

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

BRENDAN IHEJIRIKA
Registration number: 6305

DECISION OF THE HEARING TRIBUNAL

June 11, 2020

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Brendan Ihejirika (the “Investigated Member”). In attendance on behalf of the Hearing Tribunal were: Rick Hackman (pharmacist and Chair), Erin Albrecht (pharmacist), Mehul Patel (pharmacist), and James Lees (public member).

The hearing took place on April 30, 2020 by way of video conference. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were: Paula Hale, representing the Complaints Director; James Krempien, the Complaints Director; Brendan Ihejirika, the Investigated Member; Steven Fix, representing the Investigated Member; and, Ayla Akgungor, independent legal counsel to the Hearing Tribunal.

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 allegations considered by the Hearing Tribunal were as follows:

IT IS ALLEGED THAT, between January 1, 2017 to August 31, 2017, while you were both a licensed Alberta pharmacist (ACP Permit. # 6305) and the licensee of Royal Care Compounding Pharmacy (ACP License #1868), that you:

1. Fabricated prescription documentation for the purpose of the Alberta Blue Cross Compliance Verification Review with respect to the following nine original prescriptions: 605915 (Ref #2), 605031 (Ref#3), 605463 (Ref #4), 610127 (Ref #40), 605116 (Ref #45), 605462 (Ref #53), 605914 (Ref#56), 605916 (Ref #58), and 605913 (Ref #PS-4);
2. Wrote prescription documentation containing signatures imitating the prescribing pharmacist's signature for the purpose of the Alberta Blue Cross Compliance Verification Review for the following 18 original prescriptions: 605080 (Ref. #1), 604375 (Ref. #14), 604376 (Ref. #15), 605026 (Ref. #31), 605030 (Ref. #32), 605032 (Ref. #34), 605075 (Ref. #36), 605077 (Ref. #38), 605078 (Ref. #39), 605081 (Ref. #41), 605082 (Ref. #42), 605083 (Ref. #43), 605084 (Ref. #44), 605160 (Ref. #46), 605161 (Ref. #47), 605164 (Ref. #49), 605369 (Ref. #51) and 604787 (Ref. #PS-1);
3. For the purpose of the Alberta Blue Cross Compliance Verification Review, fabricated the documentation of a verbal order from the prescriber of original prescription 605447 (Ref. #52), who indicated that they provided a written prescription and not a verbal prescription;

4. For the purpose of the Alberta Blue Cross Compliance Verification Review, fabricated the Notification to the Original Prescriber for original prescription 605160 (Ref. #46);
5. When confronted by the Alberta Blue Cross auditor, suggested that you fabricated documents in order to complete work that should have been completed by another pharmacist; and
6. Failed to properly store and maintain pharmacy records in that the pharmacy records:
 - (a) were not stored securely to ensure that only persons authorized by the licensee have access to the records, and
 - (b) were not stored at the pharmacy or other authorized location.

IT IS ALLEGED THAT your conduct in these matters:

- (a) breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and a pharmacy licensee;
- (b) undermined the integrity of the profession;
- (c) decreased the public's trust in the profession;
- (d) created the potential for patient harm; and
- (e) failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.

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

- Standards 1(in particular sub-standards 1.1,1.2 and 1.4), 11(in particular sub-standards 11.1, 11.2, 11.5 and 11.9) and 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1(in particular sub-standards 1.1 and 1.2), 2 (in particular sub-standards 2.1 and 2.2) and 8 (in particular sub-standards 8.1, 8.2 and 8.5(a)) of the Standards for the Operation of Licensed Pharmacies;
- Sections C.01.041(1)(a) and C.01.041(3) of the Food and Drug Regulations;
- Sections 1(l)(pp)(i), 1(l)(pp)(ii), 1(l)(pp)(iii) and 1(l)(pp)(xii) of the *Health Professions Act*;

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- Section 1(l)(p)(i), 1(l)(p)(vi), 1(l)(p)(ix), 10(1)(d)(iv) and 10(1.1) of the *Pharmacy and Drug Act*;
- Section 12(1) of the Pharmacy and Drug Regulation; and
- Principles 1(1,12) and 10(1,2) of the ACP Code of Ethics

and that the conduct and breaches set out above constitutes unprofessional conduct pursuant to the provisions of sections 1(l)(pp)(i), 1(l)(pp)(ii), 1(l)(pp)(iii), and 1(l)(pp)(xii) of the *Health Professions Act* and constitutes misconduct pursuant to the provisions of sections 1(l)(p)(i), 1(l)(p)(ii), 1(l)(p)(iv), 1(l)(p)(vi) and 1(l)(p)(ix) of the *Pharmacy and Drug Act*.

The matter proceeded by Admission of Unprofessional Conduct, an Agreed Statement of Facts, and a Joint Submission on Sanction. Through the Admission of Unprofessional Conduct, the Investigated Member admitted the allegations set out above.

III. PRELIMINARY MATTERS

There were no objections made with regard to the timeliness of service of the Notice of Hearing. There were no objections raised with regard to the composition of the Hearing Tribunal or with regard to the jurisdiction of the Hearing Tribunal to hear this matter. No applications were made to have the hearing or part of the hearing held in private.

IV. EVIDENCE

The Agreed Statement of Facts provided by the parties states:

1. At all relevant times, Mr. Ihejirika was a registered member of the Alberta College of Pharmacy (ACP Practice Permit #6305) and the licensee at Royal Care Compounding Pharmacy (ACP License #1868), located at 5119 – 50 Street, Mundare, AB T0B 3H0.
2. On April 2, 2019, the Complaints Director received a letter of complaint from [REDACTED], Analyst, Claims Audit and Investigation Services with Alberta Blue Cross. The letter of complaint was attached as Tab “A” to the Agreed Statement of Facts.
3. On March 20, 2019, the Complaints Director received a letter of complaint from [REDACTED], Pharmacy Consultant with Claims Audit and Investigation Services for Alberta Blue Cross. The letter of complaint was attached as Tab “B” to the Agreed Statement of Facts.

4. The Final Report from Alberta Blue Cross referred to in both letters of complaint was attached as Tab “C” to the Agreed Statement of Facts. Additional supporting documents to the Alberta Blue Cross Final Report were not attached but were available if required by the Hearing Tribunal.
5. Based on Ms. [REDACTED]’s and Mr. [REDACTED]’s letter of complaint, the Complaints Director and Investigator Jennifer Mosher commenced an investigation into the conduct of Mr. Ihejirika and Royal Care Compounding Pharmacy. The investigation included the collection of relevant documents from Alberta Blue Cross, and correspondence and interviews with two pharmacists as well as Mr. Ihejirika.
6. Following the investigation and on review of the investigative report and evidence, the Complaints Director determined that this matter should be referred to a hearing. The Record of the Complaints Director’s decision was attached as Tab “D”.
7. As part of the consent hearing process, the parties agreed to proceed with the hearing by way of videoconference and the Notice of Hearing was amended. The Amended Notice of Hearing was attached as Exhibit “E”.

Facts Relevant to the Complaint

8. In May of 2017, Alberta Blue Cross initiated a Compliance Verification Review at the Royal Care Compounding Pharmacy.
9. Alberta Blue Cross requested and received documents from Mr. Ihejirika and then arranged for an on-site audit. During the on-site audit, 168 separate prescription claims made between January 1, 2017 to August 31, 2017 were audited by Alberta Blue Cross.
10. As a result of the Compliance Verification Review, including the on-site audit, Alberta Blue Cross identified 29 instances from January 1, 2017 to August 31, 2017 where the Pharmacy provided altered, enhanced, or fabricated source documentation. More specifically, Alberta Blue Cross identified:
 - a) Nine original prescriptions where the prescription documentation did not contain the prescribing pharmacist’s signature.
 - b) 18 original prescriptions where the prescribing pharmacist confirmed the documentation was not in her handwriting and the signature was not hers.
 - c) One original prescription where the Pharmacy provided a copy of a verbal order from the prescriber; the prescriber indicated that he had provided a written prescription and not a verbal prescription.

- d) One original prescription where the notification to the original prescriber provided to Alberta Blue Cross was written for the purpose of the Compliance Verification Review.
11. In response to these findings, Mr. Ihejirika admitted that he had fabricated documentation and explained to the Alberta Blue Cross auditor that he had provided fabricated documentation to finish work that should have been completed during the initial dispensing activity.
 12. As part of the investigation by the Complaints Director and Investigator Mosher, Mr. Ihejirika provided a written response to the complaint.
 13. On May 30, 2019, the Investigator Mosher interviewed Mr. Ihejirika. During that interview, Mr. Ihejirika stated the following:
 - a) he knowingly provided fabricated documents for the Alberta Blue Cross pharmacy audit,
 - b) he felt 'terrible' about his having fabricated the documents,
 - c) he fabricated these documents as the 'pharmacists didn't do what they were supposed to do' and he created these records 'on behalf of the pharmacists in their own name', and
 - d) he did not debate fabricating the documents but expressed that they were not created to 'get paid' but only to satisfy the ABC audit.
 14. With respect to pharmacy records, Mr. Ihejirika stated that:
 - a) He keeps the pharmacy records in an unsecured room in the basement,
 - b) The records (transaction records and original prescriptions) were kept in daily bundles secured by an elastic band, and
 - c) Because the elastic bands had started to degrade, he has since changed his process to keep the daily bundles in envelopes.
 15. Mr. Ihejirika speculated that the degradation of the elastics may have resulted in the loss of some pharmacy records.
 16. Mr. Ihejirika cooperated with the Alberta Blue Cross Compliance Verification Review including the on-site audit.
 17. Mr. Ihejirika has at all times cooperated with the investigation, admitted his conduct and expressed remorse for his conduct.

18. Mr. Ihejirika has repaid Alberta Blue Cross the \$6,086.38 for the claims that Alberta Blue Cross determined had falsified documentation.

V. ADMISSION OF UNPROFESSIONAL CONDUCT

The admissions provided by the Investigated Member were as follows:

- [1] Pursuant to section 70 of the *Health Professions Act*, Brendan Ihejirika wishes to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.
- [2] Mr. Ihejirika acknowledges and admits that, between January 1, 2017 to August 31, 2017, while he was both a licensed Alberta pharmacist and the licensee of Royal Care Compounding Pharmacy, he:
 1. Fabricated prescription documentation for the purpose of the Alberta Blue Cross Compliance Verification Review with respect to the following nine original prescriptions: 605915 (Ref #2), 605031 (Ref #3), 605463 (Ref #4), 610127 (Ref #40), 605116 (Ref #45), 605462 (Ref #53), 605914 (Ref #56), 605916 (Ref #58) and 605913 (Ref #PS-4);
 2. Wrote prescription documentation containing signatures imitating the prescribing pharmacist's signature for the purpose of the Alberta Blue Cross Compliance Verification Review for the following 18 original prescriptions: 605080 (Ref #1), 604375 (Ref #14), 604376 (Ref #15), 605026 (Ref #31), 605030 (Ref #32), 605032 (Ref #34), 605075 (Ref #36), 605077 (Ref #38), 605078 (Ref #39), 605081 (Ref #41), 605082 (Ref #42), 605083 (Ref #43), 605084 (Ref #44), 605160 (Ref #46), 605161 (Ref #47), 605164 (Ref #49), 605369 (Ref #51) and 604787 (Ref #PS-1);
 3. For the purpose of the Alberta Blue Cross Compliance Verification Review, fabricated the documentation of a verbal order from the prescriber of original prescription 605447 (Ref #52), who indicated that they provided a written prescription and not a verbal prescription;
 4. For the purpose of the Alberta Blue Cross Compliance Verification Review, fabricated the Notification to the Original Prescriber for original prescription 605160 (Ref #46) for the purpose of the Compliance Verification Review;
 5. When confronted by the Alberta Blue Cross auditor, suggested that he had fabricated documents in order to complete work that should have been completed by another pharmacist; and
 6. Failed to properly store and maintain pharmacy records in that the pharmacy records:

(a) were not stored securely to ensure that only persons authorized by the licensee have access to the records, and

(b) were not stored at the pharmacy or other authorized location.

[3] Mr. Ihejirika agrees and acknowledges that his conduct in these matters:

- a. Breached his statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and a pharmacy licensee;
- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession;
- d. Created the potential for patient harm; and
- e. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.

[4] Mr. Ihejirika further agrees and acknowledges that his conduct, as set out above constitutes breaches of:

- Standards 1 (in particular sub-standards 1.1,1.2 and 1.4), 11 (in particular sub-standards 11.1,11.2,11.5 and 11.9) and 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 (in particular sub-standards 1.1 and 1.2), 2 (in particular sub-standards 2.1 and 2.2) and 8 (in particular sub-standards 8.1,8.2 and 8.5(a)) of the Standards for the Operation of Licensed Pharmacies;
- Sections C.01.041(1)(a) and C.01.041(3) of the Food and Drug Regulations;
- Sections 1(1)(pp)(i), 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Profession Act*;
- Sections 1(1)(p)(i),1(1)(p)(vi),1(1)(p)(ix),10(1)(d)(iv) and 10(1.1) of the *Pharmacy and Drug Act*;
- Section 12(1) of the Pharmacy and Drug Regulation; and
- Principles 1(1,12) and 10(1,2) 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)(i),1(1)(pp)(ii),1(1)(pp)(iii) and 1(1)(pp)(xii) of the *Health Professions Act* and constitutes misconduct pursuant to the provisions of sections 1(1)(p)(i),1(1)(p)(ii),1(1)(p)(iv),1(1)(p)(vi) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

- [5] The Complaints Director, James Krempien, acknowledges that Mr. Ihejirika and his legal counsel have been fully cooperative throughout the investigation, hearing process and in developing this Admission of Unprofessional Conduct.
- [6] Mr. Ihejirika acknowledges that he has received legal advice prior to signing this Admission of Unprofessional Conduct and that he understands that if the Hearing Tribunal accepts his Admission of Unprofessional Conduct, the Hearing Tribunal may proceed to issue one or more orders set out in section 82(1) of the *Health Professions Act*.

VI. **SUBMISSIONS ON UNPROFESSIONAL CONDUCT**

Submissions of the Complaints Director

On behalf of the Complaints Director, Ms. Paula Hale provided the following comments on the Admission of Unprofessional Conduct and the Agreed Statement of facts:

- This hearing is proceeding by way of consent, but this does not change the task of the Hearing Tribunal
- The Hearing Tribunal has two tasks. Firstly, to determine whether the allegations in the Notice of Hearing have been factually proven on the balance of probabilities, and second, to determine whether to agree and accept the admission and conclude that the facts constitute unprofessional conduct
- The Blue Cross Final Report is an audit report that covers a number of areas only some of which are the subject of allegations in this Hearing,
- Mr. Krempien received the full Blue Cross Final Report and the supporting documentation. He initiated an investigation of the matter that resulted in the Record of Decision and it is this Record of Decision that provides this Hearing Tribunal jurisdiction for this hearing,
- The Amended Notice of Hearing (Exhibit#1) had the date amended. The allegations in the Amended Notice of Hearing are the only allegations that should be considered by the Hearing Tribunal. There was an edit to Allegation #5. The words, “thus attempting to damage the reputation of another regulated health professional” are entirely and completely withdrawn,
- The evidence which supports allegations 1-4 can be found in Section 2 of the Blue Cross Final Report, on pages 31-34. Allegation 5 is touched on in a couple of places, but mainly on page 35 of the Blue Cross Final Report.
- With respect to Allegation #6, while it isn’t specifically addressed in the Blue Cross Final Report, the best evidence for it can be found in the Agreed Statement of Facts starting at paragraph 14

- The Agreed Statement of Facts and the attached documents constitute evidence that the facts and allegations have been proven
- The facts are primarily uncontested, and Mr. Ihejirika has been forthcoming and cooperative throughout the process, starting with the Blue Cross Audit and with the subsequent investigation by Mr. Krempien. Mr. Ihejirika admitted to the facts in the Agreed Statement from the beginning. This forms a strong foundational basis that the allegations have been factually proven.
- With respect to the second aspect of the Hearing Tribunal's task, there is an admission that is marked as Exhibit #3. The starting point for the assessment of unprofessional conduct would be the definition of unprofessional conduct in *the Health Professions Act*, section 1(1)(pp) and specifically (ii), (iii), and (xii). The heart of the issue comes down to Principle 10 of the Code of Ethics of the Alberta College of Pharmacy ("ACP") which obliges pharmacists to be honest in their dealings with patients, other health professionals, and other contractors, that in this instance would include Alberta Blue Cross
- With respect to record keeping, Mr. Ihejirika did not have a system in place to meet his obligations. The records were not appropriately stored and there were not appropriate safeguards in place. These are fundamental and foundational aspects of the practice of pharmacy

Submissions of Mr. Ihejirika

On behalf of Mr. Ihejirika, Mr. Steven Fix provided the following comments on the Admission of Unprofessional Conduct and the Agreed Statement of facts:

- Mr. Ihejirika has acknowledged from the outset that there were some things that "crossed the line" and he has been forthright with investigators and these proceedings. Furthermore, from the very beginning of this, when he realized that a line had been crossed, Mr. Ihejirika has been very remorseful,
- Some of the records that were kept onsite were not properly bound and a small number of these records went missing, which highlights the issue in the way the records were stored,
- These are not situations where drugs were dispensed to someone that didn't "deserve" them or who shouldn't get them. This was simply a matter of records going missing and in the course of an audit Mr. Ihejirika went back to try and correct those records,
- In spite of the fact that the prescriptions were dispensed, Mr. Ihejirika paid back the approximately \$6000 to Alberta Blue Cross. Had the paperwork been correct, he would not have been required to pay this money back to Alberta Blue Cross, so he is already out of pocket by this amount,

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- Mr. Ihejirika concedes that there were at least 2 lines that were crossed that amount to unprofessional conduct: correcting the missing documents and the storage of records,
- With respect to Allegation #5, the assertion that has been appropriately removed was an opinion by one of the investigators and was inconsistent with Mr. Ihejirika's cooperation and forthright admissions. He was, in no way, casting aspersions on another pharmacist.

Reply by the Complaints Director

Ms. Hale made further comment that under the *Pharmacy and Drug Act*, pharmacy is defined very narrowly where professional services are provided. There is an obligation on the part of the licensee to keep records in the pharmacy. If records are to be kept offsite, there is a process in the Regulations to facilitate this and that the ACP can authorize.

VII. FINDINGS

During the hearing on April 30, 2020 the Hearing Tribunal verbally advised the parties that it accepted the Agreed Statement of Facts and the Admission of Unprofessional Conduct. The facts as admitted by Mr. Ihejirika support the admission. The Hearing Tribunal considered the submissions made by both parties.

With respect to allegation 1, the Blue Cross Final Report confirms that there were nine original prescription numbers, matching those set out in allegation 1, where the prescription documentation provided by the Pharmacy did not contain the prescribing pharmacist's signature. The Blue Cross Final Report also confirms that when the prescribing pharmacist was contacted about the prescriptions, it was revealed the original reduced to writing prescriptions were not at the pharmacy and Mr. Ihejirika had created prescription documentation for the purpose of the Compliance Verification Review.

For allegation 2, the Blue Cross Final Report confirms that for the 18 prescription numbers described in allegation 2, there were discrepancies with the documentation provided. As a result, Blue Cross contacted the prescribing pharmacist to verify the documentation provided by the pharmacy. The prescribing pharmacist confirmed that the documentation was not in her handwriting and the signature was not hers. When the pharmacy was asked to provide a detailed explanation of for the source of the documentation, Mr. Ihejirika indicated that he wrote prescription documentation containing signatures imitating the prescribing pharmacist's signature for the purpose of the Compliance Verification Review.

Allegation 3 relates to prescription 605447 (Ref. #52). The Blue Cross Final Report reveals that for the purpose of the Compliance Verification Review, the pharmacy provided a copy of a verbal order from the prescriber. When the prescriber was

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contacted by Blue Cross to verify the verbal order, the prescriber indicated that he had not verbally authorized the prescription and that a written prescription was given on February 1, 2017. It is clear from the findings in the Blue Cross Final Report that Mr. Ihejirika fabricated the documentation of the verbal order for the Compliance Verification Review.

Allegation 4 also relates to a single prescription, 605160 (Ref. #46). In this case, the Blue Cross Final Report demonstrates that the pharmacy indicated that the Notification to the Original Prescriber provided to Alberta Blue Cross was written for the purpose of the Compliance Verification Review. The pharmacy explained that there were instances where their faxes did not make it to their intended destinations. Mr. Ihejirika indicated to Alberta Blue Cross that he wrote the Notification to the Original Prescriber as it should have been completed at the time.

With respect to Allegation 5, the Alberta Blue Cross Final Report confirms that Mr. Ihejirika advised Alberta Blue Cross in writing that he had fabricated work that another pharmacist was to have done during the initial dispensing activity.

In terms of allegation 6, the Agreed Statement of Facts reveals that Mr. Ihejirika kept his pharmacy records in an unsecured room in the basement and the records (transaction records and original prescriptions) were kept in daily bundles secured by an elastic band. Because the elastic bands had started to degrade, Mr. Ihejirika has since changed his process to keep the daily bundles in envelopes. Mr. Ihejirika speculated that the degradation of the elastics may have resulted in the loss of some pharmacy records.

Based on the evidence set out above, the Hearing Tribunal is satisfied that the conduct alleged in allegations 1-6 has been established on the balance of probabilities.

The Hearing Tribunal is further satisfied that the conduct set out in allegations 1-6 amounts to unprofessional conduct. Allegations 1-5 all relate to the fabrication of prescription documents for the purpose of the Alberta Blue Cross Compliance Verification Review. The fabrication of prescription documentation contravenes, in particular, Principle 10 of the ACP Code of Ethics, which requires pharmacists to act with honesty and integrity and Standard 18 of the Standards of Practice of Pharmacists and Pharmacy Technicians which requires that pharmacists create and maintain patient records for pharmacy services provided by that pharmacist. The Hearing Tribunal further finds that the fabrication of pharmacy documentation is conduct which contravenes section 1(1)(pp)(xii) of the *Health Professions Act* in that it is conduct which harms the integrity of the pharmacy profession. The public has the right to expect that pharmacy documentation will be authentic and accurate and pharmacists who falsify documentation jeopardize public trust and paint the profession in a poor light.

With respect to allegation 6, the Hearing Tribunal finds that the failure to properly maintain and store pharmacy records is a contravention of Standard 8 of the Standards for the Operation of Licensed Pharmacies, which requires that licensees ensure that there is an effective system for the creation, maintenance, secure storage and availability for retrieval of all required records. In particular, Standard 8 requires that

records be stored securely to ensure that only persons authorized by the licensee have access to the records and that records be maintained in the pharmacy unless the licensee has applied for and received permission from the Registrar to store the records at a location other than the pharmacy. There is no evidence in this case that Mr. Ihejirika sought or received any permission from the Registrar to store his records outside of his pharmacy.

Further, Standard 8 requires that the licensee ensure that there is an effective system for the creation, maintenance, secure storage and availability for retrieval of all required records. Given that Mr. Ihejirika was using elastic bands to organize records and his speculation that the degradation of those elastic bands led to the loss of pharmacy records, it is clear that this standard was not met.

In general, the Hearing Tribunal discussed the responsibility of a Licensee to establish and operationalize policy within a pharmacy and to direct others. This is a foundational expectation that the public has of a licensee.

For the reasons set out above, the Hearing Tribunal accepts Mr. Ihejirika's admission of unprofessional conduct and finds that Mr. Ihejirika engaged in unprofessional conduct with respect to allegations 1 through 6.

VIII. SUBMISSIONS ON SANCTION

A Joint Submission on Sanction was proposed by Ms. Hale, on behalf of the Complaints Director and by Mr. Fix, on behalf of Mr. Ihejirika. This submission specified that:

1. Mr. Ihejirika's practice permit shall be suspended for a period of three (3) months, with one (1) month to be served starting on a date acceptable to the Complaints Director and being no later than 60 days after the date of the Hearing Tribunal's written decision, and the remaining two (2) months 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 during that period, Mr. Ihejirika will not be required to serve the remaining two months of his suspension.
2. Mr. Ihejirika shall pay a fine of \$10,000 within 30 days from receipt of the Hearing Tribunal's written decision.
3. For the period of two (2) years from the date of the Hearing Tribunal's decision, Mr. Ihejirika shall not be permitted to be an owner, proprietor or licensee of a pharmacy.
4. Mr. Ihejirika shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter to a maximum of \$15,000 within a period of 180 days from receipt of the Hearing Tribunal's written decision and the statement of costs from the Alberta College of Pharmacy.

5. Mr. Ihejirika will provide a copy of the Hearing Tribunal's written decision to any licensee of any other pharmacy where he works as a pharmacist for a period of three (3) years.

Submissions of the Complaints Director

Ms. Hale submitted that when a Hearing Tribunal is faced with a joint submission, the Hearing Tribunal needs to look at it carefully and not disregard it or put it aside lightly. Unless a Hearing Tribunal finds that a joint submission is unreasonable or contrary to the public interest, then the Hearing Tribunal should let the joint submission stand. The Hearing Tribunal has a role to play in considering whether the joint submission is in the public interest.

When dealing with joint submissions, the perspective of the law is that the parties, through the adversarial process, are in the best position to come to an agreement on the appropriate sanctions.

Ms. Hale then reviewed the relevant factors from *Jaswal and the Medical Board of Newfoundland* to provide context as to why the joint submission is appropriate and fair in the circumstances.

In terms of aggravating factors, Ms. Hale noted that the conduct in question is serious conduct. In this case, the conduct was intentional conduct which hits at the foundation of the profession. The creation of accurate and truthful pharmacy documentation is fundamental to the profession.

Further, Mr. Ihejirika was an experienced pharmacist who has been on the clinical register of the ACP since 2003. He also had elevated statutory obligations as the licensee of the pharmacy.

In Ms. Hale's view, the nub of the issue is that the health system, the profession of pharmacy and regulated health professionals really rely on a foundational level that health professionals act with honesty and integrity. This includes an expectation that pharmacists are ethical and honest in their dealings with other health professionals, patients and other health system participants like Alberta Blue Cross.

In terms of mitigating factors, Mr. Ihejirika's cooperation is a very significant one. He cooperated with both the Alberta Blue Cross investigation and the ACP investigation and he made immediate and forthright admissions in both those contexts. He did not wait until an investigation had been completed. At no point did he deny his conduct. He has also acknowledged his responsibility and that his conduct did breach the Standards of Practice and Code of Ethics. He has also certainly expressed remorse for his conduct. Further, Mr. Ihejirika has no prior complaints or discipline history with the ACP. This fact and the fact of his cooperation both work in his favor in the context of sanctions.

Ms. Hale provided the Hearing Tribunal with the case of David Hill and ACP as an indicator of the range of sanctions in similar cases. Like Mr. Ihejirika, Mr. Hill

knowingly submitted false documentation to Alberta Blue Cross in the context of an audit. In terms of sanction, the Hearing Tribunal ordered a three (3) month suspension with one (1) month to be served and two (2) months to be held in abeyance for a period of two years pending no further complaints or findings of unprofessional conduct. Mr. Hill was also ordered to pay a fine of \$10,000 and costs up to a maximum of \$30,000. Mr. Hill was prohibited from being an owner, proprietor or licensee of a pharmacy for a period of three (3) years. He was also directed to provide a copy of the Hearing Tribunal's decision to the licensee of any pharmacy where he worked as a pharmacist for a period of three (3) years.

Submissions of Mr. Ihejirika

Mr. Fix reinforced the Hearing Tribunal's duty to defer to joint submissions. He noted that, to interfere with the joint submission, it is not sufficient for the Hearing Tribunal to find that the joint submission is unreasonable. The Hearing Tribunal must also find that the joint submission would bring the administration of justice into disrepute. In other words, the joint submission must be so far out of line that it is an attempt to make a mockery out of the proceedings and this is certainly not the case here.

Mr. Fix also addressed the notion of moral culpability. While there is a clear acknowledgement here that Mr. Ihejirika crossed the line in falsifying documents, Mr. Ihejirika took these steps only to compensate for the missing documentation. He did not falsify documents to cover up drugs that were sold to someone that should not have been sold or prescribed to someone who should not have had them or fraudulently to make extra billings. In Mr. Ihejirika's case, the reason for crossing the line was way less egregious than it would otherwise be on many occasions.

It is fair to say that Mr. Ihejirika is a very experienced pharmacist but that cuts both ways. In almost two decades of practice, there have been no findings of unprofessional conducts or even any suggestions of wrongdoing.

He was very remorseful and very cooperative, and this sets him apart from the David Hill decision. Mr. Fix described Mr. Ihejirika as very remorseful and contrite. He is a family man and very much regrets his decision to make up missing paperwork.

VIII. FINDINGS AND ORDERS

At the conclusion of the hearing on April 30, 2020 the Hearing Tribunal provided a verbal decision to accept the Joint Submission on Sanction. The Hearing Tribunal acknowledges that deference should be provided to Joint Submissions on Sanction and the Hearing Tribunal ought not to depart from the Joint Submission unless we consider the sanctions to be unfit or to subvert the principles of justice or to bring the administration of justice into disrepute.

The Hearing Tribunal considered several factors before arriving at the decision to accept the Joint Submission on Sanction. Submissions made by counsel for the Complaints Director and for Mr. Ihejirika were discussed. Mr. Ihejirika was remorseful

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and acknowledged the seriousness of the offenses and has accepted responsibility for them by way of his admission. He has no prior record of unprofessional conduct, has cooperated fully with the investigation, and has made restitution to Alberta Blue Cross. Mr. Ihejirika has been practicing in Alberta for a time sufficient to reasonably be expected to understand the obligations and requirements of both a pharmacist and a licensee. In the view of the Hearing Tribunal, the public and the health system relies on pharmacists to conduct themselves with honesty and integrity.

The Hearing Tribunal accepts that while Mr. Ihejirika's actions were intentional, his aim was to replace missing documentation. This was not a case of falsification for a more serious circumstance such as drug diversion or financial fraud.

The Hearing Tribunal assessed the joint submission for appropriateness of sanction and its effectiveness as a future deterrent for both Mr. Ihejirika and the profession at large. The fine imposed and the costs are significant. However, the suspension from practicing as a pharmacist for 3 months (with 2 months to be held in abeyance) and a further suspension from assuming a role as an owner, proprietor, or licensee for 2 years also amount to a significant financial deterrent. The Hearing Tribunal also recognized the requirement to provide a copy of the Hearing Tribunal written decision to any future licensee he works for as a pharmacist for 3 years.

The Hearing Tribunal also accepts that the sanctions set out in the joint submission fall well within the range of penalties ordered for similar unprofessional conduct as evidenced by the David Hill case. The Hearing Tribunal agrees that the conduct of Mr. Ihejirika is less serious than that of Mr. Hill and the sanction orders for Mr. Ihejirika should reflect that.

The Hearing Tribunal recognized the value of the collaborative work done between counsel for the Complaints Director and Mr. Ihejirika in arriving at the Joint Submission on Sanction. It serves the interests of fairness to Mr. Ihejirika and the public interest by making the process efficient and expedient.

ORDERS

The Hearing Tribunal accepts the Joint Submission on Sanction and makes the following orders under section 82 of the *Health Professions Act*:

1. Mr. Ihejirika's practice permit shall be suspended for a period of three (3) months, with one (1) month to be served starting on a date acceptable to the Complaints Director and being no later than 60 days after the date of the Hearing Tribunal's written decision, and the remaining two (2) months 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 during that period, Mr. Ihejirika will not be required to serve the remaining two months of his suspension.
2. Mr. Ihejirika shall pay a fine of \$10,000 within 30 days from receipt of the Hearing Tribunal's written decision.

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3. For the period of two (2) years from the date of the Hearing Tribunal's decision, Mr. Ihejirika shall not be permitted to be an owner, proprietor or licensee of a pharmacy.
4. Mr. Ihejirika shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter to a maximum of \$15,000 within a period of 180 days from receipt of the Hearing Tribunal's written decision and the statement of costs from the Alberta College of Pharmacy.
5. Mr. Ihejirika will provide a copy of the Hearing Tribunal's written decision to any licensee of any other pharmacy where he works as a pharmacist for a period of three (3) years.

Signed on behalf of the Hearing Tribunal by the Chair on June 11, 2020.

Per: 
[Richard Hackman \(Jun 10, 2020 20:13 MDT\)](#)
Rick Hackman

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