. Allegation 1 alleged that Ms. Gamboa submitted, or allowed for the submission, of Claims to ABC when she should have known she was not entitled to such claims under the Pharmacy's agreement with ABC. The Tribunal was provided with sufficient evidence from the ABC audit and the Agreed Statement of Facts to find Allegation 1a) and Allegation 1b) to be proven.
52. Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians requires pharmacy professionals to comply with the law that governs their practices. It is a professional responsibility to be proficient in the law, regulations and contracts that govern the practice of pharmacy. The Tribunal finds that Ms. Gamboa did not fulfil this responsibility, chose not to educate herself or seek guidance, and followed through with a "hit and miss" strategy that does not comply with the Standards. The need for all pharmacists, but especially licensees, to be in compliance with the law is reiterated in Standard 1 (sub-standard 1.1 and 1.2) of the Standards for Operation of Licensed Pharmacies. Ms. Gamboa had a professional responsibility as a pharmacist and licensee to be informed about the requirements for claiming compensation through the ABC agreement. Ms. Gamboa did not comply with the professional responsibility.
53. The actions of the Investigated Member also breached the Alberta College of Pharmacy's Code of Ethics, Principle 1 (sub-standard 1 and 12), which states that all regulated members must act in the best interest of each patient and not allow professional judgement to be impaired by personal or commercial benefits. Principle 10 (sub-standards 1, 2, and 3) hold each regulated member to comply with the letter and spirit of the laws that govern practice, to be honest in all dealings, including with contractors, and to seek and expect fair remuneration for professional services. The evidence presented to the Tribunal proves the Investigated Member acted in contravention of the Code of Ethics through the improper submission of claims to ABC.
54. The Tribunal was very troubled by the Investigated Member's claim that she was never informed by ABC about the incorrect billings and she stated this as the reason for the large number of infractions. As stated above, the guiding documents of Pharmacy practice clearly state there is a professional responsibility to understand the documents and contracts that govern practice. The Tribunal does not agree that ABC holds any blame for the conduct of Ms. Gamboa.
55. The Tribunal was provided a copy of the ABC Pharmacy Agreement and reviewed the section pertaining to Assessments for Trial Prescriptions. The pharmacist and public

- members on the Tribunal agreed that the definition provided was clearly explained and struggled to fully understand how it was interpreted the way it was by the Investigated Member.
56. Allegation 2 alleged that Ms. Gamboa failed to create or maintain required and accurate pharmacy records. The Tribunal was provided with sufficient evidence from the ABC audit and the Agreed Statement of Facts to find Allegation 2a) through 2c) to be proven.
  57. Inaccurate record keeping is in direct violation of Standard 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians, Standard 8 (sub-standard 8.1 and 8.3) of the Standards for the Operation of Licensed Pharmacies and Section 10(1) (sub-sections 10(1)(a) and 10(1)(d)(iv)) of the *Pharmacy and Drug Act*, which specifies it is the role of the licensee to ensure all requirements and standards for recording keeping are met. The Pharmacy and Drug Regulation, Section 12(1)<sup>1</sup> also states the licensee must ensure records are created and maintained in accordance with the Standards for the Operation of Licensed Pharmacies. Inaccurate or missing pharmacy records put the public at risk due to missing health information and inhibits the ability for a pharmacist and other staff at the pharmacy to provide proper patient care.
  58. The failures to comply with the Standards of Practice, Standards for the Operation of Licensed Pharmacies and Principles of the Code of Ethics outlined above are serious, as is the failure to comply with the *Pharmacy and Drug Act* and Pharmacy and Drug Regulation.
  59. The Tribunal wanted to highlight in this written decision that, although the wording in the Amended Notice of Hearing may state that these actions had the “potential” to do harm, the Tribunal disagrees with Mr. Code’s comments that these actions did not cause harm. ABC is part of the public. Improper submission of claims undermines the public’s trust in the profession and risks the compensation of professional services for all pharmacies. If brought to wide media attention, this unprofessional conduct may affect the public’s trust in pharmacy professionals. The Hearing Tribunal was satisfied that Ms. Gamboa’s conduct harmed the integrity of the profession and is detrimental to the best interests of the public.
  60. The Hearing Tribunal was satisfied that Ms. Gamboa’s admitted and proven conduct in Allegations 1 and 2 constitutes unprofessional conduct pursuant to sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under section 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drugs Act*.

## **VII. SUBMISSIONS ON SANCTION**

61. The parties presented a Joint Submission on Sanction, which was entered as Exhibit 2.
62. The Joint Submission on Sanction for Ms. Gamboa was as follows:

---

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

1. Ms. Gamboa shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Ms. Gamboa is responsible for the costs of the program.
2. Mr. Gamboa's practice permit shall be suspended for 3 months, with
  - i. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
  - ii. 2 months to be held in abeyance pending Ms. Gamboa's completion of Order 1 above.

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

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

63. Ms. Costigan advised the Tribunal that Ms. Gamboa has already completed both parts A and B of the Licensee Education Program, and has provided the certificates of completion to the Complaints Director.
64. Ms. Costigan noted the length of time Ms. Gamboa was a licensee of the pharmacy, which was taken into account for the length of suspension.
65. Ms. Costigan explained that sanctions are understood to serve four purposes; protection of the public, maintaining the integrity of the profession, fairness to the member, and deterrence, both specific to the member and generally to the profession at large.
66. Ms. Costigan submitted there are a number of factors that are considered when deciding on proposed sanctions and directed the Tribunal to consider the factors set out in the case *Jaswal v Newfoundland Medical Board* in determining whether the four purposes of sanctions were served. In the case of Ms. Gamboa, those factors were as follows:
  - a. Ms. Gamboa was first licensed in July of 2004. Her conduct cannot be excused based on lack of experience.
  - b. There are no prior findings of unprofessional conduct against Ms. Gamboa. This works in the Investigated Member's favour.
  - c. The conduct that has been found to be unprofessional conduct happened many times over the period of 10 months. This was not a 'one off' scenario.
  - d. The Investigated Member admitted to both Allegations and has taken responsibility for her conduct; she has been very cooperative throughout the investigation and has worked with the Complaints Director and counsel to reach the Agreed Statement of Facts, Admission of Unprofessional Conduct and the Joint Submission on Sanction. This weighs heavily in Ms. Gamboa's favor.
67. Ms. Costigan stated that the Complaints Director trusts that the orders in the joint submission are enough to achieve deterrence and protection of the public; that the proposed sanctions promote specific and general deterrence by reminding members of upholding their obligations as well as the consequences for failing to do so.
68. Ms. Costigan then addressed the sanctions imposed in similar cases and highlighted that the range of sentencing is very similar to what the Joint Submission is proposing in this case. Ms. Costigan explained that the addition of remedial education is new to this case in response to a previous Hearing Tribunal's written decision. This is why the Licensee Program courses have been included in the submitted sanctions for Ms. Gamboa.
69. Ms. Costigan closed her submission by reviewing the law on Joint Submission. Joint submissions must meet the public interest test, as set out in *R v. Anthony-Cook*, which states that a decision maker should not depart from a joint submission on sanction unless the proposed sentence would bring the administration of justice into disrepute.

or would otherwise be contrary to the public interest. Ms. Costigan asked the Tribunal to accept the Joint Submission, based on the factors reviewed and having been agreed upon by the Complaints Director and the Investigated Member to be reasonable, appropriate and fair.

70. Mr. Code submitted that the Joint Submission has considered all of the purposes and principles of sanctioning and is reasonable and appropriate based on the facts and admission of guilt by Ms. Gamboa. He ended his submissions requesting the Tribunal accept the Joint Submission.
71. Counsel confirmed that in respect of Order 5, the parties agreed that the Hearing Tribunal had the jurisdiction to make such an order and that both parties had agreed to this Order.

### **VIII. FINDINGS ON SANCTION**

72. The Hearing Tribunal reviewed the proposed Joint Submission on Sanctions for Ms. Gamboa for appropriateness of sanction and effectiveness as a deterrent for Ms. Gamboa and the profession at large. The submissions of both parties were considered as well.
73. The Hearing Tribunal also considered the submissions and agreement of the parties with respect to Order 5, that the Hearing Tribunal had jurisdiction to make such an order and that both parties had agreed to this Order.
74. At the conclusion of the hearing on June 16, 2022, the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanction. This written decision confirms the decision of the Hearing Tribunal and provides reasons.
75. The Hearing Tribunal noted that sanctions must serve the following purposes: public protection, maintenance of the profession's integrity, fairness to Ms. Gamboa, and specific and general deterrence.
76. The Tribunal agreed with the mitigating factors as submitted by Ms. Costigan, specifically that there have been no prior findings of unprofessional conduct for the Investigated Member and that Ms. Gamboa and her counsel were very cooperative throughout the investigative and negotiation processes.
77. The conduct of Ms. Gamboa was outside the expected conduct of a pharmacist and therefore required sanctioning to promote deterrence, not only for Ms. Gamboa, but all pharmacists. The self-regulatory nature of the profession of pharmacy relies on the integrity and professionalism of its members.
78. Pharmacists are expected to inform themselves regarding all documents and contracts that govern their work as a pharmacist. Ms. Gamboa chose not to do this and the consequences of her actions are the sanctions being imposed by this Hearing Tribunal.

79. There are clear requirements in governing documents for the creation and keeping of patient records. Not abiding by these requirements has led to the sanctions being imposed on Ms. Gamboa.
80. The Tribunal would like to acknowledge the importance of the addition of remedial education in the Joint Submission. This addition not only illustrates the importance of evolving sanctions for similar cases to meet the principles of public safety and deterrence, but also highlights the importance of a Hearing Tribunal's work in making recommendations even when accepting a Joint Submission.
81. The public must have confidence that all Alberta pharmacists and licensees operate in accordance with the legislation that relates to the practice of pharmacy in Alberta and the Standards and Code of Ethics set forth by the Alberta College of Pharmacy. The public must be confident that failure to uphold the trust will be met with significant consequences. The suspension and fines address this.
82. Requiring Ms. Gamboa to provide a copy of the Hearing Tribunal's decision to any pharmacy employer or licensee of a pharmacy where he is employed for a period of 3 years and the ability of the Complaints Director to direct that Ms. Gamboa not serve as an owner, proprietor, or licensor of a pharmacy for a period of time if similar Allegations are referred to a hearing serve to protect the public interest and act as a deterrent to Ms. Gamboa specifically, but also the profession more generally.
83. The Hearing Tribunal noted the joint agreement that Ms. Gamboa pay half of the full costs of the investigation and hearing with Mr. Khan paying the other half. The Hearing Tribunal found this was an appropriate case to order the full payment of costs by the two investigated members.
84. The Hearing Tribunal considered the cases that were provided and compared to the sanctions being proposed. The Hearing Tribunal concluded that the sanctions proposed in the Joint Submission on Sanction are appropriate.
85. The Hearing Tribunal applied the public interest test and finds the joint submission on sanction to be appropriate. The jointly proposed sanctions serve the purposes of sanctions in professional discipline cases and protect the public interest.
86. The Tribunal discussed the lack of attendance of the Investigated Member at the Hearing. Mr. Code did state that Ms. Gamboa could be reached and could be in attendance if requested, however no explanation was provided for her absence other than Mr. Code saying that she was "under the understanding that [she] need not attend, therefore, [she is] not in attendance, but [she is] in Calgary, and I can get [her] here if we need [her]". Ms. Gamboa's choice not to attend did not affect the Tribunal's final decision. However, the Hearing Tribunal views that an investigated member's attendance at a hearing is important, from the perspective of accountability and transparency.

**IX. ORDERS OF THE HEARING TRIBUNAL**

87. The Hearing Tribunal accepts the Joint Submission on Sanction for Ms. Gamboa and makes the following orders under Section 82 of the *Health Professions Act*:

1. Ms. Gamboa shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Ms. Gamboa is responsible for the costs of the program.
2. Mr. Gamboa's practice permit shall be suspended for 3 months, with
  - i. 1 month to be served on dates acceptable to the Complaints Directs and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
  - ii. 2 months to be held in abeyance pending Ms. Gamboa's completion of Order 1 above.

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

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

6. Ms. Gamboa shall be responsible for payment of 50% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Ms. Gamboa receives a copy of the Hearing Tribunal's written decision.

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

Per:   
Anita McDonald (Oct 3, 2022 10:51 MDT)  
Anita McDonald, Chair