

IN THE MATTER OF THE HEALTH PROFESSIONS  
ACT, BEING CHAPTER H-7 OF THE REVISED  
STATUTES OF ALBERTA, 2000



and

IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF TUYEN HUYNH and CALGARY  
MEDICAL PHARMACY and  
LOI NGUYEN and SAIGON PHARMACY

**DECISION OF THE HEARING TRIBUNAL**

From September 28, 2009 to October 2, 2009 a hearing was conducted before a panel of the Hearing Tribunal concerning this matter. The hearing was held at the offices of the Alberta College of Pharmacists #1200, 10303 Jasper Avenue, Edmonton, Alberta. The hearing was held under the Part 4 of the *Health Professions Act*, R.S.A. 2000, c. H-7.

Present were:

Members of the Hearing Tribunal:

Debbie Santos, Pharmacist, Chair  
Peter Macek, Pharmacist  
Deana Sabuda, Pharmacist  
Diane Adams, public member

James Krempien, Complaints Director for the Alberta College of Pharmacists  
David Jardine, Legal counsel for the Alberta College of Pharmacists  
Tuyen Huynh  
Loi Nguyen  
Brian Devlin, Legal counsel for Tuyen Huynh and Loi Nguyen

**PRELIMINARY MATTERS**

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing. There were some earlier dates scheduled for this hearing that were adjourned by consent. Mr. Devlin and Mr. Jardine agreed that no issues arose from the adjournment. Mr. Devlin and Mr. Jardine indicated there would be some additional documents submitted for completion of the record and to

avoid the need to call additional witnesses. There were no other preliminary or jurisdictional matters raised.

### **ALLEGATIONS**

The Notice of Hearing (Exhibit 1) sets out several particulars and the following Allegations:

- A. During the period from November 1, 2003 to June 30, 2005, there were substantial discrepancies between the quantities of 15 drug products billed to Alberta Blue Cross by the two pharmacies and the inventory available to the pharmacies to dispense prescriptions for these drug products.
- B. During the course of the audits conducted by Alberta Blue Cross, the pharmacies were unable to provide documentation to substantiate the purchase of sufficient amounts of 15 drug products (out of the 35 sampled) that were documented as dispensed to a client and submitted to Alberta Blue Cross for payment.
- C. The said pharmacies and LOI NGUYEN and TUYEN HUYNH as Licensees and Pharmacy Managers failed to cooperate in professional manner with the Alberta Blue Cross audit by failing to provide accounts and invoices and complete information for the audit, by failing to respond clearly to questions raised by the Alberta Blue Cross representatives conducting the audit, and by failing to provide explanations for the discrepancies noted by the audit team.
- D. Based on the unexplained discrepancies in respect to the 15 drug products named in the Alberta Blue Cross audit, Saigon Pharmacy (License #36) and LOI NGUYEN and Calgary Medical Pharmacy (License #1328) and TUYEN HUYNH may:
  - i. have billed Alberta Blue Cross for drug products that were not provided to the pharmacies' customers; or

- ii. have failed to provide patients with drug products that had been prescribed to them; or
- iii. have obtained drug products from unauthorized and undocumented sources.

E. Based on the discrepancies in respect to the 15 drug products named in the Alberta Blue Cross audit, and the failure of the two pharmacists or their pharmacies to provide documentation to explain these discrepancies and to support the quantities claimed from Alberta Blue Cross of the 15 drug products in question, Saigon Pharmacy (License #36) and LOI NGUYEN and Calgary Medical Pharmacy (License #1328) and TUYEN HUYNH have:

- i failed to maintain adequate and complete records of the drug products acquired by the pharmacies; and
- ii. failed to maintain records sufficient to provide verification and reconciliation of the quantities of the 15 drug products acquired by the pharmacies with the quantities of those 15 drug products shown as dispensed to patients and submitted to Alberta Blue Cross for payment.

The Hearing Tribunal was asked to determine if the conduct of Mr. Nguyen and Ms. Huynh as Pharmacists and as Proprietors constitutes a breach of the following statutes, regulations, standards and Code of Ethics governing the practice of pharmacy:

- Sections 1(1)(pp)(i), 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Section 23, section 24 and sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(p)(v), and 1(1)(p)(ix) 31(2)(a) of the *Pharmacy and Drug Act*;
- Section 1 and subsections 1.1 and 1.2 of the Standards for Pharmacist Practice;
- Section 12(1) of the *Pharmacy and Drug Regulation*;

- Sections 4 and 5 of the Standards for Operating Licensed Pharmacies;
- Sections 73, 74 and 75 of the Standards for Operating Licensed Pharmacies;
- Principle VI, Guidelines 1, 2, and 4 and Principle VII of the *Code of Ethics Bylaw*.

It is alleged that the conduct of Ms. Huynh and Mr. Nguyen set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(i), 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct pursuant to sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(p)(v), and 1(1)(p)(ix) 31(2)(a) of the *Pharmacy and Drug Act*.

### **SUMMARY OF EVIDENCE**

Several exhibits were entered at the hearing. There were seven witnesses called to present evidence. Their evidence is summarized below.

#### **John Richardson**

John Richardson, Chartered Accountant, is a senior manager of Audit Services at Alberta Blue Cross. Mr. Richardson's evidence was that a pharmacy's business will not be 100% for Alberta Blue Cross members.

Mr. Richardson's evidence was that in order for Alberta Blue Cross to determine that a pharmacy has acquired sufficient drugs to support a claim, Alberta Blue Cross needs to know the percentage of the pharmacy's business. Alberta Blue Cross cannot independently obtain or verify the percentage. Mr. Richardson testified that pharmacies subject to an audit have the opportunity to review and comment on a draft audit report. Here the pharmacies had from May 2006 to March 2007 to review the draft audit findings and advise Alberta Blue Cross of any errors.

Mr. Richardson indicated 7 pharmacies in the past 25 years have had their Alberta Blue Cross Pharmacy Agreements terminated (this includes Calgary Medical Pharmacy and Saigon Pharmacy). Six of these 7 pharmacies, including Calgary Medical Pharmacy and

Saigon Pharmacy, had their contracts terminated in the past 6 years due to unsupported quantities.

Mr. Richardson indicated that pharmacies in general were not given notice by Alberta Blue Cross that they would be required to keep accurate percentages of business nor had notices been sent out to the profession.

Calgary Medical Pharmacy and Saigon Pharmacy were selected for the audit due to unsupported quantity issues found in other affiliated pharmacies and reports from members of the public about these issues with the two affiliated pharmacies in Edmonton.

Mr. Richardson was asked about a letter from Dallas Leslie, an Alberta Blue Cross auditor to Ms. Huynh (Exhibit 9, Tab 2), which stated that if a pharmacy did not provide percentages, the audit team would determine a percentage of business based on an industry standard. Mr. Richardson indicated that at one time the department was encouraged to move in the direction of using industry standard percentages but he would not permit it.

Mr. Richardson agreed there was nothing in the Agreement that specifically required a pharmacist to maintain percentages of business. Mr. Richardson indicated that Alberta Blue Cross has a legal opinion from their counsel that it is reasonable for Alberta Blue Cross to request percentages of business from the pharmacies it deals with and that Alberta Blue Cross relies on the pharmacies to provide percentages of business.

One of the issues in the audit was that Alberta Blue Cross could not determine which pharmacy received which drug product from Saipharm Supplies. Mr. Richardson confirmed that Mr. Nguyen and Ms. Huynh were given draft audit reports that clearly showed a discrepancy and these members had over a year to provide an explanation and supporting documentation but failed to do so. Mr. Richardson confirmed that Mr. Nguyen ultimately provided percentages for his pharmacy.

Mr. Richardson indicated that the Alberta Blue Cross contracts were terminated due to a perceived breach of the trust relationship between the pharmacies and Alberta Blue Cross.

Jil Tanguay

Jil Tanguay is the manager of Provider Audit Services for Alberta Blue Cross and is a Certified Forensic Investigator. Mr. Tanguay's role is to oversee audits. This audit was assigned as a risk audit based on cross-ownership with a pharmacy in Edmonton. Mr. Tanguay indicated that standard audit periods are one year. However, this audit covered a 19 month period.

Mr. Tanguay explained that each drug has a different utilization pattern within each pharmacy. Pharmacies with different clientele will have different utilizations of different drugs. The audit requires the actual percentage for that specific drug, for a specific pharmacy so that an accurate determination can be made. Mr. Tanguay conceded that while Alberta Blue Cross generally receives accurate percentages when asked, there are some pharmacies that have not provided percentages in the past when requested by Alberta Blue Cross.

Mr. Tanguay confirmed that actual percentages for Saigon Pharmacy were received from Mr. Nguyen but Ms. Huynh indicated that for Calgary Medical Pharmacy, she would get Mr. Nguyen, her husband, to update the computer to get accurate percentages. Aside from the first set of estimated percentages received from Ms. Huynh, no other percentages were received from her. Mr. Tanguay was asked about Exhibit 9, Tab 7 which is a contact summary by Dallas Leslie. The contact summary states that Mr. Leslie told Mr. Nguyen that as long as he could give Alberta Blue Cross an approximate percentage that was all Alberta Blue Cross needed. Mr. Leslie told Mr. Nguyen that if he could not provide percentages, they would use 18% from the preliminary audit questionnaire and an industry standard for the others.

Mr. Tanguay indicated that Alberta Blue Cross asked for a discovery meeting to address specific concerns and understand the relationship between Saigon Pharmacy, Calgary Medical Pharmacy and Saipharm Supplies. His evidence was that at the discovery meeting, it was mutually agreed between Alberta Blue Cross and the members that combining the two pharmacies would be the most accurate way to perform the audit. After the discovery meeting Alberta Blue Cross was provided with additional invoices for

both pharmacies and Saigon Pharmacy provided printouts for percentage of business. The additional information provided reduced the amount owing to Alberta Blue Cross substantially.

Mr. Tanguay confirmed that Ms. Huynh did nothing that was deliberately misleading. Mr. Tanguay testified that Loi Nguyen deliberately misled Alberta Blue Cross when Loi admitted to giving low estimated percentages at the outset. This was the only deliberate misleading evidence from him. Mr. Tanguay confirmed that Mr. Nguyen did cooperate with Alberta Blue Cross and verified accurate percentages were provided. He confirmed that Mr. Nguyen even had to pull out all of his invoices again because of an Alberta Blue Cross computer error.

Mr. Tanguay described the audit rights under Alberta Blue Cross Pharmacy Agreement section 5.7. They have the right to: 1. Look at invoices for drugs billed to Alberta Blue Cross; 2. Inspect a prescription for which a claim has been filled. Mr. Tanguay states that Alberta Blue Cross does not have the authority in the Alberta Blue Cross Agreement to look at quantities and drugs that were sold to other individuals, other than Blue Cross clients.

#### Donald McCutchen

Donald McCutchen is a Chartered Accountant and partner with Deloitte and Touche LLP. He is the Professional Practice Director of the Edmonton office. He was engaged by Alberta Blue Cross to do an independent review of the audit process. His mandate was to review the audit methodologies and processes used in the compliance verification under the Alberta Blue Cross Pharmacy Agreement for compliance with Generally Accepted Auditing Standards (“GAAS”). The Alberta Blue Cross audit objective was to verify the legitimacy of claims submitted to Alberta Blue Cross electronically under the Agreement. Mr. McCutchen stated that because audit staff, as employees of Alberta Blue Cross, could be challenged on their objective state of mind, the audit was consistent with GAAS versus compliant with GAAS.

Mr. McCutchen's evidence was that there are two pieces of information that could be obtained with only minimal co-operation from a member: 1) the total quantity sold of a specific drug for which claims were submitted to Alberta Blue Cross during the audit period and 2) the total quantity of the same drug that the pharmacy purchased for the same audit period. This is verified through examination of a pharmacy's purchase invoices.

Mr. McCutchen's evidence was that Alberta Blue Cross cannot verify with any degree of certainty and requires cooperation of the pharmacy for the calculated percentage of the total quantity of a specific drug that was dispensed to Alberta Blue Cross plan participants and billed to Alberta Blue Cross during the audit period, compared to the total quantity of that drug dispensed by the pharmacy to all of its customers for the same period. Mr. McCutchen's evidence was that it is a reasonable request for Alberta Blue Cross to ask the pharmacies for calculated percentages to show that the claims they have made are within the Alberta Blue Cross provider Agreement. It is in the spirit of the Agreement to ask for this information.

Mr. McCutchen's evidence was that Saipharm is a related party and a weighted average of both pharmacies was an acceptable approach and methodology within GAAS.

#### Monica Stark

Monica Stark is a Chartered Accountant. She is the Manager in Forensic and Dispute Services at Deloitte and Touche LLP in Edmonton. She was engaged by Alberta Blue Cross to do an independent review of the audit process.

Ms. Stark's evidence was that the process was to determine whether or not the audit was in compliance with GAAS. This was an audit for compliance with an Agreement, specifically the Alberta Blue Cross Pharmacy Agreement, not a forensic audit because Alberta Blue Cross did not have access to all of the documents of an organization.

Ms. Stark's evidence was that the approach by Alberta Blue Cross to ask the pharmacies to provide percentages was a reasonable approach, given the limitations of the agreement.



She stated it was reasonable in a good faith relationship to expect some degree of cooperation from a member.

### Loi Nguyen

Loi Nguyen was born in Vietnam and came to Canada in 1979. Mr. Nguyen left Vietnam after 4 years of pharmacy training. He studied at the University of Alberta from 1985 to 1989 and he graduated from the pharmacy program in 1989.

Mr. Nguyen began operating Saigon Pharmacy in 1990 which he opened next to the office of some Vietnamese doctors, to serve their clientele. Mr. Nguyen owns 70 to 75 percent of Saigon Pharmacy and Ms. Huynh owns the balance. Saigon Pharmacy stayed in the original location until 1995 when it moved to a new location.

Mr. Nguyen and Tuyen Huynh are married. They agreed to open another pharmacy, Calgary Medical Pharmacy. They arranged this with their neighbor who was a doctor. Ms. Huynh owns 100 percent of Calgary Medical Pharmacy.

Saipharm Supplies was started between 2000 and 2002. It was created to order drug products for both pharmacies and to sell product back to both pharmacies. Mr. Nguyen was not aware that a license was required for Saipharm Supplies unless it was ordering narcotics, which he stated it never did. Saipharm Supplies is owned 76 percent by Mr. Nguyen and 24 percent by Ms. Huynh.

Mr. Nguyen's evidence was that invoices were maintained between Saipharm Supplies and the two pharmacies (Saigon Pharmacy and Calgary Medical Pharmacy) and that Saipharm Supplies maintained invoices from its suppliers as well.

Saigon Pharmacy and Calgary Medical Pharmacy each stored their invoices on their own premises. The invoices of Saipharm Supplies were stored at Calgary Medical Pharmacy, where an office was created to keep the records. Prescription records were kept separate for both Saigon Pharmacy and Calgary Medical Pharmacy and stored on site. Saipharm Supplies did not fill any prescriptions thus did not have prescription records. Mr. Nguyen confirmed that no computerized drug inventory was maintained.

Saigon Pharmacy was audited previously in 2002. During that audit, Mr. Nguyen provided invoices and prescriptions. Mr. Nguyen knew from the prior audit of the importance of keeping accurate records in the form of invoices. He was informed of this audit by letter and was told when the Alberta Blue Cross auditors were coming to his pharmacy. Mr. Nguyen described the audit process: Alberta Blue Cross came on site, provided lists of drugs and the period of time and requested all invoices pertaining to the drugs and the periods. Alberta Blue Cross did not ask to see any prescriptions, only invoices. They brought their own scanners and computers to copy the provided invoices. Mr. Nguyen mentioned that the auditors missed one box of invoices during the on-site audit.

Mr. Nguyen stated that he was never told he would need to keep track of actual percentage of each drug sold. Mr. Nguyen referenced a letter (Exhibit 9, Tab 6) where Alberta Blue Cross requests percentage of claims with respect to the pharmacies overall business for each drug product in the Alberta Blue Cross sample. Percentages were also requested by Alberta Blue Cross before the letter was sent. Mr. Nguyen did not know what the percentages were and was concerned about the impact if he gave the wrong percentages. Mr. Nguyen stated that he provided estimated percentages after Alberta Blue Cross continued to request the numbers. Mr. Nguyen provided handwritten estimated percentages (Exhibit 9, Tab 8). Mr. Nguyen initially provided an estimate of 18 percent of his business being to Alberta Blue Cross. He clarified that he did not account for AISH and social services. His initial percentage would have been considerably higher had he factored those groups into that total initially. It was Mr. Nguyen's understanding that estimates were all that was required.

Mr. Nguyen had concerns with the Alberta Blue Cross Draft Audit Report. Mr. Nguyen reviewed the Draft Report and found that drugs were missed from some invoices. On June 6, 2006, Mr. Nguyen asked for an extension of time to provide more information. He was comparing all invoices to the Draft Report. He also mentioned to Alberta Blue Cross that he contacted his pharmacy software provider to get help on obtaining percentages from his computer. Mr. Nguyen reviewed the process of obtaining accurate percentage from his pharmacy software system. With difficulty (understanding the

correct sequence of keystrokes, etc.) he was able to determine accurate percentages of business.

Mr. Nguyen had no understanding as to whether or not he had to provide percentages to Alberta Blue Cross. He requested a copy of the Alberta Blue Cross agreement at a meeting with Alberta Blue Cross.

Mr. Nguyen recalled meeting with Alberta Blue Cross to show them printouts from his computer system to back up the updated percentages he provided. Mr. Nguyen discussed a letter following the meeting at Alberta Blue Cross, dated July 14, 2006. The letter mentions that the percentage for Calgary Medical Pharmacy may not be correct.

Mr. Nguyen stated he did not assist Ms. Huynh in getting percentages for Calgary Medical Pharmacy because it was her pharmacy and she knows how to do this. Mr. Nguyen stated that he did not make any decisions as to what information Calgary Medical Pharmacy would provide. It was Ms. Huynh's decision, as she was the owner of the pharmacy. Mr. Nguyen knew that Ms. Huynh told Alberta Blue Cross she would ask him for his help in getting percentage for her pharmacy. Mr. Nguyen was copied on letters sent to Calgary Medical Pharmacy continuing to request updated percentage information.

Mr. Nguyen clarified the operation of Saipharm Supplies. Saigon Pharmacy never sold product to Saipharm Supplies. Generally the product sold by Saipharm Supplies was invoiced to Calgary Medical Pharmacy and Saigon Pharmacy but in some cases the amount sold to each pharmacy was more or less than invoiced by Saipharm Supplies. This was why Mr. Nguyen agreed to a shared audit. However, when the audit was combined to both Saigon Pharmacy and Calgary Medical Pharmacy, Mr. Nguyen did not do anything to ensure the numbers from Calgary Medical Pharmacy were as accurate as possible.

Mr. Nguyen stated that at no time during the audit did Alberta Blue Cross ask to see prescriptions, get patient names or contact doctors regarding the audit.

Within 30 days of receiving the draft audit report from Alberta Blue Cross, Mr. Nguyen provided updated percentages to Alberta Blue Cross. Those updated percentages substantially reduced the amount owing.

Mr. Nguyen discussed some inventory issues that may have arisen during the course of the audit period; that opening inventory on some drugs may not be the same as the closing inventory. Mr. Nguyen requested more time to respond to the draft summary. He was not able to find any further information by the deadline of May 23, 2007.

Mr. Nguyen stated he was not clear on how Alberta Blue Cross reached its conclusion in the Final Report demanding payment of \$92,000 from Saigon Pharmacy and Calgary Medical Pharmacy. Mr. Nguyen refers to the Appendix A of the Final Audit Report and disagreed with Alberta Blue Cross averaging his accurate percentages from Saigon Pharmacy to the rounded off, estimated percentages of Calgary Medical Pharmacy. Mr. Nguyen discussed some calculation errors found in the Final Audit Report that Mr. Tanguay from Alberta Blue Cross addressed.

Mr. Nguyen stated he did not purchase drugs from unauthorized sources and use them, he did not falsify or forge prescriptions or bill Alberta Blue Cross for drugs not given to the patient that was asking for them

Mr. Nguyen did not inform Alberta Blue Cross that he thought there were mistakes in the Final Audit Report. He did not provide additional invoices to Alberta Blue Cross following the Final Report. The documents were not brought forward until this hearing.

Mr. Nguyen was questioned about the letter from Alberta Blue Cross where they thought he would help Ms. Huynh get percentages documentation. He did not advise Alberta Blue Cross that he was not going to show her how to do this.

Mr. Nguyen said that the Saipharm Supplies invoices were accurate, but Alberta Blue Cross did not accept them. They wanted to see the invoices to Saipharm Supplies from its suppliers. Mr. Nguyen handled the invoices for Saipharm Supplies. Later it was clarified that Alberta Blue Cross did not accept the Saipharm Supplies invoices because of an 8 percent markup on the drug costs.

Mr. Nguyen, when questioned in reference to estimated figures for Pegetron, stated that he did not provide figures and supporting documentation.

Mr. Nguyen was aware that when Alberta Blue Cross examined invoices prior to the audit period, they also included claims made in their calculations. They were shown Saipharm Supplies invoices for large amounts but not shown other invoices for smaller purchases. Mr. Nguyen did not inform Alberta Blue Cross that they missed some invoices. He did not communicate this because of all the errors found throughout the Report.

Mr. Nguyen confirmed that he responded to Alberta Blue Cross regarding invoices found at Calgary Medical Pharmacy. His role was to find invoices only. Mr. Nguyen was asked again about percentages and helping his wife get the numbers from her computer. He changed his evidence to say that he did try to help her but her computer was slow and did not have the same updates as his at Saigon Pharmacy. He thinks she could have asked her software vendor for an upgrade.

Mr. Nguyen stated that he decided at some point that it was important to provide Alberta Blue Cross with accurate data. He could not recall exactly when that point was.

### Tuyen Huynh

Tuyen Huynh was born in Vietnam. She came to Canada in 1980. She started studies at the University of Alberta in 1985 and graduated from pharmacy in 1990. She opened Saigon Pharmacy in Calgary in 1990 with Mr. Nguyen.

Ms. Huynh started Calgary Medical Pharmacy in 1998, because she loved to practice pharmacy. She wanted to use her training to own her own pharmacy. She is and has always been the 100 percent owner. Calgary Medical Pharmacy has one other employee, a pharmacy technician.

Saipharm Supplies was incorporated between 2000 and 2002. Mr. Nguyen owns 76 percent and Ms. Huynh owns 24 percent. Ms. Huynh stated that when Saipharm Supplies

bought drugs they were kept at Calgary Medical Pharmacy (in a separate office) before being distributed.

Ms. Huynh said that when Saipharm Supplies sold drugs to Saigon Pharmacy, they wrote it down. Mr. Nguyen did all of the invoicing for Saipharm Supplies. Ms. Huynh would receive invoices for Calgary Medical Pharmacy. She would pay them and record them in her bookkeeping system.

Ms. Huynh testified that during the audit period (November 2003 to June 2005) she only worked at Calgary Medical Pharmacy. Ms. Huynh said she did not keep an inventory, nor did she record an inventory into her computer system. Calgary Medical Pharmacy had Simplicity Plus computer software during the time of the audit. Ms. Huynh was unsure what version she had as her husband set up all of the computers.

This was her first audit by Alberta Blue Cross but she was aware that her husband had been audited before, in about 2002.

Ms. Huynh said she received a phone call from Alberta Blue Cross, indicating they wanted to come to visit her pharmacy for an audit. They gave a list of 35 drugs for which they wanted all invoices. She said she had these ready and 2 employees from Alberta Blue Cross visited and scanned everything. Ms. Huynh said that during the initial on-site audit they never asked about percentages although a letter of January 9, 2006 from Alberta Blue Cross indicates she was unsure of pharmacy's percentage to Alberta Blue Cross. She testified that she thinks Alberta Blue Cross made a mistake in that letter. Ms. Huynh understood that Alberta Blue Cross was asking for a percentage for Alberta Blue Cross compared to total sales. She indicated she did not understand what was industry standard. However, she did not talk to anyone at Alberta Blue Cross about it.

Ms. Huynh indicated she provided the handwritten percentages because she thought she had to complete the form. If not Alberta Blue Cross could use any percent against her. She thought she had to give an estimate. She wrote down the percentages off the top of her mind, randomly. And for Eprex she indicated 100 percent because it was not

commonly dispensed. For Plavix, the majority are seniors who bill Alberta Blue Cross, hence she wrote down 90 percent.

Ms. Huynh testified that she thought the percentage was for a survey, and she did not think they would use this percentage in an audit. After receipt of the Draft Report, she received a call from Dallas Leslie. She was surprised to find out they had used her estimated percentages. After the phone call, she understood that Alberta blue Cross was requesting more accurate percentages.

Ms. Huynh received a letter dated July 24, 2006 from Alberta Blue Cross. She understood that Alberta Blue Cross was asking for percentages and back-up for the drugs listed. She reviewed the Agreement and concluded from reading it that there was nothing in there about percentages. She stated that she also recalled that the Alberta Pharmacists Association sent a memo that advised members not to give percentages in an audit. She did not recall when the memo was circulated. She called the Association to try to get a copy. Her evidence was that the Association could not provide her a copy. She also stated she is very poor on the computer and that she knows about pharmacy and drugs, and just uses the computer for dispensing medications.

Ms. Huynh testified that she never obtained any legal advice as to whether she had to give the percentage information. She admitted she never gave them more accurate percentages but she did send them more invoices.

Ms. Huynh indicated she had many concerns with the Final Report, including the use of estimated percentages. She also did not agree with the averaging of her percentages with her husband's as her pharmacy is completely different from his. They have different neighbourhoods and clientele. Ms. Huynh testified that she went through the listed invoices and calculations and she found some errors.

Ms. Huynh denied billing Alberta Blue Cross for drug products not provided to customers, failing to provide patients with drug products prescribed or obtaining drug products from unauthorized sources.

Ms. Huynh admitted that as of the hearing, she still has not done the calculations as to the correct percentages.

Ms. Huynh initially did not recall the meeting with Alberta Blue Cross in July of 2006. Ms. Huynh admitted to receiving the Draft Report and acknowledged correspondence that stated Alberta Blue Cross wanted to have a meeting, that they had some questions, but they were also willing to hear from her about her concerns. She provided invoices that she did not think were listed in the Draft Report, and admitted that there was discussion about purchases from Saipharm Supplies. Ms. Huynh testified that Saipharm Supplies is located in her store. When Mr. Nguyen needs a medication, he faxes her, then she has a girl who goes to the separate office where the drug products are stored and they have a record that says where the drug is shipped, Calgary Medical Pharmacy or Saigon Pharmacy. When Ms. Huynh needs a drug product, she takes it from Saipharm Supplies and writes it down.

Ms. Huynh asked at the meeting what would happen if she changed the percentage and she was told she would need back up documentation.

Ms. Huynh indicated at the meeting that she had not updated her software, she did not know how to obtain the information and she had to ask her husband. She indicated there may have been a mix up between Calgary Medical Pharmacy and Saigon Pharmacy.

Ms. Huynh confirmed that at no point following the meeting did she tell Alberta Blue Cross that she was not going to do provide percentages. Ms. Huynh never advised Alberta Blue Cross that she did not think she had to provide percentages. She also never told Alberta Blue Cross that she could not provide the information.

Ms. Huynh never contacted Alberta Blue Cross to say she felt using the average was wrong or that using her estimated percentages was wrong. She did not tell them you should not be doing this because her husband had already told them. She never provided Alberta Blue Cross with any information to give them a more accurate percentage.



Ms. Huynh's evidence was that she did not ask for another meeting because up to that point her impression was they did not do a good job, it was lousy, awful, she was tired and because they were asking for something she did not believe in.

Ms. Huynh stated that after she got the final letter from Alberta Blue Cross saying she owed money, she said she phoned the VP of Alberta Blue Cross and tried to talk to him. She said she had concerns, he told her the Report was final, and they were not talking to her anymore. On cross-examination, she agreed that she had already received the Draft Report and that she only made that effort after she got the Notice of Termination.

On cross-examination, Ms. Huynh clarified that 6 or 7 invoices were missed. She said they checked and found those as examples, but that she does not have the resources, nor the time to go through all of the invoices.

Ms. Huynh admitted that Alberta Blue Cross supplied a very large portion of her direct billings but she did not talk to them about the problems. She said that she thought her husband was acting on her behalf, because he had been corresponding with them. If he said something that means she had also said it. However, Ms. Huynh acknowledged that although her husband gave percentages for Saigon Pharmacy, that was his position, but not hers. Her position was that she was refusing to give the percentage. She did not let Alberta Blue Cross know that. She did tell her husband, but he did not communicate that on her behalf.

After the matter became an Alberta College of Pharmacists matter, she still did not go back to find the percentages. She stated she could do it, but she had not done it.

Ms. Huynh indicated that her pharmacy shut down in February 2008 because most of her business came from Alberta Blue Cross, so when they cut her contract it had a big impact on her pharmacy and there was no way she could survive. Ms. Huynh continues to work as a part-time pharmacist at Saigon Pharmacy.

Ms. Huynh indicated that Saipharm Supplies ordered from Astra, Abbott, GSK, Merck, and Schering but never from Prairie or Procurity, only directly from the manufacturer. Saipharm Supplies only sold drugs to Calgary Medical Pharmacy and Saigon Pharmacy.

Ms. Huynh was questioned about the Final Audit Report numbers for Eprex. She had claimed 20 units but had invoices for only 12. She thought Alberta Blue Cross made a mistake on the transmission where she had voided transactions but somehow Alberta Blue Cross did not get the information. Ms. Huynh said she has never done a physical inventory count in her store as she does not have enough resources.

Ms. Huynh was asked how she reconciles her claims to Alberta Blue Cross to the statements sent by Alberta Blue Cross. Ms. Huynh's evidence was that she does not do direct examinations of the reconciliations. She simply checks how much money she is paid. She stated she does not know how to print a report. Mr. Devlin provided at the hearing several unopened envelopes of Alberta Blue Cross statements for both pharmacies.

#### David Elzinga

David Elzinga is a Chartered Accountant and an Investigative and Forensic Accountant (IFA). IFA requires a chartered accounting designation. In contrast, a Certified Forensic Investigator (CFI) does not require an accounting degree.

Mr. Elzinga was engaged to review the Report prepared by Jil Tanguay, BSc, CFI, Manager of Alberta Blue Cross Audit Services, dated July 31, 2007 regarding the matter at hand and provide comments on the Report with respect to whether it complied with audit standards expected in the circumstances.

Mr. Elzinga's evidence was that he considered whether the Report met the applicable GAAS standards. The author of the report was a CFI therefore, Mr. Elzinga also considered the standards applicable to CFI practitioners. In addition, because the Report referred to standards of the CICA and because of the nature of the report, Mr. Elzinga also considered the IFA Standards.

Mr. Elzinga stated that the objective of the audit was to report on the pharmacies' compliance with the Alberta Blue Cross Agreement. However, concerns about the legitimacy of the claims, and concerns about over-billing, changed the objective and focus of the audit to one that was more akin to an investigative or forensic engagement.

Mr. Elzinga described three deficiencies in the audit process: 1) the overall approach used by the Alberta Blue Cross auditors was an analytical procedure, which is part of GAAS, to test the reasonableness of the pharmacy claims. The procedure is meant to test reasonableness and identify anomalies requiring further investigation. It is insufficient to assess a definitive amount owing from that analysis; 2) the percentage of Alberta Blue Cross claims for each drug that was requested from the pharmacies was only an approximation. Further, when the estimate resulted in the pharmacies having quantities greater than that claimed, these drugs were removed from the sample, which resulted in selection bias. The percentages used were approximations and documentation in the Alberta Blue Cross file showed that the pharmacies informed Alberta Blue Cross that these were inaccurate. However, they were still used in the over-billing calculation; 3) when the audit identified anomalies, it changed from assessing overall compliance with the contract to quantification of billing errors. Procedures need to change once you find anomalies; they should become more focused and more in-depth. However, this did not occur and consequently the level of work conducted was insufficient to support the definitive conclusions that the Report reached with respect to quantification of over-billing.

Mr. Elzinga stated that he saw no indication of any confirmation procedures (i.e. sending a confirmation to the patient, requesting whether they received the drug, contact the doctor to see if the prescription was written).

Mr. Elzinga stated that while he did not review all of the calculations, tables and schedules for consistency and accuracy of calculations, he did find errors and inconsistencies within the Report that may result in erroneous conclusions made by Alberta Blue Cross. Examples cited by Mr. Elzinga include: a) Pegetron; unsupported quantity should be 1 not 11. This is an error of 89 percent. b) Nasonex; total quantity claimed was 11,900 and a total of 13,300 was carried forward. c) Elocom Cream; total quantity claimed was 9725 and a total of 10,260 was carried forward. d) Didrocal; total quantity claimed was 35,470 and a total of 41,230 was carried forward. Mr. Elzinga stated the total quantity of these errors is a little over \$10,000.00, which on a recovery of \$92,000.00 is relatively significant.

In cross-examination, Mr. Elzinga indicated he was not aware that Saigon Pharmacy had provided in June and July 2006 accurate percentages to two decimal points along with supporting documentation.

Mr. Elzinga agreed that in reviewing compliance with an Agreement, you assume you start with the point of view that the parties are operating in good faith. Mr. Elzinga was not aware that Alberta Blue Cross had used the percentage methodology in over 100 audits for about six years, Alberta Blue Cross had received this information from most pharmacies when requested, and generally speaking, it is possible to generate this information.

Mr. Elzinga agreed that it was appropriate for Alberta Blue Cross to: a) get access to the invoices and make copies; b) if further invoices were identified to Alberta Blue Cross then Alberta Blue Cross would incorporate them; c) send out a detailed report to the pharmacies with the preliminary findings and allowing the pharmacies to provide additional information; d) when the audit was changed to a combined audit it was fair procedure to look at the invoices again, before issuing the Final Report. Mr. Elzinga stated that percentages would be a second level of back-up. The true back-up documentation are the source documents i.e. invoices, prescriptions, cheques, the documents that start and finish the accounting process.

Mr. Elzinga did not give consideration to the limitations that Alberta Blue Cross was entitled to under the Agreement. He stated that he based his report on the understanding that Alberta Blue Cross asked for estimated percentages or approximate percentages.

### **SUBMISSIONS FROM COUNSEL**

#### **Mr. Jardine**

Mr. Jardine indicated that the Alberta Blue Cross Report and records show Alberta Blue Cross had done a detailed review on the invoices. The evidence establishes a substantial discrepancy for 15 drug products. The members have not shown missing substantial invoices. The longer the audit period, the more accurate the percentage will be and an

audit period of 19 months is quite a long period. Alberta Blue Cross extended the audit period for drugs identified as large purchase inventory for the pharmacies.

Alberta Blue Cross does not provide coverage for all Albertans. Their guess is they supply probably 55 percent in the province. Therefore the argument that once the pharmacies have enough to cover Alberta Blue Cross claims that should be the end of the inquiry, is wrong. Alberta Blue Cross acknowledges that the numbers can vary significantly from pharmacy to pharmacy. It is not unreasonable for Alberta Blue Cross to say that when they look at the total quantity purchased, they have got to also look at the total quantity dispensed. After four days of hearings, the members still have not provided documentation to substantiate the purchase of sufficient amounts for the 15 drug products.

Both Alberta Blue Cross audit witnesses were clear that going into audit compliance they would assume good faith and cooperation. When you are dealing with a third party payer, there is a professional and ethical aspect of good faith and reasonable cooperation to produce the records. Aside from a contractual obligation there is a professional obligation to be honest, open and transparent with third party payers of your patient's prescriptions and to comply with reasonable requests to make that apparent.

Mr. Jardine submitted that the members failed to cooperate in a professional manner with Alberta Blue Cross audit by failing to provide accounts and invoices and complete information for the audit. The members failed to respond clearly to questions raised by Alberta Blue Cross and failed to provide explanation for discrepancies noted.

Mr. Jardine acknowledged that there is no direct evidence of any of the three items in Allegation D.

Mr. Jardine also submitted that it is a professional obligation to maintain sufficient records to be able to respond to reasonable requests and verify that what you billed is correct.

There is an obligation to retain records, patient profiles, tracings and to have the ability to follow what happened and to produce that information. These duties do not extend to

simply dispensing, but to receiving and handling drugs. Record keeping is a fundamental part of the profession of pharmacy.

Mr. Jardine submitted that at the end of a 5 day hearing with professionals, we should not be left without any explanation. There should be records and information that can be produced, that answer the concerns.

Mr. Jardine reviewed the standards and sections of the Code of Ethics and Legislation that he submitted had been breached by the members.

#### Mr. Devlin

Mr. Devlin stated that both of his clients were charged essentially jointly with the same charges, which comes down to a question of unprofessional conduct of a pharmacist. He reminded the Hearing Tribunal that Saigon Pharmacy was jointly owned (76 percent by Mr. Nguyen and 24 percent by Ms. Huynh) whereas Calgary Medical Pharmacy was 100 percent owned by Ms. Huynh. Saipharm Supplies is not a pharmacy, not licensed, and is not the subject of any charges.

Mr. Devlin argued that this is not a collection issue. Rather, the issue is whether what the members did or did not do, amounted to unprofessional conduct. Mr. Devlin stated that Alberta Blue Cross has its rights pursuant to its Agreement and could pursue those in other venues (such as through the court process).

Mr. Devlin stated that it comes down to a question of whether unprofessional conduct occurred, which is a nebulous sort of definition, something that harms the integrity of the profession. The Hearing Tribunal should ask themselves if these members have done something or omitted to do something which has harmed the integrity of the profession.

Mr. Devlin's submission was that there is no particular charge of failing to keep a specific record (a prescription, a copy of sale to a customer, an invoice). He argued that his clients did keep the records required by law and regulations and they had kept and gave all of the documents which they were required to give to Alberta Blue Cross.

Mr. Devlin noted that “living up to the spirit and letter of the law” it is not the same as living up to spirit and letter of the Agreement, which he stated was a totally separate matter. The case is ruled by the Agreement between independent parties. It is a contract, that is all. Alberta Blue Cross does not have special powers simply because it is supported or indemnified by the government.

Mr. Devlin stated this was a test case because whatever the Hearing Tribunal decides may very well determine what the rights are, as between Alberta Blue Cross and the pharmacies in the province of Alberta.

Mr. Devlin submitted that Alberta Blue Cross only asked for approximate percentages. Mr. Nguyen first provided rounded off percentages, then later provided more accurate ones. He even provided Alberta Blue Cross with printouts to support those percentages. Mr. Tanguay agreed that these percentages were accurate.

Mr. Devlin stated that Ms. Huynh did provide percentages that were obviously rounded off. Mr. Devlin submitted that Ms. Huynh provided estimates that Alberta Blue Cross had no right to ask for. The percentages she gave were clearly rough estimates considering the rounded off figures provided. The only exception to that was the percentage for Eprex, where Ms. Huynh stated that she had only 1 patient on this medication who was an Alberta Blue Cross client. Mr. Devlin stated that Ms. Huynh’s position remained the same throughout which was that she did not agree with the way Alberta Blue Cross was doing this and she did not feel she had any obligation to go further and provide specific percentages. Mr. Devlin says that Ms. Huynh did not have a professional obligation to tell Alberta Blue Cross she was not giving them something they were not entitled to.

Mr. Devlin submitted that the evidence is consistent with two people trying to run small pharmacies and having a great deal of difficulty keeping up with the various records and producing the invoices. He says that there is and never was anything unprofessional or dishonest going on.

## **FINDINGS OF FACT**

The Hearing Tribunal makes the following findings of fact from the evidence and Exhibits presented at the hearing.

Both Mr. Nguyen and Ms. Huynh are pharmacists. Mr. Nguyen is the licensee of Saigon Pharmacy and Ms. Huynh was the licensee of Calgary Medical Pharmacy (now closed).

The members had Agreements through their respective pharmacies with Alberta Blue Cross. Pursuant to the terms of those Agreements, Alberta Blue Cross was entitled to conduct audits of the claims submitted.

Pursuant to the terms of the Agreements, Alberta Blue Cross conducted audits of the two pharmacies for claims submitted from November 1, 2003 to June 30, 2005.

Initial on-site audits were conducted on August 3 and 4, 2005 and analysis showed total drug quantity claimed exceeded the quantity the pharmacies had available for particular drugs. This resulted in an initial Draft Report in May 2006 and then a discovery meeting on July 6, 2006.

The Draft Report was provided to the members for their review and comment.

During the discovery meeting on July 6, 2006, the pharmacies advised Alberta Blue Cross that they received drug products from Saipharm Supplies, a company run by the owners of the two pharmacies. Saipharm Supplies sold drug products to both pharmacies and it was indicated at this meeting that there might be instances where the invoices from Saipharm Supplies for the drug product may not have accurately shown which pharmacy the drug products were sold to.

Alberta Blue Cross decided that a combined audit with a complete review of Saigon Pharmacy, Calgary Medical Pharmacy and invoices for purchases made by Saipharm Supplies was required. The members agreed to this process.

In August 2006, Alberta Blue Cross returned for on-site visits to the pharmacies to review documentation for the audit period November 1, 2003 to June 30, 2005.



The Final Audit Report from Alberta Blue Cross concluded that there were 15 drug products where the total drug quantity claimed by the pharmacies exceeded the total drug product quantity available.

The members produced five or six additional invoices at the hearing. This was the first time Alberta Blue Cross had been presented with the additional invoices.

Several repeated requests for feedback or additional information were made by Alberta Blue Cross to the members.

Mr. Nguyen did provide accurate percentages for Saigon Pharmacy.

Ms. Huynh initially provided estimated percentages for Calgary Medical Pharmacy. At no point did Ms. Huynh provide more accurate percentages. At the discovery meeting, Ms. Huynh indicated she had not updated her software, she did not know how to access the information and she had to ask her husband.

At some point, Ms. Huynh decided she was not going to provide accurate percentages. However, at no point did Ms. Huynh advise Alberta Blue Cross that she was not going to provide accurate percentages.

The pharmacies had from May 2006 to March 2007 to review the Alberta Blue Cross draft audit findings and provide any additional information or documents to support any concerns they might have had with the audit.

There was no substantive communication from Mr. Nguyen after the combined audit was received in March 2007, other than to say Alberta Blue Cross was wrong. Mr. Nguyen did not provide additional invoices and did not identify the calculation errors he had talked about.

Alberta Blue Cross sent out a notice in March 2007 and the Final Audit Report was issued on July 31, 2007. Alberta Blue Cross got no response from the members.

## **DECISION**

**A: During the period from November 1, 2003 to June 30, 2005, there were substantial discrepancies between the quantities of 15 drug products billed to Alberta Blue Cross by the two pharmacies and the inventory available to the pharmacies to dispense prescriptions for these drug products.**

The Hearing Tribunal finds Allegation A to be proven in 4 of the 15 drug products. The Hearing Tribunal finds that the evidence does not establish, on a balance of probabilities that the Allegation is proven for the remaining 11 drug products.

Due to shared purchasing practices by both pharmacies via Saipharm Supplies, the members could not provide accurate amounts of each drug purchased by each individual pharmacy. During the audit process, Alberta Blue Cross and the members mutually decided that combining the two pharmacies would be the fairest way to perform the audit.

The Final Audit Report is found at Exhibit 3, Tab 2B. The final numbers are a combination of the numbers for both pharmacies. The calculations used by Alberta Blue Cross relied on estimated information from Calgary Medical Pharmacy and the actual stated percentages provided by Mr. Nguyen for Saigon Pharmacy. In order to determine if the pharmacies purchased enough drug products to support their business, Alberta Blue Cross requested percentage of business for each of the drug products in their audit. The Final Report is based on actual percentages for Saigon Pharmacy (License #36) provided by Mr. Nguyen and estimated percentages for Calgary Medical Pharmacy (License #1328) provided by Ms. Huynh. Appendix A of the Final Audit Report (Exhibit 3, Tab 2B, page 28) lists the 15 drug products, the quantities claimed to Alberta Blue Cross by each of the pharmacies and the combined percentage of total volume for the claims made by the pharmacies.

The percentages were used by Alberta Blue Cross to gauge the total business of both pharmacies for each drug product. Alberta Blue Cross compared total business to the total product purchased. Alberta Blue Cross then determined, based on the above

information, what proportion of the each drug product purchased was available to their plan members to support the claims made.

Because the percentages used by Alberta Blue Cross were estimated percentages, the Hearing Tribunal found that it could not rely on this calculation to determine on a balance of probabilities if Allegation A had been proven.

The Hearing Tribunal undertook a calculation to test the Allegation for the fifteen drug products identified by the Alberta Blue Cross Final Audit Report. The Hearing Tribunal accepted Mr. Nguyen's percentages of business as being accurate and accepted that Ms. Huynh's percentages were only estimates. Based on evidence presented, the Hearing Tribunal could not determine the accurate percentage of business for Ms. Huynh's pharmacy. In order to give the members the highest possible benefit of the doubt, the Hearing Tribunal based its findings on the assumption that Ms. Huynh's claims to Alberta Blue Cross were her entire business to all parties (i.e. her percentage of business to ABC would be 100 percent).

By her own admission Ms. Huynh admitted her overall business was about 80 percent with Alberta Blue Cross (Transcript, page 607). The Hearing Tribunal also heard testimony from Mr. John Richardson that it was not reality to say that 100 percent of a pharmacy's business is with Alberta Blue Cross members (Transcript, page 42). As such, this approach provides the most benefit of the doubt to the members by giving Ms. Huynh the best case scenario for her claims. The method for determining whether there was a substantial discrepancy in the drug products is described in detail below.

The Hearing Tribunal used the information from Appendix A of the Alberta Blue Cross (ABC) Final Audit Report (Exhibit 3, Tab 2B, page 28) as follows:

- The quantity of drug claimed to ABC by License #1328 (Calgary Medical Pharmacy)
- The quantity of drug claimed to ABC by License #36 (Saigon Pharmacy)

- The percentage of volume from License #36 (Saigon Pharmacy) (Mr. Tanguay's evidence was that he received updated percentages from Mr. Nguyen and subsequently verified them with Mr. Nguyen at a discovery meeting: Transcript, pages 245-246).

The Hearing Tribunal did not use the following information from Appendix A of the Final Audit Report:

- The percentage of volume from License #1328 (Calgary Medical Pharmacy). The Hearing Tribunal heard evidence that the percentages were estimates only. (Evidence of Jil Tanguay, Transcript, page 293 and page 294)
- The combined percentage of volume. Given that this used the estimated information from Mrs. Huynh, the Hearing Tribunal did not rely on this information.

The Hearing Tribunal also accepted the following information summarized in Appendix B in the Alberta Blue Cross Final Report (Exhibit 3, Tab 2B, page 29):

- Total quantity purchased by both pharmacies (based on invoices gathered from the member pharmacies over the course of the audit).

Documents submitted by Alberta Blue Cross in Exhibit 8 were relied on as they verified that the drug product percentages provided by Mr. Nguyen (for those drugs addressed in Exhibit 8) were for the course of the audit period. Where possible, the total number of claims to all sources was used in the calculations outlined below to confirm the accuracy of the percentages provided by Mr. Nguyen.

Determination of whether there is a substantial discrepancy:

- Mr. Nguyen provided an accurate picture of his total business to Alberta Blue Cross with his updated percentages and supporting documentation. The total business was found using the actual documents in Exhibit 8 when possible or using ratios based on the accurate percentages provided by Mr. Nguyen:

$$\frac{\text{ABC Claims}}{\text{Total Claims}} = \frac{\text{ABC percent of business}}{100 \text{ percent}}$$

- Mrs. Huynh did not provide an accurate picture of her total business to Alberta Blue Cross. The Hearing Tribunal is giving Mrs. Huynh the benefit of the doubt, and is for the purpose of finding the best-case scenario of products sold by her pharmacy, taking her claims to Alberta Blue Cross as 100 percent of her total business. That is, the Hearing Tribunal is assuming that her entire business of the 15 drug products in question was sold to no one else other than Alberta Blue Cross.
- Mr. Nguyen's total business and Mrs. Huynh's claims to Alberta Blue Cross were combined to determine the total amount of each drug sold by the two pharmacies.
- That amount was then compared to the total quantity purchased (from Exhibit 3, Tab 2B, Appendix B) to see if there was a substantial discrepancy.

The Hearing Tribunal found that the following 3 drug products from the 15 identified had substantial discrepancies based on the calculations done as set out above:

**1) Zovirax 5 % Topical Ointment:**

519 claimed by Calgary Medical Pharmacy (Exhibit 3, Tab 2B, page 28) and assumed to be total business + 1,883 sold by Saigon pharmacy (Exhibit 8, fax page 011/014) = 2,402 total sold by both pharmacies.

The combined purchased amounts from invoices (Appendix B of the ABC Final Audit Report, Exhibit 3, Tab 2B, page 29) is 2,116.

Subtracting the amount sold from the amount purchased results in negative 286 (2,116 – 2,402). The Hearing Tribunal concludes that the members sold at least 286 more units of product, compared with total purchased based on the submitted invoices. The Hearing Tribunal finds that this is a substantial discrepancy.

**2) Losec 20mg Sustained Release Tablets:**

Mr. Nguyen's total business to all parties was determined by the following calculations:

|                               |   |  |
|-------------------------------|---|--|
| <u>28,070 (claims to ABC)</u> | = | <u>61.69 (ABC portion of business)</u> |
| Total Business to all parties |   | 100 (total business to all parties)    |
| Total business to all parties | = | $\frac{(28,070 \times 100)}{61.69}$    |
| Total business to all parties | = | 45,502                                 |

45,502 sold by Saigon pharmacy plus the 8,788 sold to Alberta Blue Cross by Calgary Medical Pharmacy = 54,290 total sold by both pharmacies.

The combined purchased amounts from invoices (Appendix B of the Final Audit Report, Exhibit 3, Tab 2B, page 29) is 41,868.

Subtracting the amount sold from the amount purchased results in negative 12,422 (41,868 – 54,290). The Hearing Tribunal concludes that the members sold at least 12,422 more units, compared with total purchased based on the submitted invoices. The Hearing Tribunal finds that this is a substantial discrepancy.

**3) Livostin 0.5mg/ml (Base) Ophthalmic Suspension**

Mr. Nguyen's total business to all parties was determined by the following calculations:

|                               |   |  |
|-------------------------------|---|--|
| <u>530 (claims to ABC)</u>    |   | <u>52.68 (ABC portion of business)</u>                   |
| Total Business to all parties |   | 100 (total business to all parties)                      |
| Total business to all parties | = | $\frac{530 \times 100}{52.68}$ (ABC portion of business) |
| Total business to all parties | = | 1,006  |

1,006 sold by Saigon pharmacy plus the 290 sold to Alberta Blue Cross by Calgary Medical Pharmacy gives a combined sold of 1,296 units by both pharmacies.

The combined purchased amounts from invoices (from Appendix B of the Final Audit Report, Exhibit 3, Tab 2B, page 29) is 1,190.

Subtracting the amount sold from the amount purchased results in negative 106 (1,190 – 1,296). The Hearing Tribunal concludes that the members sold at least 106 more units of product, compared with total purchased based on the submitted invoices. The Hearing Tribunal finds that this is a substantial discrepancy.

#### **4) Other Drugs – Except Eprex**

The Hearing Tribunal examined the remaining drug products in question (except Eprex) in the same manner as outlined above for the first 3 medications listed (Zovirax, Losec, Livostin). Attached as Appendix A to this decision are the calculations for the 11 drug products.

The Hearing Tribunal found that there were not substantial discrepancies for the 11 remaining drug products.

#### **5) Eprex:**

Eprex was dispensed only by Ms. Huynh during the time period of the audit. The Hearing Tribunal reviewed Ms. Huynh's evidence regarding the discrepancy of Eprex, which is detailed in Allegation E below. The Hearing Tribunal did not accept Ms. Huynh's explanation of the discrepancy of Eprex claimed to Alberta Blue Cross.

The Hearing Tribunal understands the concept of voiding a transaction to Alberta Blue Cross; however, it does not accept the great variance in claims sent versus claims paid by Alberta Blue Cross. Ms. Huynh was paid for 20 units and had invoices supporting the purchase of only 12 units. Considering that this was a single drug, a unique dosage form (injection), involving a single patient, the Hearing Tribunal decided that Ms. Huynh gave an inadequate explanation for the discrepancy. This is the fourth drug of the 15 that the Hearing Tribunal found a substantial discrepancy between the quantity billed and inventory available.

## **Conclusion on Allegation A**

The Hearing Tribunal finds that due to the substantial discrepancies as set forth above, Allegation A is proven for 3 of the 15 drug products with respect to Mr. Nguyen and 4 of the 15 drug products with respect to Ms. Huynh.

Despite the lack of detailed information on Calgary Medical Pharmacy's business, the Hearing Tribunal found substantial discrepancies in the items sold by the pharmacies compared to stock they purchased for Zovirax 5% topical ointment, Losec 20mg sustained release tablets, Livostin 0.5mg/ml (Base) Ophthalmic suspension) and Eprex. These discrepancies were found even when allocating the best possible scenario for Calgary Medical Pharmacy, as the members did not present evidence on Calgary Medical Pharmacy's actual business. The true discrepancies may be larger than illustrated here, considering the evidence from several witnesses that it was highly unlikely that 100 percent of Calgary Medical Pharmacy's business was only to Alberta Blue Cross on all of these drug products.

The Hearing Tribunal is concerned about the magnitude of discrepancy identified for the 4 drug products identified and felt it is not acceptable conduct for professionals to have such great unexplained discrepancies. As a self-regulated profession, pharmacists must be forthright in dealing with all aspects of practice (with both the public and third party payers). The Hearing Tribunal finds that this conduct breaches section 1(pp)(ii) and (xii) of the *Health Professions Act*.

The Hearing Tribunal finds that the members breached Principle VI of the Code of Ethics – A pharmacist acts with honesty and integrity. The Guidelines for Interpretation state at section 4: Pharmacists are honest in professional business dealings including those with clients, third party payers and suppliers of drugs, non-prescription medications and health related products.

The Hearing Tribunal finds that the substantial discrepancies and the complete lack of explanation for them constitutes conduct that harms the integrity of the regulated profession, contrary to section 1(pp)(xii) of the *Health Professions Act*.



For the reasons noted above, the Hearing Tribunal finds that Allegation A has been proven against both members and constitutes unprofessional conduct.

**B. During the course of the audits conducted by Alberta Blue Cross, the pharmacies were unable to provide documentation to substantiate the purchase of sufficient amounts of 15 drug products (out of the 35 sampled) that were documented as dispensed to a client and submitted to Alberta Blue Cross for payment.**

Although the wording of the charge is specific to the time period of the audit, Mr. Jardine invited the Hearing Tribunal to expand Allegation B to include the failure by the members to provide documentation at the hearing. In Allegation A, the Hearing Tribunal concluded that the members could not substantiate the purchase of sufficient amounts for 4 of the 15 drug products, based on evidence provided up to, and during, the hearing.

In addition, the Hearing Tribunal finds that Allegation B, as it relates to the course of the audit, is addressed in Allegation C dealing with a failure to cooperate with Alberta Blue Cross in the audit, and Allegation E, which addresses the failure to maintain records. The Hearing Tribunal interprets the word “unable” in Allegation B as either being a refusal to provide the documentation (which is included in Allegation C as a failure to cooperate) or an inability to do so based on a lack of documentation (which is included in Allegation E as a failure to maintain records).

For these reasons, the Hearing Tribunal finds that it is not necessary to rule on this Allegation as the particulars for this Allegation are addressed in the other allegations. The Hearing Tribunal sees this charge as being duplicated in Allegations A, C and E.

**C. The said pharmacies and LOI NGUYEN and TUYEN HUYNH as Licensees and Pharmacy Managers failed to cooperate in professional manner with the Alberta Blue Cross audit by failing to provide accounts and invoices and complete information for the audit, by failing to respond clearly to questions raised by the Alberta Blue Cross representatives conducting the audit, and**

**by failing to provide explanations for the discrepancies noted by the audit team.**

The Hearing Tribunal clearly recognizes that there is an issue of interpreting the audit rights of Alberta Blue Cross in sections 5.7 and 5.10 of the Alberta Blue Cross Agreement and the corresponding obligations of members with regard to percentage of business. The Hearing Tribunal reviewed and considered the evidence of percentages. The Hearing Tribunal finds that the obligation to provide accurate percentages under the Agreement has not been clearly established from the evidence. However, the Hearing Tribunal finds that the obligation to disclose percentages of business is a matter of contract interpretation by the courts, and not within the role of the Hearing Tribunal.

The Hearing Tribunal makes no finding on whether the members had an obligation to disclose their accurate percentage of business information to Alberta Blue Cross. Rather, the Hearing Tribunal is reviewing the Allegation with a view to determining the professional responsibility of a member in dealing with a third party provider.

Mr. Nguyen

The Hearing Tribunal heard evidence that Mr. Nguyen provided accounts, invoices and percentages as requested by the audit team at Alberta Blue Cross. Mr. Nguyen chose to provide accurate percentages for his pharmacy. Mr. Tanguay's evidence was that there was nothing he could think of that amounted to professional misconduct or unprofessional conduct with respect to Mr. Nguyen (Transcript, page 291). Although this is ultimately a determination for the Hearing Tribunal, Mr. Tanguay's evidence, as a representative of the complainant Alberta Blue Cross, is noteworthy.

The Hearing Tribunal finds that Allegation C against Mr. Nguyen is not founded. The Hearing Tribunal finds that Mr. Nguyen cooperated in a professional manner with Alberta Blue Cross by providing the information and responses to the audit team during the course of the audit process. Mr. Nguyen did not provide explanations for the discrepancies noted by the audit team. This issue arises from the joining of the pharmacies in the audit and has already been addressed in Allegation A.

## Ms. Huynh

The Hearing Tribunal finds that Ms. Huynh failed to cooperate with Alberta Blue Cross. At the July 6, 2006 meeting with Alberta Blue Cross, she told the auditors that she would provide more accurate percentages to the audit team (Transcript, page 586). However, Ms. Huynh's evidence was that she never went back to Alberta Blue Cross to advise them that she was not going to provide the information (Transcript, pages 586 and 599). Ms. Huynh's evidence was that she did not ask for another meeting with Alberta Blue Cross to explain what mistakes there were in the second draft "because they didn't do a good job, this is lousy, this is awful, you know, I am tired, because they are asking for something I don't believe in." (Transcript, page 588)

The Hearing Tribunal heard evidence from Ms. Huynh that she thought her husband was acting on her behalf. She stated: "What I thought is my husband act on my behalf, because he has been corresponding to them. If he says – that means I already said it." (Transcript, page 597) However, she knew the Mr. Nguyen had never communicated to Alberta Blue Cross that accurate percentages would not be provided for Calgary Medical Pharmacy. She stated at the hearing: "You know, that is my position. He said, well, you have got your pharmacy and I have got my pharmacy, so that is your decision." (Transcript, pages 599-600)

The Hearing Tribunal finds that a member has a professional obligation to communicate with Alberta Blue Cross in an honest and forthright manner. The operation of Calgary Medical Pharmacy is Ms. Huynh's responsibility. Although she can get assistance to provide responses to Alberta Blue Cross, it is her responsibility to provide adequate responses. As such, although her husband assisted her on the issue of providing information to Alberta Blue Cross for Calgary Medical Pharmacy, the duty to communicate with Alberta Blue Cross is Ms. Huynh's responsibility.

Ms. Huynh's evidence was that she does not think that she has to give Alberta Blue Cross a percentage (Transcript, pages 610-611). It is unclear if Ms. Huynh initially intended to provide accurate percentages and changed her mind or whether it was always her

intention to not provide these. In any event, the Hearing Tribunal finds that Ms. Huynh had an obligation to disclose her position to the audit team.

Ms. Huynh had a professional responsibility to communicate with Alberta Blue Cross during the course of the audit. Once she decided she would not provide percentages, she had a responsibility to communicate that decision. Instead, Ms. Huynh advised Alberta Blue Cross she would provide accurate percentages and changed her position without advising Alberta Blue Cross. Alberta Blue Cross was left in limbo during the audit process without knowing what or when information would be communicated.

The Hearing Tribunal finds that Allegation C is proven with respect to the conduct by Ms. Huynh.

As noted above, the Hearing Tribunal makes no finding as to whether or not a member is obligated to disclose their percentage of business in the course of an audit. Rather, the Hearing Tribunal is reviewing the Allegation with a view to determining the professional responsibility of a member in dealing with a third party provider. The Hearing Tribunal finds that there is a duty to cooperate with a third party provider with a sense of openness and of communicating in a professional manner.

For the reasons above, the Hearing Tribunal is satisfied that the conduct of Ms. Huynh contravenes the Code of Ethics, principle VI – A pharmacist acts with honesty and integrity. Section 4 of the Guidelines for Interpretation state: Pharmacists are honest in professional dealings including those with clients, third party payers and suppliers of drugs, non-prescription medications and health related products.

In considering Ms. Huynh's conduct, the Hearing Tribunal finds that the conduct is on the lower end of the spectrum of unprofessional conduct.

**D. Based on the unexplained discrepancies in respect to the 15 drug products named in the Alberta Blue Cross audit, Saigon Pharmacy (License #36) and LOI NGUYEN and Calgary Medical Pharmacy (License #1328) and TUYEN HUYNH may:**

- i. have billed Alberta Blue Cross for drug products that were not provided to the pharmacies' customers; or**
- ii. have failed to provide patients with drug products that had been prescribed to them; or**
- iii. have obtained drug products from unauthorized and undocumented sources.**

At the conclusion of the hearing, counsel for the College acknowledged that no evidence had been presented to support this Allegation. The Hearing Tribunal has heard no direct evidence to suggest any of the three items in Allegation D occurred, thus this Allegation is unproven.

Mr. Devlin raised a concern about this Allegation being before the Hearing Tribunal without any evidence to support it. The Hearing Tribunal acknowledges Mr. Devlin's concerns. However, given the findings and that the College conceded that there was no direct evidence to support the Allegation, the Hearing Tribunal confirms that no consideration was given to this Allegation in the findings made on the remaining Allegations.

**E. Based on the discrepancies in respect to the 15 drug products named in the Alberta Blue Cross audit, and the failure of the two pharmacists or their pharmacies to provide documentation to explain these discrepancies and to support the quantities claimed from Alberta Blue Cross of the 15 drug products in question, Saigon Pharmacy (License #36) and LOI NGUYEN and Calgary Medical Pharmacy (License #1328) and TUYEN HUYNH have:**

- i. failed to maintain adequate and complete records of the drug products acquired by the pharmacies; and**
- ii. failed to maintain records sufficient to provide verification and reconciliation of the quantities of the 15 drug products acquired by the pharmacies with the quantities of those 15**

**drug products shown as dispensed to patients and submitted to  
Alberta Blue Cross for payment.**

The Hearing Tribunal recognizes that the members provided invoices for the drug products. However, it was not clear from the invoices what proportion of the drugs were purchased by each pharmacy via the related party, Saipharm, a company set up by the members to act as a wholesaler. The Hearing Tribunal finds that the members were not able to properly differentiate the drug flow between the two pharmacies and the supplier Saipharm (Tab 5, Exhibit 9, page C3.3).

Alberta Blue Cross wrote letters to Mr. Nguyen and Ms. Huynh dated January 9, 2006 (Exhibit 9, Tabs 2 and 6) outlining concerns about products invoiced to either Saigon Pharmacy or Calgary Medical Pharmacy by Saipharm and the accuracy of paperwork between the related parties. There was a discovery meeting on July 6, 2006 between Alberta Blue Cross and the members. The evidence of that meeting establishes that the members agreed with Alberta Blue Cross that a combined audit (with a complete review of Saigon Pharmacy and Calgary Medical Pharmacy and purchases made by Saipharm) was required because it could not be determined how much of the drug products were purchased by each pharmacy. A subsequent letter from Alberta Blue Cross dated July 14, 2006 (Exhibit 9, Tab 15), supports that the parties agreed to combine the audit. At the hearing, Ms. Huynh stated: "Maybe we mix up between Calgary Medical and Saigon." (Transcript, page 581)

Considering this evidence, the Hearing Tribunal finds that the members failed to keep accurate and complete records of the drug products acquired by each of the pharmacies. The responsibility rested with both members to ensure they maintained adequate and complete records of drug products acquired by each pharmacy. The Hearing Tribunal finds that both members failed to meet this responsibility.

Members have a duty to maintain records and a responsibility to be able to verify and reconcile the records. The Hearing Tribunal was shown evidence of unopened reconciliations that Alberta Blue Cross provided for both pharmacies (Transcript, pages 615 to 617). Mr. Devlin stated "These are statements that they have not even opened,

because they just relied on Blue Cross to make the payments.” (Transcript, page 617) Mr. Devlin confirmed that the statements discussed above were for both pharmacies (Transcript, page 776).

The question was asked to Ms. Huynh: “Do you do reconciliations daily or weekly? You just send claims through at random and hope you get money for them?” Ms. Huynh replied: “Yes, that is all I do. I don’t do a direct examination. Maybe – well, how come – I don’t know.” (Transcript, page 615) Ms. Huynh was asked if she has a process to verify that the direct deposit from Alberta Blue Cross matches remotely what she has sent to them as claims. Her response was: “I have a process – like, I know – I check how much money they pay me.” She is asked “Against what, what do you check it against?” Her reply: “I don’t know, because I don’t know how to print a report.” (Transcript, page 616)

No further evidence on the means of verification and reconciliation was presented. Only the members have the information to verify and reconcile the amount of drug products – it was not information that was independently accessible at the hearing. Both members demonstrated that they failed to maintain records sufficient to provide verification and reconciliation of the quantities of the 15 drug products acquired by the pharmacies, dispensed to the patients and submitted to Alberta Blue Cross for payment.

The Hearing Tribunal also heard evidence from Mrs. Huynh with respect to her claims to Alberta Blue Cross for the drug Eprex 20,000 unit/ml injectable. The evidence was that 12 units of this drug were purchased and 20 units were claimed to Alberta Blue Cross being dispensed to the patient. Had Ms. Huynh properly maintained and reconciled her records, a discrepancy in the amount claimed would have been identified. This was a single drug item for a single patient. The Hearing Tribunal sees the ability to access a single patient profile and identify the drug dispensed for a given period as a basic, fundamental skill of a pharmacist. Accessing and interpreting a patient profile is a skill that every licensed pharmacist must be able to do.

Ms. Huynh’s evidence with respect to the Eprex was: “I think that is a mistake on the transmission, you know, on the computer, right, when I do the void. In that particular

instance I do the void on my claim, right, and on my computer it showed that it was voided, but, you know, I don't know -- somehow Blue Cross didn't get that information... You know, on my system -- I don't know, like, there is no way I can check if the transmission is done or not at that time. Now maybe they have more -- the updated version now, you can know. With my computer knowledge I don't know -- there is no way I can verify." (Transcript, pages 612-613). Given that Ms. Huynh has been practicing as a pharmacist since 1990, she should have acquired the knowledge and skill set necessary to understand how to reconcile her claims to a third party payer.

For the reasons outlined above, the Hearing Tribunal finds that Allegation E has been proven for Ms. Huynh and for Mr. Nguyen.

The Hearing Tribunal finds that the members demonstrate insufficient skill or knowledge with regard to record keeping, when considering the flow of drug products between Saigon pharmacy, Calgary Medical Pharmacy and Saipharm Supplies. This conduct breaches section 1(pp)(i) of the *Health Professions Act*, in that it displays a lack of skill or knowledge in the provision of professional services. It also contravenes section 1(pp)(ii) of the *Health Professions Act*, in that it breaches standards of practice, in particular, the Standards for Operating Licensed Pharmacies, section 73, 74 and 75. Section 73 addresses the standard for transaction records. The evidence establishes that the members, as licensees did not ensure that their transaction records were retained. In addition, Ms. Huynh did not have the necessary systems to store and retrieve all documents required to be kept or systems in place that were capable of reporting the information required in a patient record, or reporting the information required in a transaction, or capable of collating and generating reports in breach of section 75 of the Standards. The Hearing Tribunal finds that Ms. Huynh's lack of skill or knowledge necessary to use her computer system is a breach of these Standards.

The Hearing Tribunal finds that the conduct of the members is in breach of the *Health Professions Act*, sections (1)(pp)(i) and (ii) and a breach of the Standards for Operating Licensed Pharmacies and constitutes unprofessional conduct.



## **SUMMARY OF DECISION**

The Hearing Tribunal finds that Allegation A has been proven against both members (for 3 of the 15 drugs products for Mr. Nguyen and for 4 of the 15 drug product for Ms. Huynh) and that this conduct constitutes unprofessional conduct.

The Hearing Tribunal finds that Allegation B is encompassed in Allegations A, C and E and thus makes no separate findings on this Allegation.

The Hearing Tribunal finds that Allegation C has been proven with respect to Ms. Huynh only and that her conduct constitutes unprofessional conduct. Allegation C is dismissed against Mr. Nguyen.

The Hearing Tribunal finds that Allegation D is not proven against either of the members and this Allegation is dismissed in its entirety.

The Hearing Tribunal finds that Allegation E has been proven against both Mr. Nguyen and Ms. Huynh, and that the conduct of the members constitutes unprofessional conduct.

The Hearing Tribunal is prepared to hear submissions from the parties on the appropriate orders to be made under section 82 of the *Health Professions Act*.

Dated this 17 day of May, 2010

Signed on behalf of the Hearing Tribunal.

  
Debbie Santos, Chair

## Appendix A

### Summary of Quantities Sold and Purchased (using exhibits 3, 8 and 9)

| <u>Drug Name</u>                       | <u>CMP<sup>1</sup></u> | <u>SG<sup>2</sup></u> | <u>Combined Sold<sup>2</sup></u> | <u>Combined Purchased<sup>4</sup></u> | <u>Difference<sup>5</sup></u> |
|--|------------------------|-----------------------|----------------------------------|---------------------------------------|-------------------------------|
| Advair 250mcg Aerosol                  | 2880                   | 1080                  | 3960                             | 3840                                  | -120                          |
| Nasonex 50mcg/dose Spray               | 5180                   | 28645                 | 33825                            | 43120                                 | 9295                          |
| Altace 10mg Capsule                    | 8210                   | 12580                 | 20790                            | 24500                                 | 3710                          |
| Zovirax 5% Ointment                    | 519                    | 1883                  | 2402                             | 2116                                  | -286                          |
| Losec 20mg SR tablets                  | 8788                   | 45502                 | 54290                            | 41868                                 | -12422                        |
| Pantoloc 40mg EC tab                   | 10323                  | 9625                  | 19948                            | 21800                                 | 1852                          |
| Prevacid 30mg SR Capsule               | 19435                  | 10818                 | 30253                            | 35600                                 | 5347                          |
| Elocom 0.1% Cream                      | 2475                   | 17631                 | 20106                            | 21240                                 | 1134                          |
| Ultravate 0.05% Cream                  | 1790                   | 2450                  | 4240                             | 7050                                  | 2810                          |
| Livostin 0.5mg/ml Opth. Susp.          | 290                    | 1006                  | 1296                             | 1190                                  | -106                          |
| Flovent HFA 250mcg/dose                | 5640                   | 28808                 | 34448                            | 34620                                 | 172                           |
| Didrocal 400mg/500mg tab               | 5400                   | 38335                 | 43735                            | 48870                                 | 5135                          |
| Elocom 0.1% Lotion                     | 315                    | 360                   | 675                              | 1140                                  | 465                           |
| Pegatron 200mg Cap/80mcg/0.5ml inj kit | -                      | 60                    | 60                               | 59                                    | -1                            |
| Epex 20,000 unit/ml Injectable         | 20                     | -                     | 20                               | 12                                    | -8                            |

### Footnotes:

- CMP (Calgary Medical Pharmacy) values are actual claims made to ABC from Appendix A of the Final Report.

To give the members the fullest benefit of the doubt the numbers are used in these calculations as if the only party the pharmacy deals with is ABC (i.e. 100% of her business of these drugs is to ABC)
- SG (Saigon Pharmacy) values are based on actual claims and accurate percentages provided, except for Altace and Ultravate, where actual totals from their computer printouts were used (exhibit 8). All calculations are listed below (all percentages are listed as a decimal i.e. 66.67% is shown here as 0.6667):

|                          |   |
|--------------------------|---|
| Advair 250mcg Aerosol    | 720 {claims to ABC} / 0.6667 {confirmed, accurate percentage of business} = 1080    |
| Nasonex 50mcg/dose Spray | 6720 {claims to ABC} / 0.2346 {confirmed, accurate percentage of business} = 28645  |
| Altace 10mg Capsule      | 12580 {total dispensed based on exhibit 8 faxes to ABC}                             |
| Zovirax 5% Ointment      | 672 {claims to ABC} / 0.3569 {confirmed, accurate percentage of business} = 1883    |
| Losec 20mg SR tablets    | 28070 {claims to ABC} / 0.6169 {confirmed, accurate percentage of business} = 45502 |
| Pantoloc 40mg EC tab     | 6292 {claims to ABC} / 0.6537 {confirmed, accurate percentage of business} = 9625   |

|  |   |
|--|---|
| Prevacid 30mg SR Capsule               | 7144 {claims to ABC} / 0.6604 {confirmed, accurate percentage of business} = 10818  |
| Elocom 0.1% Cream                      | 7250 {claims to ABC} / 0.4112 {confirmed, accurate percentage of business} = 17631  |
| Ultravate 0.05% Cream                  | 2450 {total dispensed based on exhibit 8 faxes to ABC}                              |
| Livostin 0.5mg/ml Opth. Susp.          | 530 {claims to ABC} / 0.5268 {confirmed, accurate percentage of business} = 1006    |
| Flovent HFA 250mcg/dose                | 17040 {claims to ABC} / 0.5915 {confirmed, accurate percentage of business} = 28808 |
| Didrocal 400mg/500mg tab               | 30070 {claims to ABC} / 0.7844 {confirmed, accurate percentage of business} = 38335 |
| Elocom 0.1% Lotion                     | 225 {claims to ABC} / 0.6250 {confirmed, accurate percentage of business} = 360     |
| Pegetron 200mg Cap/80mcg/0.5ml inj kit | 54 {claims to ABC} / 0.900 {confirmed, accurate percentage of business} = 60        |

3. Added CMP column to SG column to obtain this total. This total is a best case scenario for the pharmacies as it is using

confirmed quantities only (not estimated percentages).

4. Used the appendices in the ABC final report to obtain the amounts purchased, the summary is in Appendix B (page 29, tab 2B, exhibit 3)

5. Subtracted combined sold from combined purchased to determine if sufficient inventory was on hand to support their total business. Negative figures (in bold print) indicate that there is not enough stock purchased to support their business.