

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**Mohamed Ibrahim**  
**Registration Number 9354**

**DECISION OF THE HEARING TRIBUNAL**

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Mohamed Ibrahim. In attendance on behalf of the Hearing Tribunal were Teryn Wasileyko (Pharmacist), Hugo Leung (Pharmacist), Jim Lees (Public Member) and chair, Chris Heitland (Pharmacist). Ms. Ayla Akgungor, independent counsel to the Hearing Tribunal was also in attendance.

The hearing took place on July 10, 2018 at the Alberta College of Pharmacy<sup>1</sup> located at 8215 112 Street in Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were Mr. James Krempien, Complaints Director; Mr. David Jardine, counsel for the Complaints Director, and Annabritt Chisholm, student at law. Mr. Mohamed Ibrahim was also in attendance and represented by Ms. Karen Smith, counsel for Mr. Ibrahim and Heather Frydenlund, student at law. The hearing was also observed by Monty Stanowich, Compliance Officer with the Alberta College of Pharmacy and [REDACTED] a contracting Pharmacist with Alberta Blue Cross.

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 Notice of Hearing filed as an Exhibit 1 at the hearing alleged that:

IT IS ALLEGED THAT on December 7, 2017, as a practicing pharmacist and the licensee of Evergreen Pharmacy in Edmonton, Alberta, Mr. Mohamed Ibrahim failed or refused to comply with the requests of a Field Officer appointed by the Registrar of the Alberta College of Pharmacists to provide information requested by the Field Officer and that by engaging in this conduct Mr. Ibrahim:

1. Failed to respect the authority of the Alberta College of Pharmacists and its Field Officer;
2. Failed to comply with his duties as a pharmacist and a licensee to provide information requested by a Field Officer; and
3. Called into question the trust placed in him as a member of a self-regulating profession and the licensee of a licensed pharmacy.

IT IS ALLEGED THAT his conduct in these matters:

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<sup>1</sup> On July 1, 2018 the Alberta College of Pharmacists' name changed to the Alberta College of Pharmacy.

- a. Breached his statutory and regulatory obligations to the Alberta College of Pharmacists to ensure that he fully cooperate with an investigation undertaken by a Field Officer of the Alberta College of Pharmacists;
- b. Undermined the integrity of the profession;
- c. Failed to exercise the professional and ethical conduct expected and required of an Alberta pharmacist and a licensee; and
- d. Was contrary to accepted pharmacist practice.

IT IS ALLEGED THAT Mr. Ibrahim's conduct constitutes a breach of the following statutes and standards governing the practice of pharmacy:

- Standard 1 (sub-standards 1.1(a), 1.1(b) and 1.1(c)) of the Standards for Operation of Licensed Pharmacies;
- Standard 1 (sub-standards 1.1(a) 1.1(b) and 1.1(c)) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sub-sections 21(1), 21(2), 21(5)(a), 21(5)(b), 21(8), and 23(2) of the *Pharmacy and Drug Act*;
- Principles 10(1) and 10(2) of the ACP Code of Ethics;

and that his conduct 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)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct pursuant to the provisions of sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(vi) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

AND FURTHER TAKE NOTICE THAT pursuant to section 72(1) of the *Health Professions Act*, you are required to attend at the said time and place and in person, you may be compelled to testify and you are entitled to be represented by counsel. In the event that you do not attend at the said time and place, the Hearing Tribunal may proceed in your absence pursuant to section 79(6) of the *Health Professions Act*.

### **III. PRELIMINARY MATTERS**

The Hearing was scheduled to commence at 9:30AM and was delayed until later in the morning to allow Mr. Jardine and Ms. Smith the time to finalize an Admission of Unprofessional Conduct, Agreed Statement of Facts and a Joint Submission on Sanctions.

#### IV. EVIDENCE

During the opening statement on behalf of the Complaints Director, Mr. Jardine entered several exhibits with the agreement of Ms. Smith. The following exhibits were entered:

- Exhibit 1 – Notice of Hearing
- Exhibit 2 – Admission of Unprofessional Conduct
- Exhibit 3 – Agreed Statement of Facts
- Exhibit 4 – Investigation Report
- Exhibit 5 – Investigation Records
- Exhibit 6 – Joint Submission on Sanctions

The parties agreed that Exhibits 4 and 5 would be put before the Hearing Tribunal for context only and not for the truth of their contents.

Mr. Jardine informed the Hearing Tribunal that Mr. Ibrahim was making an admission of unprofessional conduct pursuant to s.70 of the *Health Professions Act* (“HPA”).

Mr. Jardine noted that the original Notice of Hearing and Admission of Unprofessional Conduct differed in that Mr. Ibrahim had admitted to unprofessional conduct based solely on the second allegation that stated he:

2. Failed to comply with his duties as a pharmacist and a licensee to provide information requested by a Field Officer.

Mr. Jardine and Ms. Smith agreed to withdraw the following allegations from the hearing for the Hearing Tribunal’s consideration:

1. Failed to respect the authority of the Alberta College of Pharmacists and its Field Officer.
3. Called into question the trust placed in you as a member of a self-regulating profession and the licensee of a licensed pharmacy.

Mr. Jardine further confirmed that the Complaints Director was not proceeding with the following as separate allegations:

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacists to ensure that you fully cooperate with an investigation undertaken by a Field Officer of the Alberta College of Pharmacists;
- b. Undermined the integrity of the profession;

- c. Failed to exercise the professional and ethical conduct expected and required of an Alberta pharmacist and a licensee; and
- d. Was contrary to accepted pharmacist practice.

Mr. Jardine clarified that the Hearing Tribunal was proceeding on the basis that Mr. Ibrahim had admitted to unprofessional conduct pursuant to section 70 of the HPA. Mr. Ibrahim acknowledged and admitted that, on December 7, 2017, he failed to comply with his duty as a pharmacist and a licensee to provide information as requested by a Field Officer.

No witnesses were called and the facts agreed to, and signed off on, by both parties are reproduced below:

### **AGREED STATEMENT OF FACTS**

1. Mohamed Ibrahim (ACP Practice Permit #9354) has been a registered regulated pharmacist with the Alberta College of Pharmacists since December 2010.
2. At all times relevant to this matter, Mr. Ibrahim was the licensee and proprietor of Evergreen Pharmacy (ACP License #3271) in Edmonton, Alberta.
3. This matter arose as a result of a complaint from Mr. Monty Stanowich, a Compliance Officer of the Alberta College of Pharmacists, which was received by the Complaints Director of the Alberta College of Pharmacists on December 14, 2017.
4. The complaint arose as a result of a pharmacy visit to Evergreen Pharmacy conducted by Mr. Stanowich on December 7, 2017 arising out of ongoing discussions and emails with Mr. Ibrahim regarding issues concerning the failure to successfully upload prescriptions filled by the pharmacy to Netcare as required under the Health Information Regulations.
5. The complaint was investigated by Mr. James Krempien, the Complaints Director of the Alberta College of Pharmacists.
6. Based on his investigation, Mr. Krempien determined that the complaint should be referred to a hearing tribunal and issued a Record of Decision referring the matter to the Hearings Director of the Alberta College of Pharmacists.
7. After receiving Mr. Krempien's Record of Decision, the Hearings Director of the Alberta College of Pharmacists, Ms. Margaret Morley, appointed this Hearing Tribunal.
8. Mr. Ibrahim and the Complaints Director have now agreed that this hearing will proceed by way of a written Admission of Unprofessional Conduct by Mr. Ibrahim and a Joint Submission on Sanctions.

### Further Agreed Facts

9. On December 7, 2017, at approximately 3:30 p.m., Mr. Monty Stanowich conducted a scheduled field visit to Evergreen Pharmacy and met with Mr. Ibrahim who was the licensee of Evergreen Pharmacy. The meeting was a follow up meeting to a prior informal meeting with Mr. Ibrahim and ongoing emails relating to the issues that Mr. Ibrahim was having in uploading prescriptions filled at the pharmacy to Netcare.
10. At the meeting of December 7, 2017, Mr. Stanowich and Mr. Ibrahim discussed Mr. Ibrahim's responses to a series of undertakings that had been requested from him arising out of a prior meeting, Mr. Stanowich considered that Mr. Ibrahim was cooperative and had taken steps to respond to these undertakings.
11. During the meeting, Mr. Stanowich asked Mr. Ibrahim the number of prescriptions his pharmacy was filling on a daily basis for the week of November 26 to December 2, 2017.
12. Mr. Ibrahim questioned Mr. Stanowich as to why he was requesting this information. Mr. Stanowich advised Mr. Ibrahim that according to the Netcare data provided for November 2 to November 22, 2017, it appeared that there were over 2,000 dispensing events being processed daily at the pharmacy during this period.
13. Mr. Ibrahim verbally advised Mr. Stanowich that the pharmacy was filling an average of 600 to 700 prescriptions daily.
14. Mr. Stanowich asked Mr. Ibrahim to print a summary of (or allow Mr. Stanowich access to his Kroll computer system to print) the number of prescriptions processed every day at the pharmacy for the week of November 26 to December 2, 2017 to confirm the number Mr. Ibrahim had verbally provided him.
15. Mr. Ibrahim stated that he did not believe that either Mr. Stanowich or the Alberta College of Pharmacists had any business knowing how much money he was making. Mr. Stanowich advised that he wanted to see the prescription count. Mr. Stanowich offered to help Mr. Ibrahim print off this information from the Kroll computer system used by the pharmacy.
16. Mr. Ibrahim stated that Mr. Stanowich had no right to ask for this information.
17. Mr. Stanowich read to Mr. Ibrahim section 21(5) of the *Pharmacy and Drug Act*.
18. Mr. Stanowich advised Mr. Ibrahim that his refusal to comply with the request could have implications for him and stated that Mr. Ibrahim was required, as a condition of licensure to comply with the request.
19. Mr. Ibrahim did not provide the information to Mr. Stanowich despite Mr. Stanowich making a series of requests for the information. He continued to state that this was his personal information.

20. Mr. Stanowich left the pharmacy at approximately 4:30 p.m. without the information that he had requested.
21. Mr. Ibrahim and Mr. Stanowich had previously had a cooperative working relationship.
22. Mr. Stanowich subsequently filed his complaint with the Complaints Director on December 14, 2017 without having received the requested information.
23. Mr. Ibrahim did subsequently provide information orally to the College.

## V. SUBMISSIONS ON UNPROFESSIONAL CONDUCT

Mr. Jardine highlighted:

- All pharmacists are governed under the HPA. The relevant sections of the HPA that the Complaints Director views as having been contravened in this case are 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) and in particular section 1(1)(pp)(vi.1)(A), the failure or refusal to comply with a request of or co-operate with an inspector.
- The *Pharmacy and Drug Act* regulates both pharmacists and licensees and certain conduct may also constitute misconduct under the *Pharmacy and Drug Act*. Misconduct under the *Pharmacy and Drug Act* is defined in relevant part as an act that contravenes the HPA. Sections 21(1), 21(5) and 21(8) of the *Pharmacy and Drug Act* also require records to be available for an inspection by a field officer and the licensee, proprietor or any person engaged by the proprietor must cooperate with an inspection or investigation.
- The Standards of Practice for Pharmacists and Pharmacy Technicians (Standard 1.1 (a-c)), Standards for Operations of Licensed Pharmacies (Standard 1.1 (a-c)) and the Code of Ethics (Principle 10) have also been contravened by the conduct set out in Allegation 2. These standards require pharmacists and licensees to practice in accordance with the law that governs their practice.
- Mr. Ibrahim and Ms. Smith had been fully cooperative throughout the investigation, hearing process and the development of the admission of unprofessional conduct.
- Exhibit 2 – Admission of Unprofessional Conduct was supported by the information found in Exhibit 3 – Agreed Statement of Facts that was allowing the Hearing Tribunal to proceed under this admission.
- Exhibit 4 – Investigation Report contains the key points of the investigation that contributed to this matter being referred to the Complaints Director, Mr. James Krempien and ultimately, this Hearing Tribunal.

- To find unprofessional conduct, the Hearing Tribunal must find two things;
  - that the allegation has been proven on the balance of probabilities and
  - that the proven conduct is serious enough to constitute unprofessional conduct.

In this case, the conduct has been established both by the admission of Mr. Ibrahim and by the agreed facts. Further, the proven conduct is serious enough to constitute unprofessional conduct. It is important and absolutely essential for self-regulation that there be cooperation and compliance with field officers. If field officers cannot get that compliance, they cannot do their job and cannot assure the public of its safety.

- If the Tribunal accepted Mr. Ibrahim's signed admission, the next step would be to review the Joint Submission on Sanctions.

Ms. Smith highlighted:

- The Hearing Tribunal needs to do two things. First, it must have the factual basis to make the finding that, in fact, this request was made of Mr. Ibrahim and that, in fact, he did not comply. Ms. Smith suggested that the Hearing Tribunal does have the factual basis to make this finding.
- Second, the Hearing Tribunal must determine whether the conduct falls within the definition of unprofessional conduct. Mr. Ibrahim's admission of unprofessional conduct is significant on this front. However, the Hearing Tribunal must also consider the conduct in context. Here, Mr. Ibrahim did not respond to the request made by the field officer on December 7, 2017. He did subsequently give oral information and subsequently did provide the information to the Complaints Director. The Hearing Tribunal must examine in that context whether the refusal of Mr. Ibrahim to provide the total daily prescriptions for the Evergreen Pharmacy on November 26<sup>th</sup> to December 2<sup>nd</sup> constitutes unprofessional conduct.
- The Sussman case requires discipline tribunals to establish a link between the proven conduct and unprofessional conduct. In other words, the Hearing Tribunal must be able to articulate why the conduct is unprofessional conduct.

In reply, Mr. Jardine noted:

- The cases of *Artinian v. the College of Physicians and Surgeons* and *Wise v. the Law Society of Upper Canada* underscore the importance of a member's duty to cooperate with the regulator. Both cases found that failure to cooperate did amount to unprofessional conduct.

## **VI. FINDINGS**

The Hearing Tribunal accepted Mr. Ibrahim's admission of unprofessional conduct pursuant to s.70 of the HPA. The Hearing Tribunal found that the allegation that Mr. Ibrahim "failed to comply with his duties as a pharmacist and a licensee to provide information requested by a Field Officer" as set out in the Notice of Hearing is proven, and that the conduct constitutes unprofessional conduct as defined in s.1(1)(pp) of the HPA and principle 10(1) and (2) of the ACP Code of Ethics.

The facts were clear and the investigated member signed the Agreed Statement of Facts and an Admission of Unprofessional Conduct. Despite the member's admission of unprofessional conduct, it is the duty of the Hearing Tribunal to consider the facts and the admission to determine whether there is sufficient evidence to find the allegation against the member proven. In this case, it was easier to reach the finding of unprofessional conduct where the Complaints Director and the member have both cooperated and have proceeded by way of agreements.

The essential issue at hand was that a College Field Officer is entitled to inspect and is authorized under the HPA to receive cooperation from a licensed pharmacist and the information that they request. As outlined in the Agreed Statement of Facts, Mr. Ibrahim was asked to provide specific information about the number of prescriptions he had filled during a specified period. While he verbally provided a prescription count, he refused to print off a summary from his Kroll computer system to verify the number provided verbally. When Mr. Stanowich offered to help Mr. Ibrahim print the information from the Kroll computer system, Mr. Ibrahim stated that he had no right to ask for this information. Mr. Stanowich then went on to read to Mr. Ibrahim section 21(5) of the *Pharmacy and Drug Act* and again, the Field Officer's request was not cooperated with. Mr. Ibrahim was then informed that by not complying with the Field Officer's request that this could have further implications and again he did not comply. Given this information, the Hearing Tribunal found that Mr. Ibrahim's admission was appropriate in the circumstances.

More specifically, the Hearing Tribunal has considered whether Mr. Ibrahim's conduct constitutes "unprofessional conduct" pursuant to s.1(1)(pp), which defines unprofessional conduct, in relevant part, to include breaching a code of ethics or standard of practice, breaching another enactment that applies to the practice of the profession, and conduct that harms the profession. Mr. Ibrahim's conduct breached Standard 1 of the Standards of Practice for Pharmacists and Pharmacy Technicians whereby pharmacists must comply with the HPA, the *Pharmacy and Drug Act* and the Code of Ethics. Mr. Ibrahim's conduct also breached Standard 1 of the Standards for the Operation of Licensed Pharmacies that also states the licensee must operate the pharmacy within the confines of the HPA, the *Pharmacy and Drug Act* and the Code of Ethics. Mr. Ibrahim's conduct also breached Principle 10 of the Code of Ethics whereby pharmacists are expected to comply with the letter and spirit of the law in their practice. Further to the HPA, College Standards and the Code of Ethics, Mr. Ibrahim's conduct also violates the *Pharmacy and Drug Act* 1(1)(p)(vi) and (ix) that outlines misconduct as an act or omission that contravenes the HPA and where a pharmacist's conduct harms the integrity of the profession of pharmacy. Mr.

Ibrahim's conduct also contravenes section 21(8) of the *Pharmacy and Drug Act*, which requires the licensee or proprietor and any person engaged by the proprietor to co-operate with an inspection or investigation. By not providing information as requested by a Field Officer, Mr. Ibrahim's admission of unprofessional conduct was deemed founded and accepted by the Hearing Tribunal.

Pharmacy is a self-regulated profession in Alberta in which the College is charged with regulating the profession, its members and licensees in protecting the interests of the general public. An integral part of being able to protect the general public and the integrity of the profession is to have regular inspections and investigations where needed by College Field Officers. It is imperative that regulated members of the College and licensees comply with and cooperate with Field Officer's requests for information and materials that they deem necessary. This is made clear in section 21 of the *Pharmacy and Drug Act* and section 1(1)(pp)(vi.1)(A) of the HPA. The failure to do so constitutes unprofessional conduct. If Field Officers cannot get the cooperation or compliance of licensed professionals, they cannot do their job and assure the public of what is necessary in protecting them and the integrity of the profession.

## **VII. SUBMISSIONS ON SANCTIONS**

Mr. Jardine started with submission on behalf of the College. A Joint Submission on Sanctions was presented to the Tribunal, and is reproduced below.

### **JOINT SUBMISSION ON SANCTIONS**

Mr. Ibrahim and the College make the following joint submission on the issue of sanctions, respectfully requesting that the Hearing Tribunal make the following orders under section 82 of the *Health Professions Act*:

1. Mr. Ibrahim will receive a reprimand with the Hearing Tribunal's decision constituting the reprimand.
2. Mr. Ibrahim's practice permit shall be suspended for a period of 2 months, with 1 month to be served starting on a date acceptable to the Complaints Director and being no later than 30 days after the date of the Hearing Tribunal's written decision, and the remaining 1 month of suspension being held in abeyance for a period of two (2) years and, if there are no further complaints or findings of unprofessional conduct relating to failure to cooperate with an inspector or investigator during that period, Mr. Ibrahim will not be required to serve the remaining one month of his suspension.
3. Mr. Ibrahim shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter to a maximum

of \$10,000 within a period of one year from the receipt of the Hearing Tribunal's written decision and the statement of costs from the Alberta College of Pharmacists.

Mr. Jardine proceeded to elaborate on the content of the Joint Submission on Sanctions, then outlined in general the purposes of professional disciplinary sanctions and lastly the overarching principles that underpin disciplinary sanctions based on the findings in *Jaswal vs. Newfoundland Medical Board* and the 12 principles of this case used in assessing sanctions.

The first of the principles is the nature and gravity of the proven allegation(s). Mr. Jardine stated that from the Complaint Director's perspective, it is a serious matter that is recognized as unprofessional conduct and is one that has significant implications for the protection of the public if there is a lack of cooperation from the member.

The second principle is the age and experience of the pharmacist. Mr. Ibrahim has been a member of the College since 2010 and this factor was deemed to be neutral and not a question of "was there a lack of experience".

The third principle is the previous character of the investigated member and it was stated by Mr. Jardine that there were no previous findings of unprofessional conduct against Mr. Ibrahim and there was one historical matter that went as far as an investigation but the matter was dismissed.

The fourth principle is not relevant as no specific patients were involved.

The fifth principle is around the frequency of the offences and is very relevant and in some ways a mitigating factor where this allegation is surrounding a single day of interactions between Mr. Ibrahim and the Field Officer. This case does not involve a question of a prolonged period of refusing to cooperate over an extended period of time.

The sixth principle is acknowledgement of the investigated member of what occurred. Mr. Jardine pointed out that the member had acknowledged and provided an admission and that is an element of mitigation. By Mr. Ibrahim's admission, he acknowledges that there is a matter to be addressed and has accepted that there should be sanctions.

Principle seven addresses if there are other serious financial or other penalties as a result of the allegations and this is a moot point as the member has not been suspended from practice.

The eighth principle is not applicable as there was no impact to a patient.

The ninth principle is the need to promote both general and specific deterrence and thereby to protect the public and ensure the safe and proper practice of pharmacy. General deterrence is to educate the profession and to make sure that other members of the profession learn from this and do not repeat this error and specific deterrence addresses the conduct of Mr. Ibrahim. In this specific case, Mr. Ibrahim acknowledged his unprofessional conduct in not cooperating with a Field Officer and this is to the member's credit when sanctions are imposed. In particular here, the suspension and the additional month of conditional

suspension are significant sanctions which serve to promote both general and specific deterrence.

The tenth principle is the need to maintain the integrity of the profession. Mr. Jardine stated that the public counts on the profession to be able to regulate its members to ensure the safety of the public. The responsibility of the Field Officer is to visit pharmacies and ensure that standards are being upheld and to preventatively identify concerns or risks that might affect the safety of the general public and the cooperation of licensed members is crucial to do so.

The eleventh principle is the degree to which the conduct in question was considered outside the normal bounds of professional behavior and the College's stance is that, while not at the most serious end of the spectrum of unprofessional conduct, this conduct would still be found by consensus to be falling outside the normal range of professional behavior.

The twelfth and final principle is the range of sentences in similar cases. This is a principle of fairness. Mr. Jardine was clear that it was challenging to find equivalent cases but he was able to find related cases in which there was failure to cooperate or failure to deal with matters. Those cases are as follows:

- *Alberta College of Pharmacists v. Britton,*
- *Alberta College of Pharmacists v. Orbeck, and*
- *Alberta College of Pharmacists v. Bright.*

Mr. Jardine further argued that although none of the comparable cases were quite like Mr. Ibrahim's case, they were similar enough that the Joint Submission on Sanctions given in this case could be considered to fall within the range of sanctions in similar cases. Britton involved a husband as proprietor and wife as licensee who failed to provide information during the investigation of an internet pharmacy. In Britton, a suspension was not ordered because the pharmacist had left the profession but a reprimand, fines of \$1,000 and \$5,000 were ordered as well as full costs of the hearing.

In Orbeck, the pharmacist failed to respond promptly to inquiries and was given a reprimand, fine of \$5,000 as well as costs of the hearing. Suspensions were not ordered because the pharmacy was not continuing. In Bright, a lawyer-pharmacist refused to complete the knowledge assessment examination for continuing competence. A suspension was not ordered because Mr. Bright was not practicing as a pharmacist but he received a reprimand, a fine of \$5,000 and \$20,000 in costs.

While fines were ordered in Britton, Orbeck and Bright, the Complaints Director is seeking a one-month suspension here in lieu of a fine. As a result of the cooperation of Mr. Ibrahim, the Complaints Director viewed a suspension as appropriate in lieu of a fine.

Ms. Smith presented her thoughts on *Jaswal vs. Newfoundland Medical Board* and emphasized the importance of the protection of the public followed by deterrence (both specific and general), rehabilitation, and fairness as it relates to comparable sanctions for comparable conduct. Ms. Smith also emphasized the importance of preserving the integrity of the profession.

Ms. Smith reiterated the case law underpinning joint submission on sanctions and that the Tribunal had to have substantial justification for not accepting them as presented.

Ms. Smith submitted that the sanctions sought were serious and appropriate in light of the conduct in question. In terms of the *Jaswal* factors, Ms. Smith submitted that the conduct was on the far lesser end of unprofessional conduct. She also noted that there was, in essence, cooperation by Mr. Ibrahim through the majority of the relevant time – this was simply a circumstance of one particular request on one particular day where he failed to cooperate. Ms. Smith also noted that Mr. Ibrahim had only been a proprietor since 2017 so that was a newer experience for him and this should be considered a mitigating factor in terms of what was required of him. Ms. Smith submitted that there have already been serious financial consequences on Mr. Ibrahim as his pharmacy was suspended as of March 2018. Ms. Smith noted that the details behind the suspension were not relevant for this Hearing Tribunal’s purpose but that she raised this issue to highlight that there has been serious financial impact on Mr. Ibrahim.

## **VII. ORDERS AND REASONS FOR ORDERS**

After consideration of the above, the Hearing Tribunal accepts the Joint Submission on Sanctions and makes the following orders pursuant to s.82 of the HPA:

1. Mr. Ibrahim will receive a reprimand with the Hearing Tribunal’s decision constituting the reprimand.
2. Mr. Ibrahim’s practice permit shall be suspended for a period of 2 months, with 1 month to be served starting on a date acceptable to the Complaints Director and being no later than 30 days after the date of the Hearing Tribunal’s written decision, and the remaining 1 month of suspension being held in abeyance for a period of two (2) years and, if there are no further complaints or findings of unprofessional conduct relating to failure to cooperate with an inspector or investigator during that period, Mr. Ibrahim will not be required to serve the remaining one month of his suspension.
3. Mr. Ibrahim shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter to a maximum of \$10,000 within a period of one year from the receipt of the Hearing Tribunal’s written decision and the statement of costs from the Alberta College of Pharmacy.

The Hearing Tribunal carefully considered the submissions of both Mr. Jardine and Ms. Smith and felt that the orders set out in the Joint Submission on Sanctions were both fair and appropriate having regard to all factors that are relevant when assessing penalty, which were referred to by both parties in their submissions. In particular, the Hearing Tribunal agrees that the conduct in question is serious. While not at the far end of the spectrum of unprofessional conduct, cooperation with a regulatory body nonetheless goes to the heart of self-regulation.

The seriousness of the conduct is balanced, however, against the fact that the conduct occurred only one day and Mr. Ibrahim did not engage in a prolonged course of failing to cooperate. Moreover the Tribunal believes that the orders are sufficient to deter Mr. Ibrahim from not cooperating with a Field Officer in the future and also in providing general deterrence to all members of the College.

The Hearing Tribunal is further satisfied that the orders for suspension are significant and will assure the public that the failure of a member to cooperate will attract significant sanctions.

The Hearing Tribunal considered the precedent cases of Britton, Orbeck and Bright. While these cases involved similar instances of failures to cooperate, the circumstances of those cases meant that fines were a more appropriate penalty than suspension. While the conduct in the Britton, Orbeck and Bright cases is arguably more serious than in the instant case, the Hearing Tribunal is prepared to accept a suspension as an appropriate order for penalty in this case. A suspension has a similar financial impact on the member as does a fine in that the member is not able to earn income from the practice of pharmacy during the period of suspension.

Capping the costs at \$10,000 is also appropriate in this case. While members who are found to have engaged in unprofessional conduct should bear a significant portion of the costs of investigating and prosecuting their unprofessional conduct, in this case, Mr. Ibrahim's agreement as to the facts and admission of unprofessional conduct significantly reduced the costs of the hearing.

Signed on behalf of the hearing tribunal by the Chair on the 24<sup>th</sup> day of October 2018.

[Christopher Heitland]  
Christopher Heitland