

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE *HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**M. Nadim Khan**

Registration number: 8223

Complaint 7967

**DECISION OF THE HEARING TRIBUNAL**

September 30, 2022

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Nadim Khan, Registration number 8223 (“Mr. Khan” or the “Investigated Member”). In attendance on behalf of the Hearing Tribunal were Rick Hackman (pharmacist and Chair), Anita McDonald (pharmacist), Pat Matusko (public member), and Naz Mellick (public member).
2. The hearing took place via videoconference on June 14, 2022. The hearing was held under the terms of Part 4 of the *Health Professions Act*.
3. In attendance at the hearing were Aman Costigan and Raymond Chen, representing the Complaints Director; James Krempien, the Complaints Director; Brett Code, counsel for the Investigated Member; and Julie Gagnon, independent legal counsel to the Hearing Tribunal. Mr. Khan was not present at the hearing.

## **II. ALLEGATIONS**

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

IT IS ALLEGED THAT, between October 1, 2016 and August 31, 2018, while Mr. Nadim Khan and Ms. Madiha Asim were registered Alberta pharmacists and the licensees of CougarRidge Pharmacy & Travel Clinic (ACP Licence #3063) (the “Pharmacy”), they:

1. Submitted, or allowed for the submission of, claims to Alberta Blue Cross when they should have known they were not entitled under the Pharmacy’s agreement with Alberta Blue Cross to the fees claimed, the particulars of which include the submission of:
  - a. 2,365 claims worth approximately \$47,300 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order;
  - b. three claims worth approximately \$60 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;
  - c. 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy’s agreement with Alberta Blue Cross and Section 2(5) of the Alberta Health Ministerial Order;

- d. eight claims worth approximately \$3,455 for Comprehensive Annual Care Plan (“CACP”) Initial Assessments within 365 days of a Standard Medication Management Assessment (“SMMA”) Initial Assessment, in breach of Article 3.1 of the Pharmacy’s agreement with Alberta Blue Cross and Section 2(4) of the Alberta Health Ministerial Order.
2. Failed to create or maintain required and accurate pharmacy records, the particulars of which include:
    - a. 34 prescriptions that were not provided by the Pharmacy to support the claims to Alberta Blue Cross;
    - b. five pharmacy service assessments where the Pharmacy did not provide the documentation to support the CACP or SMMA Initial Assessment or the Follow-up CACP or SMMA Assessment;
    - c. two pharmacy service assessments where the prescription documentation did not include the date the service was performed;
    - d. seven pharmacy service assessments where the Pharmacy’s documentation did not contain the rationale for writing the prescription;
    - e. required pharmacy records in respect to approximately \$25,353 worth of claims to Alberta Blue Cross for six drug products and one nutritional product

IT IS ALLEGED THAT the conduct of Mr. Khan and Ms. Asim in these matters:

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

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

- Standards 1 and 18, and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 (sub-standards 1.1 and 1.2) and 8 (sub-standards 8.1(a), 8.1(b) and 8.3(a)) of the Standards for the Operation of Licensed Pharmacies;

- Principles 1(1, 12) and 10 (1, 2 ,3) of the Alberta College of Pharmacy's Code of Ethics;
- Sub-Section 12(1) of the Pharmacy and Drug Regulation; and
- Sub-Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*;

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

5. The matter proceeded by Admission of Unprofessional Conduct, 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**

6. The hearings for both Mr. Nadim Khan and Ms. Madiha Asim were held concurrently. However, separate decisions have been issued for each investigated member.
7. The parties confirmed there were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to hear this matter.
8. There were no objections made with regard to the timeliness of service of the Notice of Hearing.
9. Pursuant to section 78 of the *Health Professions Act*, the hearing was open to the public. No applications were made to have the hearing or part of the hearing held in private.
10. Hearing Tribunal Member, Ms. Anita McDonald, asked why Mr. Khan was not present for the hearing. Mr. Code noted that Mr. Khan would make himself available if requested, but was not in attendance because Mr. Khan learned it was not required.

### **IV. EVIDENCE**

11. An Agreed Exhibit Book, which included the Notice of Hearing, the Admission of Unprofessional Conduct, and the Agreed Statement of Facts, was entered as Exhibit 1 by agreement of the parties.
12. The Agreed Statement of Facts sets out the following agreed facts.

#### **Brief Chronology**

13. At all relevant times, Mr. Nadim Khan and Ms. Madiha Asim were registered Alberta pharmacists and the licensees of the Pharmacy. Mr. Khan and Ms. Asim were first registered as clinical pharmacists with the Alberta College of Pharmacy on July 3, 2009 and March 10, 2017, respectively.
14. Mr. Khan was the licensee of the Pharmacy from June 20, 2016 to September 18, 2017.
15. Ms. Asim was the licensee of the Pharmacy from September 19, 2017 to August 31, 2018.
16. On December 20, 2019, the Complaints Director received a letter from a team manager with Claims Audit and Investigation Services for Alberta Blue Cross ("ABC"). The letter indicated that ABC had reviewed claims submitted by the Pharmacy and other pharmacies, and had determined there were claims submitted to ABC that may represent a breach of the Alberta College of Pharmacy's Code of Ethics, Standards of Practice for Pharmacists and Pharmacy Technicians and Standards for the Operation of licensed Pharmacies.
17. On December 20, 2019, the Complaints Director also received a letter from an analyst with Claims Audit and Investigation Services for ABC. The letter provided a summary of the findings from ABC's review of the claims made by the Pharmacy during the period of October 1, 2016 to November 30, 2018 (the "Audit Period"). The analyst indicated that the Pharmacy had submitted claims to ABC where the pharmacy service provided was ineligible or where the documentation was missing or invalid. This letter included details of the ineligible claims and missing or invalid documentation and Mr. Khan's response to the ABC findings.
18. The Complaints Director treated the information from ABC as a complaint and commenced an investigation. On December 20, 2019, he appointed himself, Ms. Jennifer Mosher and Mr. Monty Stanowich as investigators.
19. On May 26, 2020, the Complaints Director received an email from legal counsel for Mr. Khan which attached the Pharmacy's responses to the ABC draft report, and the Pharmacy's response to the Allegations in the Notice of Hearing. Legal counsel for Mr. Khan also indicated that Mr. Khan and Ms. Asim no longer had any interest or involvement with the Pharmacy and were unable to provide any further records relating to the Pharmacy.
20. On July 2, 2020, Ms. Mosher sent an email to the new licensee of the Pharmacy and requested assistance in retrieving the documentation that the Investigated Member was unable to access. On July 31, 2020, the new licensee of the Pharmacy provided the requested documentation to Ms. Mosher and noted that he could not locate most of the requested records.

21. As part of the investigation, Ms. Mosher received copies of the following from ABC: (A) Pharmacy Services Ministerial Orders covering the Audit Period; (B) Pharmacy Services compensation guides that are available on ABC's website; (C) the 2014 and 2018 ABC Pharmaceutical Services Provider Agreements covering the Audit Period; and (D) Pharmacy Benefacts, a Bulletin published by ABC referring to trial prescriptions and how to claim them.
22. On October 13, 2020, Ms. Mosher met with Mr. Khan and his legal counsel in relation to the ABC audit. In her meeting notes, Ms. Mosher recorded the following:
  - a. since the ABC audit,
    - i. Mr. Khan reviewed the Ministerial Order and considers it "his bible";
    - ii. His patient is the "most important thing";
    - iii. His practice of following up post-injection and on trial prescriptions has not changed, but he no longer bills those services to ABC;
    - iv. He does not initiate drug therapy unless it is a new medication for the patient, and he provides a prescription adaptation to extend existing medications;
    - v. He is aware that he can only bill one service per day per patient; and
    - vi. He has more time to spend with his patients rather than on submitting claims to ABC. He indicated that he "believes in patient care" and feels more motivated to provide that care. In addition, Mr. Khan conveyed that with a "100% change in billing" he was also able to better focus on documentation of care and record keeping.
  - b. Outside of the ABC audit, he received no additional communication from ABC that his billing practices were unacceptable or contrary to the Ministerial Order. When submitting Claims Verification Reviews prior to his audit, he received no feedback or requests to reverse the reviewed claims from ABC. Furthermore, his dispensing software and ABC's adjudication process allowed him to bill the claims.
  - c. Except for the Pharmacy (which was sold), Mr. Khan's pharmacies hold current, valid agreements with ABC. These agreements are not amended in any way from other agreements held by other Alberta pharmacies.
23. Following the investigation, the Complaints Director referred the matter to a hearing.

### **Agreed Facts Supporting Allegations**

24. Between October 1, 2016 and August 31, 2018, Mr. Khan and Ms. Asim were registered Alberta pharmacists and licensees of the Pharmacy.

#### Allegation 1

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

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

26. As pharmacists and licensees, Mr. Khan and Ms. Asim are expected to be aware of, and comply with, the applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta.

#### Particular 1a

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

a. 2,365 claims worth approximately \$47,300 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and follow-ups to initial access and did not meet the definition of Trial Prescription under Section 1 of the Alberta Health Ministerial Order.

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

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

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

#### Particular 1b

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

- b. three claims worth approximately \$60 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;

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

"Administration of a Product by Injection" means administration of a Product other than a Publicly Funded Vaccine by Injection.

32. Post-injection follow-ups do not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order.

Particular 1c

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

- c. 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order; and

34. Section 2(5) of the Alberta Health Ministerial Order provides that subject to specified exclusions, only one pharmacy service fee shall be payable per patient per day.

35. Mr. Khan and Ms. Asim submitted, or allowed for the submission of, 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion under the Alberta Health Ministerial Order.

Particular 1d

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

- d. eight claims worth approximately \$3,455 for Comprehensive Annual Care Plan ("CACP") Initial Assessments within 365 days of a Standard Medication Management Assessment ("SMMA") Initial Assessment, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order.

37. Section 2(4) of the Alberta Health Ministerial Order provides that "[w]here a Fee has been paid for a [SMMA Initial Assessment for a patient], no Fee for [a CACP Initial

Assessment] shall be claimed or payable within 365 days in respect of that [patient] by any Community Pharmacy."

Allegation 2

38. Mr. Khan and Ms. Asim failed to create or maintain required and accurate pharmacy records for:
- a. 34 prescriptions that were not provided by the Pharmacy to support the claims to ABC;
  - b. five pharmacy service assessments where the Pharmacy did not provide the documentation to support the CACP or SMMA Initial Assessment or the Follow-up CACP or SMMA Assessment;
  - c. two pharmacy service assessments where the prescription documentation did not include the date the service was performed;
  - d. seven pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription; and
  - e. required pharmacy records in respect to approximately \$25,353 worth of claims to ABC for six drug products and one nutritional product.
39. As Complaints Director, James Krempien, acknowledged that Mr. Khan and Ms. Asim were fully cooperative throughout the investigation and hearing process.
40. Mr. Khan acknowledged that he received legal advice prior to entering into the Agreed Statement of Facts and that he understood that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the Allegations set out in the Notice of Hearing.

Admission of Unprofessional Conduct

41. Pursuant to section 70 of the *Health Professions Act*, Mr. Nadim Khan wished to provide a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.
42. Mr. Khan acknowledged and admitted that while he was a registered Alberta pharmacist and licensee of the Pharmacy, he and Ms. Asim:
- a. Submitted, or allowed for the submission of, claims to ABC when he should have known, he was not entitled under the Pharmacy's agreement with ABC to the fees claimed, the particulars of which include the submission of:
    - i. 2,365 claims worth approximately \$47,300 as Assessments for Trial Prescriptions when the claims were for post-injection follow-ups and

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

- ii. three claims worth approximately \$60 as Assessments for Administration of a Product by Injection when the claims were for post-injection follow-ups and did not meet the definition of Administration of a Product by Injection under Section 1 of the Alberta Health Ministerial Order;
- iii. 13 claims worth approximately \$420 for more than one pharmacy service per patient per day in the absence of an exclusion, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(5) of the Alberta Health Ministerial Order; and
- iv. eight claims worth approximately \$3,455 for Comprehensive Annual Care Plan ("CACP") Initial Assessments within 365 days of a Standard Medication Management Assessment ("SMMA") Initial Assessment, in breach of Article 3.1 of the Pharmacy's agreement with ABC and Section 2(4) of the Alberta Health Ministerial Order.

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

- i. 34 prescriptions that were not provided by the Pharmacy to support the claims to ABC;
- ii. five pharmacy service assessments where the Pharmacy did not provide the documentation to support the CACP or SMMA Initial Assessment or the Follow up CACP or SMMA Assessment;
- iii. two pharmacy service assessments where the prescription documentation did not include the date the service was performed;
- iv. seven pharmacy service assessments where the Pharmacy's documentation did not contain the rationale for writing the prescription; and
- v. required pharmacy records in respect to approximately \$25,353 worth of claims to ABC for six drug products and one nutritional product.

43. Mr. Khan agreed and acknowledged that his conduct in these matters:

- Breached his statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy licensee;
- Had the potential to undermine the integrity of the profession;
- Had the potential to decrease the public's trust in the profession; and

- Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.
44. Mr. Khan further agreed and acknowledged that his conduct, as set out above, constitutes breaches of the following statutes and standards governing the profession of pharmacy:
- Standards 1 and 18, and sub-standards 1.1 and 1.2, of the Standards of Practice for Pharmacists and Pharmacy Technicians;
  - Standards 1 (sub-standards 1.1 and 1.2) and 8 (sub-standards 8.1(a), 8.1(b) and 8.3(a)) of the Standards for the Operation of Licensed Pharmacies;
  - Principles 1(1, 12) and 10 (1, 2 ,3) of the Alberta College of Pharmacy’s Code of Ethics;
  - Sub-Section 12(1) of the Pharmacy and Drug Regulation; and
  - Sub-Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*;

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

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

## **VI. SUBMISSIONS ON THE ALLEGATIONS**

46. The parties confirmed that the issues in the hearing were similar to issues in a prior hearing held the morning of June 14, 2022 and that submissions from that hearing would apply here as well. The parties confirmed that the transcript from the morning hearing on June 14, 2022 could be referenced for the purposes of the hearing involving Mr. Khan and in the Hearing Tribunal’s decision or in the event of appeal.
47. Ms. Costigan acknowledged the assistance and cooperation of Mr. Code and Mr. Khan in reaching an agreement without the need for a full hearing or for the calling of any witnesses.

48. Ms. Costigan detailed the basis for the Allegations brought forward and the chronology of how the complaint materialized. She explained each allegation in detail.
49. Ms. Costigan highlighted aspects of the Agreed Exhibit Book and gave a detailed explanation of the Admission of Unprofessional Conduct and the Agreed Statement of Facts. She detailed the chronology of the events and the communications that occurred throughout the investigative process.
50. Mr. Khan was the licensee for the portion of the ABC audit that included June 20, 2016 to September 18, 2017. Ms. Asim was the licensee from September 19, 2017 to August 31, 2018. The licensee after this date was a different owner and, therefore, the conduct after this was not a part of the investigation. The new owner, provided the requested documentation relevant to the Audit Period and, however, he could not locate most of the requested records.
51. Ms. Costigan contended that the agreed documents provided by the parties demonstrate that the admissions made by Mr. Khan are supported by the evidence. Further, Mr. Khan's conduct amounts to unprofessional conduct based on the evidence presented and should be accepted by the Hearing Tribunal.
52. Ms. Costigan added that Mr. Khan's submission of claims and his failure to create or maintain accurate pharmacy records as outlined in the Notice of Hearing amounted to breaches of the legislation, the Standards of Practice for Pharmacists and Pharmacy Technicians, the Standards for the Operation of Licensed Pharmacies and the Code of Ethics, as cited in the Notice of Hearing.
53. Ms. Costigan pointed out that the Hearing Tribunal will have to decide whether the Allegations in the Notice of Hearing were proven on the balance of probabilities and whether Mr. Khan's conduct constituted unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drug Act*.
54. Mr. Code agreed with the submissions made by Ms. Costigan. He did point out that the Allegations read "should have known" and not "knew or ought to have known" and not "knew or should have known".
55. Mr. Code noted that the words "had the potential" that are used in the Notice of Hearing is followed through in the admission document. The Notice of Hearing does not say that his conduct undermined the integrity of the profession or that it decreased the public trust, but rather that the conduct had the potential to do both.
56. Mr. Code referred to his submissions from the morning's hearing in relation to understanding how hundreds and thousands of "mistakes" could happen and how there was a reliance on ABC to identify and communicate the mistakes. That is, many mistakes were made by Mr. Khan. Mr. Code explained that there is a "long and hard" way to proper practice and there is a "shortcut" approach. The "long and hard" approach is to fully read and understand all of the documents relating to the appropriate

submission of claims to ABC. The second approach, the “shortcut” approach, is the approach taken by Mr. Khan. Mr. Khan submitted the claims to ABC and when these claims were not rejected, he assumed that the claim was valid and in line with all of the rules and requirements.

## **VII. FINDINGS ON THE ALLEGATIONS**

57. During the hearing on June 14, 2022, the Hearing Tribunal verbally advised the parties that it considered the submissions and the evidence relative to the Allegations specified in the Notice of Hearing and that it accepted Mr. Khan’s admissions of unprofessional conduct. The facts as admitted by Mr. Khan support the admissions.
58. Mr. Khan was added to the clinical register of pharmacists of the Alberta College of Pharmacy on July 3, 2009. He was the licensee of CougarRidge Pharmacy & Travel Clinic (ACP License # 3063) from June 20, 2016 to September 18, 2017. During this period of time, the relevant facts and events in Allegations 1 and 2 occurred.
59. Mr. Khan is expected, both as a pharmacist and as a licensee, to be fully aware of and comply with all applicable legislation governing the practice of pharmacy and the operation of licensed pharmacies in Alberta. The Standards of Practice for Pharmacists and Pharmacy Technicians at Standards 1.1 and 1.2 and the Standards for the Operation of Licensed Pharmacies at Standards 1.1 and 1.2 specify the expectations of pharmacists and licensees to comply with all relevant legislation and laws relating to their practice. These standards contemplate compliance both in terms of the letter and the spirit of the law.
60. Mr. Khan failed to obtain an acceptable understanding of the eligibility and limitations of the submission of claims to ABC for professional services. Furthermore, it was his responsibility to assess each individual professional service for eligibility. He chose to rely simply on the “adjudication message” from ABC as verification of eligibility. The ABC adjudication message was never intended to “validate” submissions. This approach falls well short of what is expected. There are resources available for pharmacists to ask questions about the eligibility for claim submission. ABC publishes a regular newsletter (Pharmacy Benefact). The ABC Pharmacy Agreement is also a resource that was readily available.
61. The public, of which ABC is a part, expects pharmacists to have complete and up-to-date knowledge of the legislation and standards that govern their practice. Furthermore, the public expects pharmacists to be in full compliance with applicable legislation and standards at all times and this certainly includes the submission for payment for professional services. The self regulatory nature of the profession of pharmacy is dependent upon this principle.
62. The Standards of Practice for Pharmacists and Pharmacy Technicians at Standard 18; the Standards for the Operation of Licensed Pharmacies at Standard 8; the *Pharmacy*

*and Drug Act* at section 10(1)(a) and 10(1)(d)(iv); and the *Pharmacy and Drug Regulation* at section 12(1)<sup>1</sup> relate to the requirement for pharmacists and licensees to ensure that there is an effective and secure system to create and maintain pharmacy records. In the course of the ABC Audit it was found that 34 prescriptions were not provided to support claims; no supportive documentation was provided with respect to 5 pharmacy services assessments; the documentation did not include the date of service with respect to 2 pharmacy service assessments; the rationale for writing the prescription was not provided for 7 pharmacy services assessments ; and, pharmacy records with respect to about \$25,353 worth of claims for 6 drug products and one nutritional product were not provided. The public must have confidence that pharmacists maintain accurate and complete records at all times. In the absence of this, patients are placed at significant risk as clinical decisions may be made on incorrect information or the absence of pertinent information. Mr. Khan failed to maintain the proper records and, therefore, failed in his responsibilities as a pharmacist and as a licensee.

63. The Hearing Tribunal also considered the Allegations as they relate to the Code of Ethics. Specifically, the Hearing Tribunal considered Principle 1, “Hold the well-being of each patient to be my primary concern” (and sub-principles 1 and 12) and Principle 10 “Act with honesty and integrity” (and sub-principles 1, 2, and 3). In the view of the Hearing Tribunal, the Allegations, as admitted by Mr. Khan, result in breaches of these principles. Every submission for a professional service must be assessed for validity and appropriateness on its own merit. Failure to do so invites error and inaccurate records could impact patient health. The absence of any record is even more egregious. Mr. Khan failed to uphold his professional responsibilities.
64. The failures to comply with the Standards of Practice, Standards for the Operation of Licensed Pharmacies and Principles of the Code of Ethics outlined above are serious, as is the failure to comply with the *Pharmacy and Drug Act* and *Pharmacy and Drug Regulation*.
65. The public relies on regulated members of the pharmacy profession to know and abide by its legislation and standards. The failure to do so undermines public confidence in the profession and harms the integrity of the profession in the public’s eyes. Mr. Khan’s conduct in Allegations 1 and 2 also undermined the integrity of the profession.
66. ABC is also a member of the public. Irrespective of the fact that ABC has a contractual relationship with Mr. Khan, ABC too must be able to have confidence that pharmacists conduct themselves in accordance with all laws and Standards governing the practice of pharmacy. There is no practical way to monitor the thousands of transactions that occur each day across Alberta. Therefore, the conduct of Mr. Khan undermines the integrity of the profession and has affected the public’s trust in the profession.

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

67. The Hearing Tribunal also concluded that Mr. Khan ought to have reasonably understood his obligations relative to record keeping of prescriptions. His failure in this regard places the health of the public at risk. This is because inaccurate or incomplete records can affect decision making and this has the potential to cause harm. The public must have confidence that processes exist in the management of a pharmacy that ensure that pharmacy records are current and accurate. This conduct also undermines the integrity of the profession and is detrimental to the best interests of the public.
68. The Hearing Tribunal was satisfied that Mr. Khan's admitted and proven conduct in Allegations 1 and 2 was unprofessional conduct pursuant to sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under section 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.
69. The Hearing Tribunal recognized that Mr. Khan is under no obligation to attend the proceedings in person and was aware that he was prepared to make himself available if requested. The Hearing Tribunal did not consider his absence against him in reaching a decision. However, the Hearing Tribunal wishes to emphasize the value in having an investigated member present at a hearing, both from an accountability and transparency aspect.

#### **VIII. SUBMISSIONS ON SANCTION**

70. Ms. Costigan advised the Hearing Tribunal that the parties had reached a Joint Submission on Sanction. The Joint Submission on Sanction was entered as Exhibit 2.
71. In the Joint Submission on Sanction, the parties jointly proposed the following sanctions:
  1. Mr. Khan shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the Center for Personalized Education for Professionals (CPEP) Probe Ethics and Boundaries Course. Mr. Khan is responsible for the costs of the course.
  2. Mr. Khan shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Mr. Khan is responsible for the costs of the program.
  3. Mr. Khan's practice permit shall be suspended for 3 months, with
    - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and

- b. 2 months to be held in abeyance pending Mr. Khan's completion of Orders 1 and 2 above.

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

4. Mr. Khan shall pay fines of \$2,500 with respect to Allegation 1 and \$2,500 with respect to Allegation 2, for total fines of \$5,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fines shall be paid within 1 year of the date Mr. Khan receives a copy of the Hearing Tribunal's written decision.
  5. Mr. Khan shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which he is employed for a period of 3 years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
  6. If the Complaints Director refers concerns similar to the Allegations in the Notice of Hearing to a hearing under section 66(3)(a) of the *Health Professions Act* within 5 years from the date the Hearing Tribunal Issues its written decision, the Complaints Director shall be at liberty to direct that Mr. Khan not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from the date the Complaints Director provides notice to Mr. Khan of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the Allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.
  7. Mr. Khan shall be responsible for payment of 50% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Mr. Khan receives a copy of the Hearing Tribunal's written decision
72. Ms. Costigan explained in detail the seven orders in the Joint Submission on Sanction. Ms. Costigan noted that for Order 1, Mr. Code informed her that Mr. Khan is expecting to complete the PROBE course on September 22nd to 24th, 2022. With respect to Order 2, Mr. Code informed her that Mr. Khan has completed parts A and B of the ACP Licensee Education Program and has provided certificates of completion to the Complaints Director. Ms. Costigan pointed out that Order 7 reflects that the two investigated members are sharing the costs of the hearing and investigation equally.

73. Ms. Costigan referred the Hearing Tribunal to the submissions from the morning hearing with regard to the law on joint submissions and the case authorities provided, including *Jaswal v Newfoundland Medical Board* and *R v. Anthony-Cook*. She further referred the Hearing Tribunal to the morning submissions on sentencing principles and the Book of Authorities.
74. Ms. Costigan focused on the factors that were relevant to the facts of this hearing. Ms. Costigan pointed out that the Allegations were serious and that Mr. Khan breached the ethical and professional responsibilities of a pharmacist and licensee. She noted that Mr. Khan became a registered clinical pharmacist in July of 2009 and was the licensee of the pharmacy from June 20, 2016 to September 18, 2017. He is an experienced pharmacist and has had experience as a licensee with another licensed pharmacy between 2010 and 2012 and several other pharmacies. Ms. Costigan did note that these were outside of the Audit Period. She made the point that while the conduct at these pharmacies is not at issue, his admitted conduct cannot be excused on the basis of inexperience.
75. There are no prior findings of misconduct on the part of Mr. Khan. This weighs in his favor. Mr. Khan was involved in 2 of 5 similar formal complaint matters from ABC that were resolved by agreement.
76. Ms. Costigan noted that this was not a one time error, but was repeated over a two year period.
77. As an important mitigating factor, Ms. Costigan acknowledged the admission of unprofessional conduct in taking responsibility for his conduct. Mr. Khan had also provided a certificate of completion of the Licensee Education Program. Ms. Costigan acknowledged the cooperation of his legal counsel in helping in the development of the agreed documents.
78. Ms. Costigan noted that while the amounts owing to ABC have been repaid, the Complaints Director does not view this as a penalty.
79. In the view of the Complaints Director, the orders in the Joint Submission serve as a specific and general deterrent.
80. Ms. Costigan referred to the 3 case examples provided in the morning hearing on June 14, 2022 and submitted that the proposed sanctions fall within the possible range of sanctions.
81. Ms. Asim and Mr. Khan have jointly agreed to pay for 100% of the costs of the hearing and the investigation, reflected as an order for 50% of the costs in each of the sets of proposed orders.
82. Ms. Costigan concluded by saying that the orders proposed in the Joint Submission on Sanction are appropriate and fair and should be accepted by the Hearing Tribunal.

83. Mr. Code submitted that he agreed with the submissions made on behalf of the Complaints Director and that the Joint Submission on Sanction is in the public interest.
84. Mr. Code further submitted that while it may not be a mitigating factor, Mr. Khan is out of pocket money.
85. Mr. Code pointed out that Mr. Khan offers services to a specific linguistic and cultural community and that the public interest is promoted by having pharmacists of this level of diversity in our cities and our province. This supports a shorter suspension period.
86. In Mr. Code's view, these proposed sanctions set a strong deterrence. He concluded by saying that Mr. Khan is anxious to fulfil the terms of the Joint Submission on Sanction so that he can move past this.
87. The Hearing Tribunal had a question about Allegation 2(e). The question was why it was not reflected in sanctions when it appears as though it references records outside of pharmacy services. Ms. Costigan confirmed that Allegation 2(e) was considered when sanction orders were negotiated. In the view of the Complaints Director, Allegation 2(e) is a record keeping issue and was considered based on the orders that were proposed and nothing further is required.

## **IX. FINDINGS ON SANCTION**

88. The Hearing Tribunal assessed the Joint Submission on Sanction for appropriateness of sanction and effectiveness as a deterrent for Mr. Khan and the profession at large. The submissions of both parties were considered as well.
89. The Hearing Tribunal considered the explanation of Order 6 from the morning submissions where both parties submitted that the Hearing Tribunal had jurisdiction to make such an order and that both parties had agreed to this Order.
90. At the conclusion of the hearing on June 14, 2022 the Hearing Tribunal provided a verbal decision accepting the Joint Submission on Sanction. This written decision confirms the decision of the Hearing Tribunal and provides reasons. The Hearing Tribunal acknowledges deference should be provided to joint submissions and that it ought not depart from the joint submission unless the sanctions are considered to bring the administration of justice into disrepute or be contrary to the public interest.
91. The Hearing Tribunal noted that sanctions must serve the following purposes: public protection, maintenance of the profession's integrity, fairness to Mr. Khan, and specific and general deterrence.
92. The Hearing Tribunal considered several factors in arriving at its decision. Mr. Khan was a registered clinical pharmacist at the material times, as well as, the licensee of the

- Pharmacy. The Hearing Tribunal considered Mr. Khan's experience and concluded that he reasonably ought to have been aware of and be able to comply fully with all legislation and standards governing his practice of pharmacy and the operation of the Pharmacy. He should have known the specific eligibility criteria for the submission of claims for professional services. His simple reliance on the adjudication messages from ABC is no defense for the conduct. There are several resources available to all Alberta pharmacists to clarify questions surrounding the legitimate submission of claims for professional services. The conduct in question occurred many times and, therefore, suggests that he failed in this regard.
93. The public must have confidence that pharmacists conduct themselves in accordance with all laws and standards that govern the practice of pharmacy. The profession's ability to self-regulate depends on this. The Hearing Tribunal was satisfied that the jointly proposed sanctions will maintain public confidence in the integrity of the profession.
  94. The Hearing Tribunal noted the courses that are proposed. The remedial aspect of the Joint Submission on Sanction helps to ensure the protection of the public and that the Investigated Member will be practicing appropriately and in accordance with Standards and the Code of Ethics.
  95. The public must have confidence that all Alberta pharmacists and licensees operate in accordance with the legislation that relates to the practice of pharmacy in Alberta and the Standards and Code of Ethics set forth by the Alberta College of Pharmacy. The public must be confident that failure to uphold the trust will be met with significant consequences. The suspension and fines address this.
  96. The Hearing Tribunal considered the cases that were reviewed and compared to the sanctions being proposed. The Hearing Tribunal concluded that the sanctions proposed in the Joint Submission on Sanction are appropriate.
  97. Requiring Mr. Khan to provide a copy of the Hearing Tribunal's decision to any pharmacy employer or licensee of a pharmacy where he is employed for a period of 3 years and the ability of the Complaints Director to direct that Mr. Khan not serve as an owner, proprietor, or licensor of a pharmacy for a period of time if similar Allegations are referred to a hearing serve to protect the public interest and act as a deterrent to Mr. Khan specifically, but also the profession more generally.
  98. The Hearing Tribunal noted the joint agreement that Mr. Khan pay half of the full costs of the investigation and hearing with Ms. Asim paying the other half. The Hearing Tribunal found this was an appropriate case to order the full payment of costs by the two investigated members.
  99. The Hearing Tribunal applied the public interest test and finds the Joint Submission on Sanction to be appropriate. The jointly proposed sanctions serve the purposes of sanctions in professional discipline cases and protect the public interest.

**X. ORDERS OF THE HEARING TRIBUNAL**

100. The Hearing tribunal accepts the Joint Submission and makes the following orders under Section 82 of the *Health Professions Act*

1. Mr. Khan shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the Center for Personalized Education for Professionals (CPEP) Probe Ethics and Boundaries Course. Mr. Khan is responsible for the costs of the course.
2. Mr. Khan shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Mr. Khan is responsible for the costs of the program.
3. Mr. Khan's practice permit shall be suspended for 3 months, with
  - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
  - b. 2 months to be held in abeyance pending Mr. Khan's completion of Orders 1 and 2 above.

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

4. Mr. Khan shall pay fines of \$2,500 with respect to Allegation 1 and \$2,500 with respect to Allegation 2, for total fines of \$5,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fines shall be paid within 1 year of the date Mr. Khan receives a copy of the Hearing Tribunal's written decision.
5. Mr. Khan shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which he is employed for a period of 3 years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
6. If the Complaints Director refers concerns similar to the Allegations in the Notice of Hearing to a hearing under section 66(3)(a) of the *Health Professions*

*Act* within 5 years from the date the Hearing Tribunal Issues its written decision, the Complaints Director shall be at liberty to direct that Mr. Khan not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from the date the Complaints Director provides notice to Mr. Khan of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the Allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.

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

Signed on behalf of the hearing tribunal by the Chair on September 20, 2022.

Per:   
Richard Hackman (Sep 30, 2022 10:04 MDT)  
Rick Hackman, Chair