

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF ZHIJIAN HUANG

DECISION OF THE HEARING TRIBUNAL

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Zhijian Huang (ACP Practice Permit #6638). In attendance on behalf of the Hearing Tribunal were Diane Adams, Public Member, Judy Baker, Pharmacist Member and Bonnie Oldring, Pharmacist Member and Chair.

The hearing took place on May 3, 2010 at the Alberta College of Pharmacists (ACP), 1200, 10303 Jasper Avenue, Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were Mr. David Jardine, legal counsel for the ACP, Mr. Jim Krempien, Complaints Director of the ACP and Mr. Zhijian Huang. Legal counsel did not represent Mr. Huang. Mr. Huang was advised that legal counsel at a hearing (Section 72(1) of the *Health Professions Act*) may represent him. Mr. Huang stated that he was aware that he was entitled to be represented by legal counsel.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. ALLEGATIONS

The Hearing Tribunal inquired into the complaints or matters outlined in the Revised Notice of Hearing dated May 3, 2010 – Appendix 1

Mr. Huang did not admit to unprofessional conduct or the allegations outlined in the Revised Notice of Hearing.

III. PRELIMINARY MATTERS

The hearing date was originally scheduled for March 9, 2010. Mr. Huang requested and was granted an adjournment of the March 9, 2010 hearing as his airline ticket back to Calgary was April 28 and he was requesting an adjournment until April 30, 2010 or later. As Mr. Huang was not available to appear at the March 9, 2010 hearing, the Hearing Tribunal granted the adjournment in order to provide Mr. Huang the opportunity to defend the allegations in the Notice of Hearing.

Under Section (78) 1 of the *Health Professions Act*, the hearing is required to be open to the public unless an exception applies. Mr. Huang stated that: “I think private would be a little bit more comfortable”. Mr. Huang did not provide any other reasons why he felt the hearing should be held in private. The Hearing Tribunal rejected the application for having the hearing heard in private or closed to the public. Mr. Huang was advised that at any time during the presentation of evidence he could make

another application to have the hearing heard in private. The Hearing Tribunal could also present a motion at any time during the presentation of evidence to have the hearing or part of the hearing heard in private or closed to the public.

The Hearing Tribunal reviewed sections (78) 1 and 85 of the *Health Professions Act* when considering Mr. Huang's request to have the hearing in private or closed to the public. In particular:

Section 78(1)(a)(i): Mr. Huang did not advise the tribunal of any civil action that could be prejudiced if the hearing was open to the public.

Section 78(1)(a)(ii): Tribunal members were not provided with any information to suggest that the safety of Mr. Huang or a member of the public would be at risk if the hearing was open to the public.

Section 78(1)(a)(iii): Mr. Huang did not refer to any personal, health, property or financial information, the prejudice from disclosure of which would outweigh the desirability of an open hearing. The Hearing Tribunal did reserve the option of closing the hearing to the public and sealing the evidence if Mr. Huang's personal information was deemed to be extremely sensitive.

Section 78(1)(a)(iv): Mr. Huang did not provide any information to suggest that the ability of a witness to testify would be compromised if the hearing were open to the public. The complaint was initiated by the ACP therefore a public complainant would not be attending the hearing.

Section 78(1)(a)(v): Mr. Huang's request for having the hearing in private or closed to the public because it "would be a little bit more comfortable" was not considered a satisfactory reason for granting the request. Professional discipline proceedings are always uncomfortable for the professional whose conduct is under scrutiny. If that discomfort was sufficient to justify closing the hearing then there would be no need for s. 78(1) of the *Health Professions Act*.

Section 78(1)(b): Mr. Huang or Mr. Jardine did not advise the Hearing Tribunal of any other Act that would require the hearing or part of the hearing to be held in private.

Section 85: The investigated person, the complainant and the public may examine the record of the hearing except for the parts of the hearing that are held in private. The decision, except for the parts of the hearing that are held in private, may also be examined by any member of the public. The Hearing Tribunal felt that the record of the hearing and the decision should be available to the public and therefore did not support conducting the hearing in private for the reason expressed by Mr. Huang.

IV. EVIDENCE

Mr. Jardine, representing the ACP, called 2 witnesses: Ms. Margaret Morley, ACP Hearings Director and Mr. Jim Krempien, ACP Complaints Director.

Ms. Morley: confirmed that she sent Mr. Huang the original Notice of Hearing (Exhibit 2) by Express post and the Revised Notice of Hearing (Exhibit 1) by email. Email was the only address that Mr. Huang was using during that period of time. It was confirmed that the two Notice of Hearing documents were identical except for the date of the scheduled hearing. A compilation of emails between Ms. Morley, Mr. Jardine and Mr. Huang was entered as Exhibit 3.

Mr. Krempien: presented the findings of his investigation into the conduct of Mr. Huang following the orders of a hearing decision dated July 14, 2009. One of the orders was that Mr. Huang was prohibited from being a pharmacy licensee or pharmacy owner for a period of 5 years from the date of the decision. The decision allowed Mr. Huang thirty days before these two conditions were added to his Practice Permit. It was expected that Mr. Huang would find a new licensee to govern the operations of the his pharmacy, First Choice Pharmacy (FCP) and a new owner to purchase the pharmacy **or** close the pharmacy and transfer the records, sell or redistribute the medications as indicated under the Pharmacy and Drug Act. Mr. Huang was expected to make suitable arrangements prior to August 14, 2009.

ACP received an application for a change of ownership of First Choice Pharmacy from Bruce Yee, but the application was not approved as the application was incomplete and Mr. Huang was listed as the licensee and the only pharmacist working at the location. The July 14, 2009 tribunal decision directed that Mr. Huang could not practice as a licensee for 5 years commencing 30 days from the date of the decision.

Mr. Huang was sent an email by the ACP Registration Department on Tuesday, August 11, 2009 requesting that he provide notification as indicated under the Pharmacy and Drug Act of the disposition of the medications and narcotics and the patient records of First Choice Pharmacy within 5 days of closure. On August 14, 2009 Mr. Huang responded by email that he would like to close the pharmacy on September 8, 2009. The ACP Registration Department replied on August 14, 2009 at 11:27 AM that First Choice Pharmacy must be closed by midnight that day and a written disposition of where the drugs, narcotics and controlled drugs and patient records were transferred received by ACP no later than 4:00 PM August 21, 2009.

In addition, Mr. Huang was visited at First Choice Pharmacy on August 17, 2009 by Mr. Vic Kalinka (ACP Pharmacy Practice Consultant). Mr. Kalinka reminded Mr. Huang that he must:

- notify ACP of the destination of patient record
- post a sign at the closed pharmacy indicating where the patient records are located

- provide ACP with an inventory listing and destination of controlled drugs
- remove the exterior sign of the pharmacy

On August 21, 2009, ACP received an email from Mr. Huang indicating that the medication files and regular drugs were moved to Exalan Pharmacy. A list of the narcotics that were transferred to “Blue bottle Pharmacy 148 17 AVE NE CALGARY” was also documented. On August 28, 2009 it was noted by Mr. Kalinka that a handwritten sign was posted at the former location of First Choice Pharmacy indicating “Customer your file had” and included the address and phone number corresponding to Exalan Pharmacy. The sign did not include the name of the pharmacy that the sign referenced. Mr. Kalinka also noted that the exterior signage of First Choice Pharmacy had not been removed. On September 15, 2009, Mr. Ng, pharmacy manager at Exalan Pharmacy, confirmed that he had been approached by Mr. Huang but had refused to take the records.

Mr. Krempien provided documentation of conversations showing that in September 2009 Mr. Huang was attempting to find a pharmacy to take his medication records. The ACP was aware of contacts made to: Downtown Drugmart, The Medicine Shoppe #158, Daylight Dispensary, Marshall Drugs and Fifth Avenue IDA.

On September 4, 2009 Hanif Mulji, Pharmacy Manager of Downtown Drugmart, received a box of patient prescriptions but no electronic records. During the period of September 4th to September 14th, 2009, Mr. Mulji indicated that approximately half a dozen former patients of Mr. Huang contacted Downtown Drugmart requesting refills of their prescriptions. Mr. Mulji told these patients he did not have their records and they would have to see their doctor for a new prescription. After numerous failed attempts to contact Mr. Huang by telephone, Mr. Mulji faxed Mr. Huang a note asking that he not send his customers and to come pick up his patient files. On November 2, 2009, Mr. Huang indicated to Mr. Krempien that each time he transferred patient records that he transferred all of the records.

On September 18, 2009, Mr. Huang advised the ACP that all his patient files have been transferred to “Medicine Shop at 312 401 9 Ave SW, CALGARY, AB on SEPT 14”. ACP requested confirmation of the date that the files were transferred and Mr. Huang responded: “On Sept 17, files have been transferred.” On September 18, 2009, Krista MacLaughlin, Pharmacy Manager of the Medicine Shoppe #158 stated that Mr. Huang had approached her to take his patient files but no files were ever transferred to her pharmacy. On November 2, 2009 Mr. Huang admitted that his email notification to the ACP of the FCP records being transferred to the Medicine Shoppe #158 was not accurate.

On September 22, 2009, a handwritten notice on the front door of the now closed First Choice Pharmacy indicated that the patient records have been moved to MacLeod IDA Pharmacy 323 41 Avenue NE. This address corresponds to Daylight Dispensary. The notice also stated that after October 5 the records would be moved to 1018 MacLeod Trail. The notice also included a written Chinese message. On September 28, 2009 Mr. Huang advised ACP that “I send the wrong name of

pharmacy last time the correct pharmacy shall be daylight dispensary 323 41 AVE NE CALGARY please correct it.” On November 2, 2009, Mr. Huang admits he posted an incorrect notice on his pharmacy door advising patients that their records had been transferred to MacLeod IDA Pharmacy when they had actually been transferred to Daylight Dispensary. The address posted on the door did include the correct address and phone number for Daylight Dispensary.

On September 24, 2009 Stephen Miller, Pharmacy Manager of Daylight Dispensary confirmed that on September 17th, 2009 Mr. Huang’s “assistant” dropped off a hard drive and a box of written prescriptions. He received 4 small file boxes containing prescriptions from July 2007 to August 2009 and these records were reported to be in no order of any kind. He also received a computer hard drive, which he indicated was not up to date. Mr. Miller stated that a patient (Mr. Xay Lu) requested a refill on September 22, 2009. The patient advised him that he had his medication refilled by Mr. Huang in the parking lot two weeks before (end of August). After examining the electronic record on the First Choice Pharmacy hard drive, Mr. Miller noted that the last record of prescription activity was from July 4 with no further refills. Mr. Miller was advising all former patients of FCP requesting refills to contact their doctor, as he was not confident that the records he had received were current or complete. On September 30, 2009 Monica Payne, the owner of Daylight Dispensary advises the ACP that FCP files were returned on September 29, 2009.

On October 1, 2009 Mr. Huang advised ACP “I HAVE FIRST CHOICE PHARMACY FILE GOING TO 5 TH AVE IDA PHARMACY IN CALGARY.” Mr. Huang did not advise ACP the date that the files were transferred to 5th Avenue Pharmacy, but on October 2nd, 2009 the transfer of electronic Kroll files was confirmed by Bruce Winston, owner of Fifth Avenue Pharmacy. He received the electronic files on September 30, 2009 but had not been provided with any written prescription records. Mr. Huang failed to answer ACP’s question asking when the files were transferred to 5th Avenue Pharmacy. On November 2, 2009 Mr. Huang contradicted Mr. Winston’s information that only electronic files were received.

On October 6, 2009, ACP emailed Mr. Huang requesting the date that files were transferred to 5th Avenue Pharmacy. In response to this email, Mr. Huang responded on October 6, 2009 stating: “all patient files had been to corner drug store on Oct 6, 2009 602 8 AVE SE, CALGARY AB.” On October 6, 2009, Mr. Abdul Kanji, Pharmacy Licensee of The Corner Drug Store confirmed that he was in possession of FCP’s patient files (hard drive and 4 small boxes of written prescriptions). Mr. Huang told Mr. Kanji that all of the FCP patients had been contacted by telephone and advised that their patient records had been transferred to The Corner Drug Store Inc. On November 3, 2009, Mr. Kanji confirms that Corner Drug Store is still in custody of the patient records from FCP and as of that date no former patients of FCP had approached Corner Drug Store for access to their records or a refill for an existing prescription.

On October 7, 2009, ACP emailed Mr. Huang requesting to know where the patient records were from September 29, 2009 until October 5th, 2009. Mr. Huang responds on the same day stating: “I keep the file at my home during the time.” On November

2, 2009 he verbally advised Mr. Krempien that this information was not correct. Mr. Huang indicated the records were stored at the FCP premises during this period and only he had access to the building. Mr. Miller of Daylight Dispensary indicated that on September 17, 2009, an assistant of Mr. Huang's dropped off the FCP prescriptions and hard drive. On September 17, 2009, Mr. Huang indicated he was working in Manning, Alberta. On October 6, 2009 Mr. Kanji indicated that prescriptions and hard drive were "sent over" to his pharmacy, the Corner Drug Store. Mr. Huang admitted working in Falher, Alberta on October 6, 2009.

On August 28, 2009, Mr. Kalinka reported that FCP was vacated and locked up, but the exterior signage remained on the building. Mr. Krempien visited the premises on September 22, 2009 and the exterior sign had been painted over leaving only the phone number visible.

On November 2, 2009, Mr. Huang advised Mr. Krempien that his principle method of informing his 25 regular customers and irregular patients that their records were going to be transferred to Exalan Pharmacy was verbally as they walked into the store. Mr. Ng, pharmacy licensee of Exalan Pharmacy stated that he refused to take the records of FCP. Mr. Huang advised Mr. Krempien that when former patients requested their records he said: "I just tell them you can get the new prescription from your own doctor".

Mr. Huang advised Mr. Krempien that shortly after August 14, 2009 he covered the windows of FCP in newspaper and the pharmacy was "closed to the public". He indicated that if he happened to be in the pharmacy after it had closed and a patient happened to knock on the door then he would advise the patient which pharmacy their records had been transferred. Mr. Huang advised Mr. Krempien in an email dated November 9, 2009 that he had worked in other stores on: August 11, 12, 13, 15, 21, 22, 23, 27, 28, 29 and 30th, September 6, 10, 11, 17, 18, 19, 21, 22, 23, 24, 25, 28, 29th and October 1 and 2nd (all 2009).

On November 2, 2009, Mr. Huang advised Mr. Krempien that in his efforts to advise patients as to the location of their FCP records he would place a notice on the exterior of his pharmacy door, and at times people walking by the pharmacy took down this notice.

On November 2, 2009, Mr. Huang advised Mr. Krempien that part of his method to notify FCP patients of the transfer of their records was to ask some patients to tell other patients.

On November 2, 2009, Mr. Huang admitted that FCP was closed on August 11, 12 & 13, 2009. Mr. Huang did not request ACP permission for a temporary pharmacy closure and he admitted that during this closure he did not make provisions for his patients to have access to their records or to be able to contact him.

On November 2, 2009 Mr. Huang admitted that he thought he had to keep patient records for only 2 years not the mandated minimum retention period of 42 months.

The ACP investigation demonstrated that the transferred prescriptions and records dated back to 2007. Mr. Miller, Pharmacy Manager Daylight Dispensary stated that he received 4 small file boxes containing prescriptions from July 2007 to August 2009 and these records were in no order of any kind.

When requested, Mr. Huang provided the ACP with a listing of the pharmacist shifts he had worked (not including FCP) from July 14 to October 15, 2009. He reported 27 days including 10 days at Rexall #7266. Mr. Huang indicated he understood he only had to notify the ACP of his employment location if the position is a long-term job, which he describes as working continually for “like 7 days”. On November 2, 2009, Mr. Huang admitted that he failed to notify the registrar about his employment locations and dates in accordance with the *Pharmacists Profession Regulations*.

On September 15, 2009 Mr. Krempien emailed Mr. Huang requesting Mr. Huang contact him by telephone “today” to discuss a recent concern. On September 14, 2009, Mr. Kalinka had observed that there was no notice on FCP indicating the location of the patient records. On September 8, 2009 the ACP received notice that Downtown Drugmart was having patients coming to the pharmacy asking for prescription refills and had some prescriptions for FCP. ACP had not received notice from Mr. Huang that the FCP patient files were being transferred to Downtown Drugmart. Mr. Krempien had tried on several occasions to contact Mr. Huang by telephone to no avail. Mr. Huang did not respond to this email request to call Mr. Krempien. Mr. Krempien eventually located Mr. Huang on October 5, 2009 working at Falher IDA.

On September 15, 2009 a complaint referral form is forwarded to Mr. Krempien and Mr. Krempien appointed himself as the Investigator. On September 16, 2009, Mr. Krempien issued a letter to Mr. Huang outlining the allegations and requesting a written response no later than October 1, 2009.

On September 30, 2009, Mr. Huang received an email from ACP asking for a telephone number when Mr. Krempien could contact him. On October 1, 2009 Mr. Huang emails ACP with a phone number.

On October 1, 2009, Mr. Huang emails a response to the allegations and request for a written response requested by Mr. Krempien on September 15, 2009. Mr. Huang’s response was incomplete and did not provide a chronological accounting of his attempts to transfer the records, does not provide the current location of the records, and does not provide any information as to the provisions he had made or is currently making to provide his patients access to their records.

On October 1, 2009, Mr. Krempien replied by email to Mr. Huang’s email requesting that he refer to Mr. Krempien’s September 16, 2009 letter issued to him. Mr. Krempien requested a written response to the concerns raised in this matter. Mr. Huang was required to contact Mr. Krempien by telephone no later than October 5, 2009. Mr. Huang was also advised that Mr. Krempien was unable to contact him by telephone using the telephone number on record at ACP or using the number provided by email on October 1, 2009. Mr. Krempien advises Mr. Huang that his

actions in avoiding making contact with him, as the Investigator in this matter, may be seen as failing to cooperate with an investigation.

On October 5, 2009, Mr. Krempien contacts Mr. Huang at Falher IDA Pharmacy. Mr. Huang requests a few extra days to prepare his written response. An extension was granted until October 9, 2009. Mr. Krempien reviewed his request for information regarding the patient records of FCP and the provisions Mr. Huang made for his patients to have access to their records. Mr. Huang indicated that he understands that he needs to respond to these items. Mr. Huang was also reminded that he must notify the ACP registration department about his employment location. Mr. Krempien advised Mr. Huang that if he did not “understand exactly what I am asking for” that he should call him. Mr. Krempien also advised Mr. Huang that his response that is due by October 9, 2009, “can’t have one or two sentences that says you’re trying”. Mr. Krempien indicated that he needed to know what has happened and what Mr. Huang is going to do in regards to the records and patients of FCP.

On October 9, 2009, Mr. Krempien received an email response to his September 16, 2009 request for information from Mr. Huang. Mr. Huang again did not provide a chronological accounting of his attempts to transfer the records or the current location of the records. Mr. Huang indicated in the email response that:

- I have done the close procedure for closing the store.
- I have contacted my customers about files move to new pharmacy where they can access their files.
- I have post notice on the door regarding the location and telephone number to public.
- I called my customers let them know where the files.
- I do my best way to have patients to provide convenient (sic) way to receive their profile.
- I post new connection telephone and location where the pharmacy can be accessed.

On October 15, 2009, Mr. Kalinka took pictures of FCP exterior. The pictures did not show any notice regarding the location of the pharmacy’s patient records posted on the pharmacy’s exterior. These pictures contraindicated the statements made in Mr. Huang’s October 9, 2009 email to Mr. Krempien.

The Hearing Tribunal received a significant amount of evidence from Mr. Krempien comprising statements of other individuals. The College adduced this evidence to prove that these statements of other individuals were true. The Hearing Tribunal recognizes that those statements were hearsay statements; however the Hearing Tribunal decided to accept the hearsay statements into evidence under s. 79(5) of the *Health Professions Act*, which provides that the technical rules of evidence applicable to judicial proceedings do not bind the Hearing Tribunal. The Hearing Tribunal has considered that the hearsay statements we accepted were not made under oath and that there were no opportunities to cross-examine the authors of the statements. The Hearing Tribunal has assigned the hearsay statements less weight than if the original authors of the hearsay statements had testified at the hearing under oath. In each

case, the Hearing Tribunal considered whether Mr. Huang adduced any evidence that contradicted the hearsay evidence provided through Mr. Krempien. In most cases he did not. The Hearing Tribunal has also evaluated the reliability and plausibility of the hearsay statements in light of all of the evidence and admissions given before it in coming to its findings.

Mr. Huang was not represented by legal counsel at the hearing. Mr. Huang did not call any witnesses. When asked by the chair of the Hearing Tribunal if he had any questions for Mr. Krempien regarding the information presented, Mr. Huang replied: "I don't know". Mr. Huang was asked if he had any questions for Mr. Krempien before he was excused as a witness. Mr. Huang replied: "I don't have questions".

Mr. Huang testified and stated he felt there was too much pressure on him. He stated that he tried to arrange with the college to see if he could get someone to take over his pharmacy. Secondly he had been thinking about getting more time for the closure of his pharmacy.

Mr. Huang stated that "before the decision on July 14, 2009, he followed the schedule as the College required". He stated he "did not have one time of closing the pharmacy since the conditional agreement". He stated he "had been doing well all the time". The July 14, 2009 order to close his pharmacy: "made me very, you know – like, unable to do the normal function, personal life, it just not going normal. That created a little bit difficulty". He stated that "after the closing he had more problems coming that he tried to handle, but described the situation as being out of his control". He stated: "I believe, like, mental problems, cause of the depression by so much happening in a short time. I cannot even digest this kind of thing happening". Mr. Huang stated he "did not intend to do what Mr. Krempien was saying".

Upon questioning by Mr. Jardine, Mr. Huang confirmed the days he had worked at pharmacies other than First Choice Pharmacy in August, September and October 2009. Mr. Huang was asked how his patients were to contact him if they had any questions. Mr. Huang stated that he had a telephone number on his door and that this number was a different one than the one Mr. Krempien was using to try and contact Mr. Huang. Mr. Huang stated that he knew he was supposed to leave information where the patient records could be found and agreed that there were periods of time when there were no postings or the posting was wrong.

Mr. Huang stated that he understood that he was required to advise the College when things changed. Mr. Huang confirmed upon questioning by Mr. Jardine that when the College was concerned that he was not posting his closing hours, he wrote to the Infringement Committee stating that it would not happen again and the investigation was ended.

Mr. Huang confirmed that he signed a professional undertaking stating that he understood the provisions of the document and it wouldn't happen again but it did happen again. Mr. Huang confirmed that over a period of 4 years, he knew the College was very concerned that he was not giving them notice when things changed

or that he was not following the rules and he had several occasions where people from the College sat down and explained the rules to him.

Mr. Jardine asked Mr. Huang why he did not tell Mr. Krempien where he was working for the 3 month period that Mr. Krempien was trying to contact him. Mr. Huang stated: "I felt it was, like, a temporary job only. It is not like permanent, continued job". Mr. Huang did not answer Mr. Jardine's question and asked the hearing to move on.

Mr. Huang confirmed that he received the decision of the July 14, 2009 and the Letter of Reprimand and he remembered reading it. The Letter of Reprimand advised Mr. Huang that the Hearing Tribunal took this breach very seriously but continued to allow him the privilege to practice Pharmacy in Alberta. Mr. Huang was advised in this letter that if he came before a Hearing Tribunal in the future, it would, in the opinion of the Hearing Tribunal, seriously question his governability to practice the profession of pharmacy in Alberta. Mr. Huang advised the Hearing Tribunal on questioning by Mr. Mr. Jardine that he did not understand the intent of the Letter of Reprimand.

Mr. Huang stated that he did not read the decision of the Ontario College of Pharmacists regarding a hearing decision of June 23, 2009. This decision centered on Mr. Huang's ongoing discipline issues and failure to comply with the terms of an original discipline order. He stated that he signed an Agreed Statement of Facts and Joint Submission as he was running his store in Calgary and did not have the time to go to the hearing. He stated: "I just agree for whatever it says".

Mr. Huang advised the Hearing Tribunal that running a pharmacy was too much pressure from inside the store, from outside the store. As a pharmacist he could only focus on the medical care and patient relationship only. Mr. Huang stated: "I decided not going to run a pharmacy for my life".

V. SUBMISSIONS

The Hearing Tribunal requested written submissions from the Alberta College of Pharmacists and Mr. Huang. The written submissions of the Alberta College of Pharmacists, May 13, 2010 was received by the hearing Tribunal - Appendix 2. Mr. Huang did not provide a written submission to the Hearing Tribunal.

Mr. Jardine confirmed the powers of the Hearing Tribunal to deal with a member who has been found to engage in unprofessional conduct. The discipline proceedings are an important part of the responsibility of a self-regulating profession such as pharmacy. The Hearing Tribunal was reminded of a number of important purposes of the proceedings, these being: protection of the public, maintaining the integrity of the profession, fairness to the member plus deterrence to both the investigated member and other members of the profession.

Mr. Jardine reminded the Hearing Tribunal of the seriousness of the conduct of Mr. Huang and the allegations that were proven. Mr. Jardine specifically directed the Hearing Tribunal to consider allegations 5, 6, 7 and 8.

Allegation 5: Mr. Huang did not properly cooperate with the investigation by the Complaints Director. He was unresponsive or slow to the requests by Mr. Krempien to contact him to discuss initial concerns of the investigation. Mr. Huang was not available at the phone number on record at the ACP. Mr. Huang did not fully or properly reply to two written requests to respond to the initial concerns sent to him. Mr. Huang was reported to be unresponsive or elusive during his interview with the Complaints Director on November 2, 2009.

Allegation 6: Mr. Jardine argued that Mr. Huang has demonstrated an ongoing pattern of ungovernability. Mr. Huang closed FCP on August 11 to 13, 2009 in contravention of the applicable regulations and guidelines. Mr. Jardine advised the Hearing Tribunal that this was the fifth formal investigation in Alberta into the conduct of Mr. Huang that has established these particular breaches. Mr. Jardine described this as a continued disregard for both the authority of the ACP and the safety of Mr. Huang's patients.

Mr. Huang failed to notify the registrar about his employment locations and dates in accordance with the *Pharmacists Profession Regulation*.

Mr. Huang did not keep prescription records for the mandated minimum retention period of 42 months. The investigation indicated that the oldest written prescription Mr. Huang had retained at FCP date from August 2007.

Mr. Huang did not file written prescriptions in a systematic manner in accordance with the applicable Standards for Operating a Licensed Pharmacy.

Allegation 7: Mr. Jardine argued that the continued and blatant breaches which persisted notwithstanding prior discipline proceedings in relation to the same type of conduct, demonstrates Mr. Huang's ungovernability as a pharmacist. Mr. Huang appears to continue his disregard for the authority under which he practices as a pharmacist and a former pharmacy licensee. Mr. Jardine argued that this also demonstrates a disregard for the health and welfare of his former patients at First Choice Pharmacy. Mr. Jardine spoke of Mr. Huang's ongoing pattern of misleading the ACP by offering assurances of compliance and then continuing to breach the same regulations, standards and guidelines that were the subject of previous investigations.

Allegation 8: Mr. Jardine argued that Mr. Huang has failed to alter his conduct and ungovernability, lack of cooperation and disregard for the health and welfare of his patients. Mr. Jardine reiterated the frequency of visits by ACP auditors, inspectors and investigators to Mr. Huang's pharmacy to discuss and examine issues relating to his conduct as a pharmacist and pharmacy licensee. Mr. Jardine argued that the over 50 separate visits over the last 5 years and the previous discipline proceedings taken

against Mr. Huang have not changed this continued pattern of ungovernability, non-cooperation with the ACP, and a disregard for the health and welfare of his patients.

Mr. Jardine presented two Law Society of Alberta decisions regarding members who were unwilling to be governed or comply with the rules and communicate with the Society as might be reasonably expected. Counsel for the Law Society argued that if a member was unwilling to accept governance then they should not be offered the privilege of membership in the Law Society. In order to maintain the reputation of the profession and sustain public confidence in the integrity of the profession it was necessary to disbar the member. The Hearing Committee of the Law Society disbarred another member based upon repetitive and persistent conduct of a member towards the Law Society representatives and process.

Mr. Jardine argued that the allegations of ungovernability are very serious and call into question the ability of the ACP to regulate Mr. Huang and therefore protect the public by ensuring that his conduct meets the minimum requirements of the profession. The ACP submitted that the principles and conclusions set in these Law Society decisions are equally applicable to the pharmacy profession and emphasize the fundamental need for a self-governing profession to be able to govern its members for the protection of the public and for maintaining the integrity of the profession in the eyes of the public and the eyes of its members.

Mr. Jardine referenced Mr. Huang's previous discipline history with the Ontario College of Pharmacists. Mr. Huang was described as ungovernable and that his ongoing discipline issues indicate a flagrant disregard for the College as the governing authority over pharmacists. This was Mr. Huang's third appearance before the discipline committee and related to his failure to abide by the terms of the original discipline order.

Mr. Jardine referenced the ACP Hearing Tribunal date July 14, 2009 where Mr. Huang had sanctions imposed including a reprimand. The reprimand reminded Mr. Huang that the intent of the sanctions was to correct his behavior and professional integrity on a go forward basis. Mr. Huang was advised in the reprimand that in their opinion, if he came before a Hearing Tribunal in the future, they should seriously question his governability to practice the profession of pharmacy in Alberta.

Mr. Jardine argued that Mr. Krempien made it clear in this hearing that despite all of the investigations and the previous hearing, he could not note any improvement in Mr. Huang's ability or willingness to comply with the College's requirements or to cooperate with the College. Mr. Jardine reminded the Hearing Tribunal of Mr. Huang's inability to respond in cross examination when asked how given his ongoing lack of compliance, could the College have any confidence that he would comply with its requirements in the future. Mr. Jardine referenced Mr. Huang's inability to confirm whether he had read the decision and letter of reprimand of the previous Hearing Tribunal.

VI. FINDINGS

Although the Hearing Tribunal was advised of Mr. Huang's past discipline history both in Ontario and in Alberta, the Hearing Tribunal did not find it necessary to consider Mr. Huang's past discipline history in its analysis of Allegations 1-5. Allegations 6, 7 and 8 squarely raised Mr. Huang's past discipline history and the Hearing Tribunal considered Mr. Huang's discipline history only as necessary in relation to those allegations.

Allegation 1

Allegation 1 is that during the process of closing First Choice Pharmacy, Mr. Huang failed to properly arrange to transfer the patient records to another licensed pharmacy in multiple respects.

The Hearing Tribunal finds that Mr. Huang was obliged to close First Choice Pharmacy 30 days following July 14, 2009 unless he arranged for a new licensee and proprietor for the pharmacy. Mr. Huang did neither. Mr. Huang had 30 days to arrange for continuity of care for his patients.

Allegation 1(d) was not proven. Evidence did not identify the assistants who delivered and picked up patient records to Calgary pharmacies therefore the security risk could not be evaluated. Mr. Huang did not produce a chronological record of when and where the patient records were transferred or stored so the Hearing Tribunal finds that there was insufficient evidence that security was compromised to justify a finding of unprofessional conduct as alleged in Allegation 1(d) .

The Hearing Tribunal nevertheless finds that Allegation 1 is well founded and constitutes unprofessional conduct. Mr. Krempien's evidence demonstrated that Mr. Huang did not utilize the 30 days to make proper arrangements for another pharmacy to take his patient records and therefore provide the continued professional service his patients were entitled to. Mr. Huang did not transfer all required patient records – written prescriptions, electronic information and 42 months of information as required and expected.

Mr. Huang's conduct during the closure of First Choice Pharmacy breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with Standards for Operating a Licensed Pharmacy, *Pharmacy and Drug Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a standard of practice. The Standards for Operating a Licensed Pharmacy state that a licensee must ensure that the licensed pharmacy operates in accordance with the law that governs pharmacy operation, pharmacist

practice and drug distribution and that written prescriptions and transaction records are filed systematically and retained for 42 months. Mr. Huang did not comply with standard 4, 73(a) and 73(b) of the Standards for Operating a Licensed Pharmacy and therefore compromised the ability of his patients to have access to their complete prescription record from FCP. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because as a pharmacist he did not maintain complete electronic and paper records and therefore prevented Mr. Hanif Mulji, Mr. Stephen Miller and Ms. Joyce Choi from refilling prescriptions and providing a professional service requested by former FCP patients.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacy and Drug Regulations* require a licensee to arrange to transfer patient records to another licensed pharmacy when a license is suspended, cancelled or otherwise terminated. Mr. Huang transferred only partial records to Downtown Drugmart, Daylight Dispensary and Fifth Avenue Pharmacy. Mr. Huang did not complete the transfer in a timely manner to ensure that his patients could access their prescription history and thus continue therapy that may have been required. Mr. Huang therefore contravened section 27(1)(c)(i) and 27(1)(c)(ii) of the *Pharmacy and Drug Regulations*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because FCP closed on August 11, 2009 and the files were not permanently transferred to Corner Drug Store until October 6, 2009. During this time three pharmacists reported that former FCP patients tried to have refills of their prescriptions but the service could not be provided because the prescription records were found to be incomplete. The conduct of Mr. Huang may have inconvenienced or caused harm to his former patients due to the fact they were unable to procure prescription refills without visiting their physician. Mr. Huang's conduct could cause his former patients to mistrust the profession of pharmacy as a whole.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The ACP Code of Ethics Bylaw Principle I, guides the pharmacist to hold the well being of each patient as his or her primary consideration. Mr. Huang did not consider the ongoing medication needs of his patients when he closed his pharmacy on August 11, 2009 and did not make arrangements for Corner Drug Store to receive his electronic and paper records until October 6, 2009. Mr. Huang did not appear to have a method of advising his patients when their prescription records were to be found nor did he post a notice on his closed pharmacy where the records were to be found. Mr. Huang therefore contravened the ACP Code of Ethics Bylaw Principle I. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition his conduct was unprofessional in nature because he did not ensure that the medication ordered for his patients could continue as required and that their medication history would be accessible to other health professionals if required in the future.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for

Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang did not comply with the laws of governing the practice of pharmacy when he failed to arrange for transfer of his prescription records when he was ordered to close First Choice Pharmacy. In addition The Standards for Pharmacist Practice section 18.6 requires that a pharmacist maintain a patient record in a manner that facilitates sharing, ease of use and retrieval of patient information by authorized individuals. Mr. Huang's files were reported to be incomplete by pharmacists that attempted to process refills for former patients of FCP. Mr. Huang therefore contravened section 1 subsections 1.1 and 1.2 and Section 16.6(b) of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he disregarded the future medication needs of his former patients when he failed to arrange for a pharmacy to take his medication records at the time of closure. Even if the records had been transferred to another pharmacy in a timely manner, Mr. Huang disregarded the need for the records to be complete enough that a fellow pharmacist could confidently use the records to provide a professional service.

Allegation 2

Allegation 2 is that Mr. Huang failed to properly arrange to give each former patient of the FCP access to their patient records.

The allegation was well founded and constitutes unprofessional conduct. Mr. Huang did not take the opportunity to advise his patients that his store was closing and where their patient records would be accessible. The evidence presented showed Mr. Huang used a variety of methods to inform his patients where records were after the store had closed. This information was found to have been incorrect and incomplete in some cases. His patients were directed to stores that did not have complete FCP patient records or provided incorrect or incomplete information. Mr. Huang's method of verbally advising patients where the records were located was not considered plausible due to Mr. Huang's admitted work schedule. He was not available the 3 days prior to the August 14, 2009 closure as he was working in Pincher Creek and in other communities outside Calgary for other days between August 15 and October 31, 2009. Mr. Huang's admission that people passing by the store would remove his signs demonstrates that the signs were not posted in a manner that would ensure his patients had continued access to information related to their prescriptions. The Hearing Tribunal agreed that because of all the transfers of the patient records, Mr. Huang's work schedule and his chosen methods of advising patients where their records were located, he did not properly arrange to give each former patient of FCP access to their patient records in a timely manner.

Mr. Huang's conduct during the closure of First Choice Pharmacy breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with Standards for Operating a Licensed Pharmacy, *Pharmacy and Drug Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a standard of practice. The Standards for Operating a Licensed Pharmacy state that a licensee must ensure that the licensed pharmacy operates in accordance with the law that governs pharmacy operation, pharmacist practice and drug distribution. As a licensee, Mr. Huang did not ensure that his pharmacy was open and operating between August 11–13, 2009 when he was working at another pharmacy nor did Mr. Huang transfer complete medication records to another store in a timely manner to ensure continuity of care for his former patients. In addition, Mr. Huang did not appear to have a reliable method of informing his patients that his store was closing and where he would be transferring his prescription records. Mr. Huang did not operate his pharmacy in accordance with the laws governing the operation of a licensed pharmacy or the practice of pharmacy therefore contravened standard 4 of the Standards for Operating a Licensed Pharmacy. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he disregarded the pharmaceutical needs of his patients when he chose to close his pharmacy for 3 days while he worked at another pharmacy. He did not demonstrate that he was concerned for his patients' continuing care when he failed to plan for the closure of his licensed pharmacy and then notifying each patient of his plan for ensuring access to their prescription records.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacy and Drug Regulations* require that a licensed pharmacy must remain open to the public during the hours of operation submitted to the registrar of the ACP. Mr. Huang chose to work at another Pharmacy, closed FCP from August 11-13, 2009 and did not make arrangements for his patients to have access to their prescription records. Mr. Huang did not transfer records to another pharmacy for these three days nor did he present evidence that he provided each patient with a copy of their record. Mr. Huang contravened Section 11(1) of the *Pharmacy and Drug Regulations*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he did not demonstrate that he was concerned for his patients' continuing care when he failed to plan for the closure of his licensed pharmacy and then notifying each patient of his plan for ensuring access to their prescription records.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to hold the well being of each patient as a primary consideration. Mr. Huang failed to consider the ongoing care of his patients and the value of a pharmacist's professional service when he closed his pharmacy for three days without providing his patients with information on how to receive service in his absence. After Mr. Huang permanently closed FCP on August 14, 2009 he did not adequately

consider the ongoing care of his patients when he posted inaccurate or incomplete notices at his closed pharmacy regarding the transfer of their records. Pharmacists serve as an essential health resource and therefore must maintain patient access to a pharmacist's service and care. Mr. Huang, in closing his pharmacy for three days and not transferring his records to another pharmacy, did not maintain access to the services and care of a pharmacist. Pharmacists are directed to comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies. Mr. Huang did not act with honesty and integrity when he failed to comply with the specific laws governing the practice of pharmacy when he closed his pharmacy for three days and did not advise his patients nor make arrangements for service at an alternative location. Mr. Huang did not comply with Principles I, II, VIII and X of the ACP Code of Ethics Bylaw. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he failed to comply with the spirit of the laws governing the practice of pharmacy or the operation of a pharmacy. Mr. Huang did not appear to value the essential services that pharmacists provide to individual patients and the health care system in general. When he closed his pharmacy both temporarily and permanently he failed to provide for continuity of care for his patients by ensuring they were adequately informed regarding the disposition of his prescription records. Evidence showing that patients had requested refills at Calgary pharmacies that did not have FCP patient records, demonstrated to the Hearing Tribunal that Mr. Huang did not hold the well being of his patients as his primary consideration, nor did he value the services of the professional pharmacist to the health care system.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang did not comply with the laws of governing the practice of pharmacy when he failed to effectively advise his patients that his pharmacy was closing or closed and where the medication records would be transferred. Evidence presented during the hearing described incomplete, incorrect or an absence of written notices advising former patients of FCP where to access their prescription records. Mr. Huang's admission that he would verbally advise his patients where their records had been transferred when they came to the pharmacy did not appear to be an effective or reasonable method of communicating this important piece of information. Mr. Huang had not made arrangements to transfer the records until after FCP was permanently closed and unoccupied plus Mr. Huang admitted to be working around the province for many days prior to and after the permanent closing of his pharmacy. The patient records were transferred to at least four pharmacies between August 14, 2009 and October 6, 2009 therefore Mr. Huang would have had to speak to each patient numerous times to ensure they were kept advised of the current location of the records. Mr. Huang therefore contravened section 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In

addition, his conduct was unprofessional in nature because he disregarded the future medication needs of his former patients when he failed to arrange for a pharmacy to take his medication records at the time of closure. Failure to make these arrangements during the 30 days that he was given to arrange for the closure of his pharmacy limited Mr. Huang's ability to effectively communicate with each of his patients how they could continue to receive professional service related to their medical record. From evidence presented, it appeared that patients of Mr. Huang's attempted to have prescriptions refilled at other Calgary pharmacies but could not be accommodated and were told to see their physician. Mr. Huang failed to meet the professional needs of his patients, but also failed to maintain the reputation of the profession and the public confidence in the integrity of the profession.

Allegation 3

Allegation 3 is that Mr. Huang failed to properly notify the ACP of the location of the FCP records. This allegation is well founded and constitutes unprofessional conduct. Mr. Huang had an obligation to advise the ACP where his patient records were located following the closure of FCP. Evidence presented showed Mr. Huang provided false information to the ACP regarding the location of his patient records (Exalan Pharmacy) and did not endeavor to correct this error when the transfer was rejected. ACP was provided with incorrect, incomplete or no information related to the numerous attempted or completed transfers of FCP patient records to Calgary pharmacies. ACP has a role in ensuring that the public is able to access their patient records and this was not possible considering Mr. Huang's lack of attention in this matter. Mr. Huang admitted that he provided inaccurate information when he advised ACP that he kept the patient records at home but later advised the Complaints Director that he kept them at the then closed FCP premises.

Mr. Huang's conduct during the closure of First Choice Pharmacy breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with *Pharmacy and Drug Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacy and Drug Regulations* require a licensee to advise the ACP of the location of the patient records when a license is suspended cancelled or otherwise terminated or a licensed pharmacy ceases to provide pharmacy services. When Mr. Huang closed his pharmacy he did not accurately inform the ACP where he transferred the patient records. Mr. Huang advised the ACP that the records had been transferred to Exalan Pharmacy, but William Ng pharmacy manager of Exalan Pharmacy stated that he refused to take the records. Mr. Huang transferred a box of written prescriptions to Downtown Drugmart from September 4 to September 14, 2009 but did not advise the ACP regarding this transfer. Mr. Huang therefore contravened section 27(1)(d) of the *Pharmacy and Drug Regulations*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional

because he posted a notice and advised ACP that FCP patient records were transferred to a pharmacy that did not ever agree to accept the records. Referring FCP patients to a location that did not have the patient records does not reflect the significant responsibility that comes with being an essential health care professional. Mr. Huang was aware of the need to advise the ACP when and where his medication records were transferred but failed to support his professional college in its role of protecting the public and acting as the final resource for the former patients of FCP. Mr. Huang had an obligation as a professional licensed pharmacist to respond to the requests of the ACP for information related to the transfer of records but he failed to supply timely and accurate information.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to hold the well being of each patient as a primary consideration. Mr. Huang failed to consider the ongoing care of his patients and the value of a pharmacist's professional service when he failed to advise the ACP of the location of his patient records. The ACP could be expected to provide patients with information related to the relocation of patient records when a pharmacy closes. Pharmacists are directed to comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies. Mr. Huang did not act with honesty and integrity when he failed to comply with the specific laws governing the practice of pharmacy. Mr. Huang did not advise the ACP where and when he had transferred his patient records after closing his store. Mr. Huang did not comply with Principles I and X of the ACP Code of Ethics Bylaw. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he failed to comply with the spirit of the laws governing the practice of pharmacy or the operation of a pharmacy. Mr. Huang did not appear to value the essential services that pharmacists provide to individual patients and the health care system in general. Failing to accurately advise the ACP where his records were relocated after closure removed the last resource his patients would have had to locate their personal medication files. This failure to respond demonstrated to the Hearing Tribunal that Mr. Huang did not hold the well being of his patients as his primary consideration, nor did he value the services of the professional pharmacist to the health care system.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of Ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang did not comply with the laws governing the practice of pharmacy when he failed to advise the ACP where the patient records of FCP had been transferred after closure. Mr. Huang therefore contravened section 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he disregarded his responsibility to provide information requested by the ACP. As a

self-governing profession, pharmacists rely on its members to support the ACP as it fulfills its mandate to protect the public and ensure a continuum of care to the citizens of Alberta.

Allegation 4

Allegation 4 was that Mr. Huang's actions resulted in a disruption to patient care and possible patient harm. This allegation is well founded and constitutes unprofessional conduct. Mr. Huang admitted that on August 11 to 13, 2009 he was working at a pharmacy outside Calgary and his store FCP was closed to his patients. He did not provide his patients any access to their records for these three days that his store was expected to be open and offering professional services. Evidence was presented showing that three pharmacists had former FCP patients requesting medication refills. The pharmacists were unable to service these patients as the pharmacies had no FCP patient records, had incomplete FCP records or had inaccurate FCP patient records in their possession.

Mr. Huang's conduct during the closure of First Choice Pharmacy breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with Standards for Operating a Licensed Pharmacy, *Pharmacy and Drug Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a standard of practice. The Standards for Operating a Licensed Pharmacy state that a licensee must ensure that the licensed pharmacy operates in accordance with the law that governs pharmacy operation, pharmacist practice and drug distribution. As a licensee, Mr. Huang did not ensure that his pharmacy was open as scheduled and able to provide professional services to his customers. Mr. Huang did not immediately transfer his complete medication records to another licensed pharmacy after FCP was permanently closed and no longer able to provide a professional service to his patients. This resulted in patients approaching other pharmacists to provide medication refills on prescriptions originally filled by FCP. Three pharmacists appropriately refused service because they did not have adequate records to process the refills. Mr. Huang's therefore contravened standard 4 of the Standards for Operating a Licensed Pharmacy. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition his conduct was unprofessional in nature because he did not ensure that another pharmacist could service his patients when his pharmacy was closed temporarily or permanently. Mr. Huang disregarded the pivotal role that pharmacists and pharmacies play in the continuum of health care and the responsibility that comes with being part of the health care team. This disregard may have inconvenienced or harmed his patients and created a negative image of the profession as a whole.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacy and Drug Regulations* require a licensee to transfer patient records to

another licensed pharmacy or to give each patient access to a copy of the patient record if a license is suspended, cancelled or otherwise terminated or a licensed pharmacy ceases to provide services. Mr. Huang did not immediately transfer all the patient records from FCP when it ceased operation therefore his former patient's medication and health care needs may have been disrupted or the patient harmed. Other pharmacists were unable to provide requested services to patients presenting at their pharmacies in Calgary because they did not have complete patient records. Mr. Huang therefore contravened section 27(1)(c)(i) and 27(1)(c)(ii) of the *Pharmacy and Drug Regulations*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he did not ensure that his patients were able to have access to their medication record after the closure of FCP. His responsibility to his former patients and the profession as a whole may have been harmed when he failed to arrange for another pharmacy to provide ongoing professional services.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to hold the well being of each patient as a primary consideration. Mr. Huang did not transfer complete records to another pharmacy that could provide ongoing professional service to former FCP patients. Three pharmacists stated they were asked by former patients of FCP to refill their prescriptions but were unable to provide the service due to inadequate patient records. Pharmaceutical care was disrupted and the health of the patients may have been harmed. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because his failure to comply with the laws governing the practice of pharmacy may have eroded the confidence his patients had in the profession of pharmacy as a whole.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang did not arrange for a timely transfer of his prescription records when he was ordered to close FCP. Mr. Huang's failure to fulfill his professional responsibility to his former patients by ensuring ongoing access to their prescription record may have disrupted care or harmed his patients. Mr. Huang therefore contravened Standard 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because as a professional pharmacist he did not fulfill his responsibility as part of the health care team to ensure the continuum of care that is so important to the health and well being of his former patients.

Allegation 5

Allegation 5 was that Mr. Huang did not properly cooperate with the Complaints Director's investigation. This allegation is well founded and constitutes unprofessional conduct. The Complaints Director at ACP is charged with investigating members that may not be adhering to the rules of conduct required by a self-governing profession. Mr. Krempien attempted to contact Mr. Huang when advised by Mr. Mulji that FCP patients were coming to his store seeking service and he was unable to help them because he did not have complete patient records from FCP. Mr. Huang was not available at the telephone number on record at the ACP nor did he reply to an email request to call Mr. Krempien. Mr. Huang's responses to Mr. Krempien's questions related to the investigation regarding the closure of FCP and the transfer of patient records to ensure the continuity of care for FCP patients were incomplete or vague. A 90 minute meeting between Mr. Krempien and Mr. Huang did not provide Mr. Krempien with all the information he requested.

Mr. Huang's conduct during the investigation of the complaint by Mr. Krempien breached section 1(1)(pp)(ii), section 1(1)(pp)(iii) and section 1(1)(pp)(vii)(B) of the *Health Professions Act* when he failed to comply with the Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of the *Health Professions Act*. The *Health Professions Act* describes unprofessional conduct as meaning failure or refusal to comply with a request of or co-operate with an investigator. Prompt and complete provision of information by investigated members is imperative to ensure that a member is not harming the public and that the member is given a chance to explain the circumstances of the perceived breach. The investigation process attempts to garner information from all sources including Mr. Huang in order to determine if a breach of standards is occurring or has occurred. Mr. Huang failed to communicate fully and promptly when requests were made for information related to the closure of FCP and specifically the disposition of the patient records. Mr. Huang's failure to keep the ACP apprised of his current contact information demonstrated his refusal to comply with the investigator. Mr. Huang therefore contravened s. (1)(1)(pp)(vii)(B) of the *Health Professions Act*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because the ACP may have been hampered in its role of investigating a member and therefore protection of the public. As part of a self-governing college pharmacists must act with integrity and honesty, even while being investigated, in order to sustain public confidence in the profession.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to act with honesty and integrity and to comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies. The ACP utilizes the investigation process to understand the circumstances surrounding a complaint or concern that is received related to the practice of a pharmacist or a licensee. Mr. Huang was given the opportunity to

respond to questions from the principle investigator and was unresponsive or provided incomplete responses on some occasions. Mr. Huang was not answering the telephone number that was on record at the ACP. Mr. Huang therefore contravened Principle X of the ACP Code of Ethics. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because as a member of a self-governing profession he demonstrated that he did not accept the governance role of the ACP. It is essential that all members licensed as a pharmacist comply with the laws governing the practice of pharmacy, including the investigation process, in order to maintain the confidence of the public.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang did not comply with the laws governing the practice of pharmacy when he failed to respond to requests by the Complaints Director related to the initial concerns of FCP closing. Mr. Huang therefore contravened section 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he disregarded the role of the ACP in responding to a concern regarding the practice of a pharmacist and the ongoing protection of the public. Mr. Huang was given the opportunity to respond to the initial concerns but did not always take the opportunity to provide responses to the questions asked by the ACP investigator. The ACP may have been hampered in mitigating the harm to individual patients or the public in general due to the conduct of the member preventing a fair and full investigation of the matter.

Allegation 6

Allegation 6 is that Mr. Huang has demonstrated a pattern of ungovernability. This allegation is well founded and constitutes unprofessional conduct. Mr. Huang closed his pharmacy for 3 days in August 2009 when it was scheduled to be open. Mr. Huang was obligated to close his store FCP on August 14, 2009 if other suitable arrangements were not made. He did not advise the registrar of the ACP that he was closing his store either temporarily or permanently 3 days prior to the expected closing. Mr. Huang admitted to working at another pharmacy outside of Calgary on these 3 days when his store was closed. Mr. Huang did not advise the registrar of his employment locations and dates. He admitted he thought this only had to be done for schedules that were long term or 7 days, but he had not advised ACP of a 9 day working schedule at a Pincher Creek pharmacy. Evidence and an admission from Mr. Huang showed that patient records were not retained for the mandated minimum retention period of 42 months. Evidence presented to the Hearing Tribunal showed that Mr. Huang did not file his written prescriptions in a systematic manner in accordance with the applicable standards for Operating a Licensed Pharmacy.

There is an obligation by the ACP to govern its members. This governance is intended to protect the public by ensuring that the conduct of the members meets the minimum requirements of the profession. Mr. Huang's disregard for the rules of conduct that are intended to assist pharmacists and pharmacies in providing a safe, systematic and professional service for the public is the basis for this finding of unprofessional conduct.

The Hearing Tribunal did not agree that the hearsay evidence provided by Mr. Miller regarding the dispensing of medication in a parking lot after FCP was closed on August 14, 2009 was sufficient to conclude that a breach had occurred. Mr. Krempien was unable to contact the patient to confirm the details and Mr. Huang said he gave it out before the store closed.

Mr. Huang's conduct breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with Standards for Operating a Licensed Pharmacy, *Pharmacists Profession Regulations, Pharmacy and Drug Act Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a standard of practice. The Standards for Operating a Licensed Pharmacy state that a licensee must ensure that the licensed pharmacy operates in accordance with the law that governs pharmacy operation, pharmacist practice and drug distribution and that written prescriptions and transaction records are filed systematically and retained for 42 months. Mr. Huang did not comply with standard 4, 73(a) and 73(b) of the Standards for Operating a Licensed Pharmacy and therefore compromised the ability of his patients to have access to their complete prescription record from FCP. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because as a pharmacist he did not maintain complete electronic and paper records and therefore prevented Mr. Hanif Mulji, Mr. Stephen Miller and Ms. Joyce Choi from refilling prescriptions and providing a professional service requested by former FCP patients.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacist Professions Regulation* requires a regulated member to provide specific information to the Registrar on the initial application for registration, when there is a change to the information or at the request of the Registrar. A member must advise the Registrar of any change to the information within 14 days of the change occurring. This information includes but is not limited to: employers name and date of employment. Mr. Huang failed to advise the Registrar within 14 days of changes to his employment locations between August 11, 2009 and October 2, 2009. Mr. Huang did report his employment history for this period on November 9, 2009 when requested by Mr. Krempien. . Mr. Huang therefore contravened sections 41(1)(j) and 41(1)(o) of the *Pharmacists Profession Regulation*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional because as this case demonstrates, there is a need from time to time

for the ACP to contact an individual member. Mr. Krempien attempted to contact Mr. Huang as he investigated the initial concerns related to the transfer of FCP patient records, but was unable to locate him, as he had not advised the ACP of his employment locations.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacy and Drug Regulations* state that a licensed pharmacy must remain open to the public during the hours of operation submitted to the Registrar. Mr. Huang failed to ensure that FCP remained open to the public during the hours submitted to the Registrar when he closed FCP August 11-13, 2009. Mr. Huang contravened section 11(1) of the *Pharmacy and Drug Act Regulation*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature as he chose to close his pharmacy despite knowingly breaching the laws and regulations governing the practice of pharmacy as a pharmacist and a licensee. Mr. Huang had signed a professional undertaking on December 7, 2007 that included a personal commitment that he would ensure that the pharmacy was open during the hours of operation previously submitted to the Registrar. Mr. Huang was advised on July 14, 2009 in a letter of reprimand that: "In the event you come before a Hearing Tribunal in the future, it would, in the opinion of this Hearing Tribunal, seriously question your governability to practice the profession of pharmacy in Alberta." In less than one year, Mr. Huang was before this Hearing Tribunal with allegations common to the previous hearing and investigations. Mr. Huang has failed to honor the commitment that is required of a professional pharmacist to maintain the standards expected by the public and the profession of pharmacy.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to hold the well being of each patient as a primary consideration. Mr. Huang failed to consider the ongoing care of his patients and the value of a pharmacist's professional service when he closed his pharmacy for three days without providing his patients with information on how to receive service in his absence. Pharmacists serve as an essential health resource and therefore must maintain patient access to a pharmacist's service and care. Mr. Huang, in closing his pharmacy for three days, did not maintain access to the services and care of a pharmacist. Pharmacists are directed to comply with both the letter and the spirit of the laws that governs the practice of pharmacy and the operation of pharmacies. Mr. Huang did not act with honesty and integrity when he failed to comply with the specific laws governing the practice of pharmacy. Mr. Huang was aware of the need to comply with the laws related to the hours a pharmacy must be open and serving the public. Mr. Huang had been investigated and before a Hearing Tribunal for similar concerns less than a year before. Mr. Huang did not comply with Principles I, II, VIII and X of the ACP Code of Ethics Bylaw. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he failed to comply with the spirit of the laws governing the practice of pharmacy or the operation of a pharmacy. Mr. Huang did not appear to value the essential services that pharmacists provide to individual patients and the health care

system in general. When he closed his pharmacy on days he was scheduled to open, he failed to provide for the continuity of care that his patients deserved to receive. Mr. Huang chose to disregard the decision of a Hearing Tribunal and the advice and warnings contained in the letter of reprimand.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang closed FCP on days that he was scheduled to be open: August 11-13, 2009. Mr. Huang's failure to fulfill his professional responsibility to his former patients by ensuring ongoing access to their prescription record may have disrupted care or harmed his patients. Mr. Huang therefore contravened Standard 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because as a professional pharmacist he did not fulfill his responsibility as part of the health care team to ensure the continuum of care that is so important to the health and well being of his former patients. Added to this, Mr. Huang had been reprimanded and reminded of the enactments that governed this aspect of a pharmacist's practice. Mr. Huang was aware that he should not close his store and work at another pharmacy.

Allegation 7

Allegation 7 is that the continued and blatant manner in which the numerous breaches have continued notwithstanding Mr. Huang's prior discipline history in relation to similar conduct demonstrates a disregard for authority, ungovernability, disregard for the health and welfare of his former patients and an ongoing pattern of misleading the ACP. This allegation is well founded and constitutes unprofessional conduct. Mr. Huang has a discipline history with the Alberta College of Pharmacists and the Ontario College of Pharmacists. These Colleges, and specifically the ACP, has been given the responsibility of governing the members who have been given the privilege of practicing as a pharmacist and operating a professional pharmacy in Alberta. The authority that the ACP has to govern its members is designed to provide confidence and protection to the public when they require the services of a pharmacist. The members of the profession meeting the standards of conduct, competence and ethics established by the profession measure the integrity of the whole profession. Mr. Huang's repeated disregard for this authority is the basis of the finding of unprofessional conduct.

Mr. Huang provided an Acknowledgement and Professional Undertaking to the Alberta College of Pharmacists on December 7, 2007. In this document Mr. Huang acknowledged that he did not comply with sections of the *Pharmacy and Drug Regulations* specific to the hours of operation of his pharmacy and advising the

Registrar of any changes to those hours. He agreed to comply fully and completely with his professional responsibilities by ensuring that the pharmacy is open to the public during the hours of operation that have been submitted to the Registrar and informing the Registrar of any change in the hours the pharmacy is to be open to the public not less than 14 days before the change occurs. Mr. Huang closed his store and worked in Grande Prairie on December 20, 2007, just 13 days after agreeing to comply fully and completely with his professional responsibilities. The Hearing Tribunal agreed that the blatant and continued manner in which these breaches have occurred notwithstanding the prior discipline proceedings demonstrate that Mr. Huang is ungovernable as a pharmacist and has a total disregard for the authority of the ACP and for the health and welfare of his former patients at FCP.

Mr. Huang's conduct breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with *Pharmacy and Drug Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of another enactment that applies to the profession. The *Pharmacy and Drug Regulations* state that a licensed pharmacy must remain open to the public during the hours of operation submitted to the Registrar. Mr. Huang failed to ensure that FCP remained open to the public during the hours submitted to the Registrar when he closed FCP August 11-13, 2009. Mr. Huang contravened section 11(1) of the *Pharmacy and Drug Act Regulation*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature as he chose to close his pharmacy despite knowingly breaching the laws and regulations governing the practice of pharmacy as a pharmacist and a licensee. Mr. Huang had signed a professional undertaking on December 7, 2007 that included a personal commitment that he would ensure that the pharmacy was open during the hours of operation previously submitted to the Registrar. Mr. Huang was advised on July 14, 2009 in a letter of reprimand that: "In the event you come before a Hearing Tribunal in the future, it would, in the opinion of this Hearing Tribunal, seriously question your governability to practice the profession of pharmacy in Alberta." In less than one year, Mr. Huang was before this Hearing Tribunal with allegations common to the previous hearing and investigations. Mr. Huang has failed to honor the commitment that is required of a professional pharmacist to maintain the standards expected by the public and the profession of pharmacy.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to hold the well being of each patient as a primary consideration. Mr. Huang failed to consider the ongoing care of his patients and the value of a pharmacist's professional service when he closed his pharmacy for three days without providing his patients with information on how to receive service in his absence. Pharmacists serve as an essential health resource and therefore must maintain patient access to a pharmacist's service and care. Mr. Huang, in closing his pharmacy for three days, did not maintain access to the services and care of a pharmacist. Pharmacists are directed to comply with both the letter and the spirit of the laws that

governs the practice of pharmacy and the operation of pharmacies. Mr. Huang did not act with honesty and integrity when he failed to comply with the specific laws governing the practice of pharmacy. Mr. Huang was aware of the need to comply with the laws related to the hours a pharmacy must be open and serving the public. Mr. Huang had been investigated and before a Hearing Tribunal for similar concerns less than a year before. Mr. Huang did not comply with Principles I, II, VIII and X of the ACP Code of Ethics Bylaw. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he failed to comply with the spirit of the laws governing the practice of pharmacy or the operation of a pharmacy. Mr. Huang did not appear to value the essential services that pharmacists provide to individual patients and the health care system in general. When he closed his pharmacy on days he was scheduled to open, he failed to provide for the continuity of care that his patients deserved to receive. Mr. Huang chose to disregard the decision of a Hearing Tribunal and the advice and warnings contained in the letter of reprimand.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang closed FCP on days that he was scheduled to be open: August 11-13, 2009. Mr. Huang's failure to fulfill his professional responsibility to his former patients by ensuring ongoing access to their prescription record may have disrupted care or harmed his patients. Mr. Huang therefore contravened Standard 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because as a professional pharmacist he did not fulfill his responsibility as part of the health care team to ensure the continuum of care that is so important to the health and well being of his former patients. Added to this, Mr. Huang had been reprimanded and reminded of the enactments that governed this aspect of a pharmacist's practice. Mr. Huang was aware that he should not close his store and work at another pharmacy.

Allegation 8

Allegation 8 is that Mr. Huang's ongoing pattern of ungovernability, non-cooperation and disregard for patient welfare notwithstanding the ACP's efforts to discuss and examine issues related to his conduct as a pharmacist and pharmacy licensee is unprofessional conduct. The allegation was well founded and constitutes unprofessional conduct. Mr. Huang was given ample opportunity to discuss and examine issues with ACP auditors, inspectors and investigators during the 50 plus visits to his pharmacy over the last 5 years. These visits were related to his conduct as a pharmacist and a pharmacy licensee. Mr. Huang has not changed his continued pattern of ungovernability by cooperating with the ACP or his apparent disregard for

the health and welfare of his patients. Mr. Huang does not appear to be willing to comply with the statutes, regulations and standards governing the practice of pharmacy in Alberta nor to acknowledge and fulfill his obligations to the public and the other members of the ACP.

Mr. Huang's conduct breached section 1(1)(pp)(ii) and section 1(1)(pp)(iii) of the *Health Professions Act* when he failed to comply with the *Health Professions Act*, Standards for Operating a Licensed Pharmacy, *Pharmacy and Drug Regulations*, Code of Ethics Bylaw and Standards for Pharmacist Practice.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of the *Health Professions Act*. The *Health Professions Act* describes unprofessional conduct as meaning failure or refusal to comply with a request of or co-operate with an investigator. Prompt and complete provision of information by investigated members is imperative to ensure that a member is not harming the public and that the member is given a chance to explain the circumstances of the perceived breach. The investigation process attempts to garner information from all sources including Mr. Huang, in order to determine if a breach of standards is occurring or has occurred. Mr. Huang failed to communicate fully and promptly when requests were made for information related to the closure of FCP and specifically the disposition of the patient records. Mr. Huang's failure to keep the ACP apprised of his current contact information demonstrated his refusal to comply with the investigator. Mr. Huang therefore contravened s. (1)(1)(pp)(vii)(B) of the *Health Professions Act*. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because the ACP may have been hampered in its role of investigating a member and therefore protection of the public. As part of a self-governing college pharmacists must act with integrity and honesty, even while being investigated, in order to sustain public and member confidence in the profession.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a standard of practice. The Standards for Operating a Licensed Pharmacy state that a licensee must ensure that the licensed pharmacy operates in accordance with the law that governs pharmacy operation, pharmacist practice and drug distribution. As a licensee, Mr. Huang did not ensure that his pharmacy was open as scheduled August 11-13, 2009 and able to provide professional services to his customers. Mr. Huang admitted he was working at another pharmacy for these three days. Mr. Huang therefore contravened standard 4 of the Standards for Operating a Licensed Pharmacy. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he disregarded the pharmaceutical needs of his patients when he chose to close his pharmacy for 3 days while he worked at another pharmacy. He did not demonstrate that he was concerned for his patients' continuing care when he failed to plan for the closure of his licensed pharmacy and then notifying each patient of his plan for ensuring access to their prescription records. Mr. Huang had previously appeared before a Hearing Tribunal to address at least 3 similar allegations related to closing his pharmacy on days it was scheduled to be open. On December 7, 2007 Mr. Huang had signed a Professional Undertaking to the

Alberta College of Pharmacists stating that “I will comply fully and completely with my professional duties and obligations under Section 11.1 of the *Pharmacy and Drug Act* and Sections 11(1) and 11(2)(a) and (b) of the *Pharmacy and Drug Regulation* regarding: ensuring that the pharmacy is open to the public during the hours of operation that have been submitted to the Registrar.” Mr. Huang breached this undertaking on December 20, 2007 when he admitted to working in Grand Prairie. The ACP has provided Mr. Huang with more than ample support to allow him to understand and put in place practices that would serve the public and the health care system in general. The Hearing Tribunal is of the opinion that Mr. Huang was well aware of the statutes governing the operation of his pharmacy and his professional practice, but chose to disregard them. The Hearing Tribunal is disappointed by this apparent disregard for his regulatory body, the public and the profession as a whole.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics. The ACP Code of Ethics Bylaw directs the pharmacist to act with honesty and integrity. To uphold this principle the pharmacist must comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies. Pharmacists must be honest with patients, other pharmacists, pharmacy technicians, health professions and the college. Mr. Huang did not comply with the laws governing the practice of pharmacy in Alberta or Ontario. Mr. Huang was investigated and sanctioned in each province for failing to abide by the laws governing his professional practice. Some of these investigations were for concerns of very similar nature to the current hearing. Mr. Huang has had over 50 separate visits in the last 5 years from ACP staff to discuss and examine issues related to his conduct. Mr. Huang did not comply with Principle X of the ACP Code of Ethics Bylaw. Mr. Huang’s conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional in nature because he has disregarded the efforts and role of the ACP to ensure that his practice afforded the citizens of Alberta the professional service they are entitled to receive from a pharmacy or pharmacist. The Hearing Tribunal concurs with the ACP that Mr. Huang is ungovernable as he is unwilling to comply with the rules governing the practice of pharmacy despite a more than reasonable attempt by the ACP and other Hearing Tribunals to assist him. Mr. Huang appears to be unwilling to accept governance and therefore should not have the privilege of membership in the ACP. The best interests of the public and the standing of the profession of pharmacy must be protected by a self-governing profession. Mr. Huang has breached his obligations as a governable member of the ACP.

The *Health Professions Act* s. 1(1)(pp)(ii) provides that unprofessional conduct includes a contravention of a code of ethics or standard of practice. The Standards for Pharmacist Practice Section 1 requires a pharmacist to act professionally and conduct their practice in accordance with the laws governing the practice of pharmacy. In approaching the law that governs the practice of pharmacy, a pharmacist must comply with its letter and its spirit to ensure that the public and each patient receive the full protection of the law. Mr. Huang has breached laws that govern the practice of pharmacy in Alberta. These laws are enacted to provide a minimal acceptable standard to which a pharmacist’s practice can be measured. It is imperative that pharmacists practicing in Alberta know, understand and comply with these laws and

standards that govern their practice. Only when these standards are met, can the public and the profession be confident that pharmacists are acting in their best interest. Mr. Huang has not met the standard in the past as evidenced by 5 investigations, over 50 visits from ACP staff to discuss issues relating to his conduct, and a professional undertaking with the ACP. Mr. Huang therefore contravened Standard 1 subsections 1.1 and 1.2 of the Standards for Pharmacist Practice. Mr. Huang's conduct meets the statutory definition of unprofessional conduct. In addition, his conduct was unprofessional because he did not utilize the resources of the ACP to increase his understanding and compliance to the laws governing the practice of pharmacy. The Hearing Tribunal agrees with the ACP that Mr. Huang is ungovernable and should not have the privilege to continue to practice the profession of pharmacy in Alberta. Mr. Huang does not appear committed to retaining the high level of trust and respect afforded a competent and professional pharmacist by the public, his patients and the profession.

Relevant Legislation, Standards and Guidelines

Mr. Huang's conduct breached the following statutes, regulations and standards governing the practice of pharmacy:

- Sections 11(1), 27(1)(b), 27(1)(c)(i), 27(1)(c)(ii) and 27(1)(d) of the *Pharmacy and Drug Regulation*;
- Sections 4, 73(a) and 73(b) of the Standards for Operating a Licensed Pharmacy;
- Sections 41(1)(j) and 41(1)(o) of the *Pharmacists Profession Regulation*;
- Section 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(vii)(B) and 1(1)(pp)(xii) of the *Health Professions Act*;
- Section 1 and subsections 1.1 and 1.2 and section 18.6(b) of the Standards for Pharmacist Practice;
- Principles I, II, VIII and X of the ACP Code of Ethics Bylaw.

Mr. Huang's conduct and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(ii), 1(pp)(iii), 1(pp)(vii) and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct pursuant to the provisions of sections 1(p)(i), 1(p)(ii), 1(p)(ix) of the *Pharmacy and Drug Act*.

Sanctions

The Hearing Tribunal reconvened on July 19, 2010 to hear submissions on sanction. The ACP entered a Hearing Tribunal decision dated July 14, 2009, which detailed the

grounds on which Mr. Huang was previously disciplined for ignoring over a prolonged period the requirements of the regulations and guidelines and his breach of a professional undertaking given to the College to close a previous investigation. This decision also found Mr. Huang guilty of unprofessional conduct for failure to cooperate with the Complaints Director as in this present case. Mr. Huang was given a reprimand that advised Mr. Huang that should he come before another Hearing Tribunal in the future, it would in the opinion of that Tribunal seriously question his governability to practice the profession of pharmacy in Alberta.

The ACP considered that despite the nature and number of the visits to Mr. Huang by ACP staff and the assurances from Mr. Huang that there would be no further breaches of the College requirements and legislation, there did not appear to be any improvement in Mr. Huang's conduct or his willingness to comply with the requirements of the Act, regulations, standards or to cooperate with the College.

Mr. Jardine presented one discipline decision from Alberta and 3 prior discipline decisions from Ontario pertaining to Mr. Huang that showed the same reoccurring problems. Mr. Huang has been investigated 4 times in Alberta. The ACP considered the failure to alter Mr. Huang's behavior required more severe sanctions in order to protect the public and the integrity of the profession.

Mr. Huang:

Mr. Huang did not provide a written submission on sanctions and he did not appear in person at the hearing when it reconvened on July 19, 2010.

VI. ORDERS

The Hearing Tribunal imposes the following orders after findings of unprofessional conduct:

- a. an order for the immediate cancellation of the registration and practice permit of Mr. Huang;
- b. an order that Mr. Huang pay a fine to the ACP of \$10,000.00 . Monthly payments of \$1000.00 per month commencing 30 days from the date of the decision are required;
- c. an order that Mr. Huang pay all of the expenses, costs and fees related to the investigation and hearing of this matter. Payment of \$1000.00 per month will commence 30 days after the payment of the fine is completed and will continue until all the expenses, costs and fees are paid in full;
- d. an order that a summary of this decision be published in the *acpNews* including the name of Mr. Huang; and

- e. an order that a copy of this decision be provided to all other pharmacy regulators in Canada by the Registrar of the Alberta College of Pharmacists.

The Hearing Tribunal considered Mr. Huang's reoccurring breaches of the statutes governing the practice of pharmacy in the province of Alberta. Mr. Huang's professional practice demonstrated an unwillingness to be governed by these statutes, guidelines and bylaws and his actions demonstrated that he was unwilling to be governed as part of a privileged self-regulating profession. Mr. Huang was repeatedly unresponsive to the ACP when contacted for information related to the investigation or the closure of his store and the disposition of the patient records. Mr. Huang was remiss in providing ACP with phone numbers, dates of employment and locations of employment even when specifically requested.

The Hearing Tribunal agreed with the Alberta College of Pharmacists that Mr. Huang is ungovernable. This hearing was the 5th time Mr. Huang has been formally investigated for breaches related to temporary closures of his pharmacy on days that it was to remain open to the public. Mr. Huang chose to work elsewhere and leave First Choice Pharmacy closed to his patients. This demonstrated a total disregard for the needs and well being of the FCP patients, the public and the profession in general. Mr. Huang demonstrated total disregard for an Acknowledgement and Professional Undertaking to the Alberta College of Pharmacists that he signed in 2007. Mr. Huang committed to ensuring that his store was open and staffed by a pharmacist for the hours of operation that were submitted to the Registrar. He understood and acknowledged that this Acknowledgement and Professional Undertaking could be referred to and relied upon by the ACP in any future complaint investigations or discipline hearings regarding any similar breaches of his professional duties and obligations as a pharmacist and licensee but he was proven to have committed a breach within 13 days of signing the document.

Mr. Huang's actions demonstrated to the Hearing Tribunal that he is not willing to conduct himself in a manner that meets the minimum requirements of the profession and therefore is considered ungovernable. Mr. Huang repeatedly failed to advise the Registrar of employment locations and dates as required by the *Pharmacists Profession Regulations*. Mr. Huang did not retain important patient records for the mandated 42 months nor did he file the written prescriptions in a systematic manner that would allow another pharmacist to ensure continuity of care in the event Mr. Huang was not available.

The Hearing Tribunal considered Mr. Huang's disregard for the future prescription needs of his FCP patients when he was permanently closing his store. Mr. Huang left Calgary to work for the 3 days prior to his store closing permanently (August 14, 2009) and did not appear to have a plan in place to allow his patients to receive professional service from another pharmacist. It was not until October 6, 2009 that his patient records were accepted by another pharmacy. On October 15, 2009, Mr. Kalinka took pictures of FCP exterior. The pictures did not show any notice regarding the location of the pharmacy's patient records posted on the pharmacy's

exterior. It was not evident how Mr. Huang would have properly advised his patients of the location of their prescription records. Three pharmacists reported that they were unable to provide prescription refills to FCP patients because patient records were incomplete or unavailable. Mr. Huang’s inadequate attention to detail and planning, when transferring the FCP patient records, may have caused a disruption in patient care or compromised the well-being of a patient.

Mr. Huang is reported to have received over 50 visits from ACP auditors, inspectors and investigators in the last 5 years. Mr. Huang has not changed his manner of cooperating with the ACP, his conduct related to the statutes governing the practice of pharmacy or his interest in the health and welfare of his patients despite these opportunities to discuss and examine the issues related to his practice. The orders reflect the need to specifically prevent Mr. Huang from engaging in further pharmacy practice so the public interest is protected. Previous sanctions have not changed Mr. Huang’s practice as a pharmacist or pharmacy licensee.

Mr. Huang had 3 discipline hearings in Ontario and one previous discipline decision in Alberta. The Ontario decision indicated that: “the Member’s ongoing discipline issues indicate a flagrant disregard for the College as a governing authority over pharmacists. The member can only be described as ungovernable”. The Alberta decision stated: “It is the intent of the Hearing Tribunal that this process, and the impending sanctions that will be imposed upon you, will correct your behavior and professional integrity on a go forward basis. In the event that you come before a Hearing Tribunal in the future, it would, in the opinion of this Hearing Tribunal, seriously question your governability to practice the profession of pharmacy in Alberta”. The present Hearing Tribunal has determined that Mr. Huang is ungovernable by the Alberta College of Pharmacists and therefore should not have the privilege of practicing pharmacy in the province of Alberta.

In making these orders, the Hearing Tribunal recognizes that allegations 6, 7 and 8 address concerns that are similar in nature. While the Hearing Tribunal found each allegation proven and that each proven allegation constitutes unprofessional conduct, the Hearing Tribunal is of the view that the orders are necessary and appropriate given Mr. Huang's proven conduct without regard to the number of allegations advanced by the ACP.

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| | Signed on behalf of the Hearing Tribunal by the Chair |
| Dated: _____ | Per: Bonnie J. Oldring Chair, Hearing Tribunal _____ |
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