

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**Nasima Khan**

Registration number: 9028

**DECISION OF THE HEARING TRIBUNAL**

September 30, 2022

## **I. INTRODUCTION**

1. The Hearing Tribunal held a hearing into the conduct of Nasima Khan, Registration number 9028 (“Ms. 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. Also in attendance at the hearing were Aman Costigan and Raymond Chen, representing the Complaints Director; James Krempien, the Complaints Director; Nasima Khan, the Investigated Member; Brett Code, counsel for the Investigated Member; and Julie Gagnon, independent legal counsel to the Hearing Tribunal.

## **II. ALLEGATIONS**

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

IT IS ALLEGED THAT, between October 1, 2016, and November 30, 2018, while you were both a registered Alberta pharmacist and the licensee of Douglasglen Pharmacy and Travel Clinic (ACP Licence #2930) (the “Pharmacy”), you:

1. Submitted, or allowed for the submission of, claims to Alberta Blue Cross when you should have known you 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. 2,912 claims worth approximately \$58,240 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. 14 claims worth approximately \$280 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. 62 claims worth approximately \$3,430 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. seven claims worth approximately \$1,840 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. 69 prescriptions that were not provided by the Pharmacy to support the claims to Alberta Blue Cross.
    - b. Three care plan assessments where the CACP or SMMA Initial Assessment was missing the pharmacist’s signature or the updated CACP or SMMA was not re-signed by the pharmacist.

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 pharmacy licensee,
- 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 your conduct 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. There were no objections made with regard to the timeliness of service of the Notice of Hearing.
7. The parties confirmed there were no objections to the composition of the Hearing Tribunal nor with regard to the jurisdiction of the Hearing Tribunal to hear this matter.
8. 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.

### **IV. EVIDENCE**

9. 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.
10. The Agreed Statement of Facts sets out the following agreed facts.

#### **Brief Chronology**

11. At all relevant times, Ms. Khan was a registered Alberta pharmacist and the licensee of the Pharmacy. Ms. Khan was first registered as a clinical pharmacist with the Alberta College of Pharmacy on July 7, 2009.
12. Ms. Khan was the licensee of the Pharmacy from September 1, 2015 to March 19, 2019. Prior to serving as the licensee of the Pharmacy, Ms. Khan had no prior licensee experience. She had worked as a staff pharmacist at community pharmacies in Calgary.
13. 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.

14. 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 letter 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 documentation and Ms. Khan's response to the ABC findings.
15. 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.
16. 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.
17. On October 13, 2020, Ms. Mosher met with Ms. Khan and her legal counsel via Microsoft Teams. In her meeting notes, Ms. Mosher recorded the following, among other things:
  - a. since the audit, Ms. Khan reviewed the Ministerial Order and continues to do so. If she has questions about the Ministerial Order, she will call ABC, the Alberta Pharmacists Association or the Alberta College of Pharmacy;
  - b. the Pharmacy holds a current, valid agreement with ABC. This agreement is not amended in any way from other agreements held by other Alberta pharmacies;
  - c. related to trial prescription claims for post-injection follow-up, she stopped this practice prior to the final ABC report, and all such transactions were reversed. Her practice of following up post-injection has not changed, but she no longer bills the service to ABC;
  - d. outside of the ABC audit, she received no additional communication from ABC telling her billing practices were unacceptable and contrary to the Ministerial Order. In 2017, when submitting Claims Verification Reviews prior to this audit, she received no feedback or requests to reverse the reviewed claims from ABC. As her dispensing software allowed the claims to adjudication, Ms. Khan thought these claims were "allowed"; and
  - e. she acknowledged that since the audit, the Pharmacy's policies, and procedures were updated, and it is now the Pharmacy's practice to document patient care and scan it into the dispensing software daily. She indicated that documentation of care and record keeping had improved. The Pharmacy is double-checking all medication reviews for completeness and billing in the matter of which the Ministerial Order intended.

18. Following the investigation, the Complaints Director referred the matter to a hearing.

**Agreed Facts Supporting Allegations**

19. During the ABC Audit Period (October 1, 2016 and November 30, 2018), Ms. Khan was both a registered Alberta pharmacist and the licensee of the Pharmacy.

Allegation 1

20. 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.

21. As pharmacists and licensees, Ms. Khan is 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

22. Ms. Khan submitted, or allowed for the submission of claims to ABC when she should have known she was not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- a. 2,912 claims worth approximately \$58,240 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.

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

"Trial Prescriptions" 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.

24. 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

25. Ms. Khan submitted, or allowed for the submission of, claims to ABC when she should have known she was not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- b. 14 claims worth approximately \$280 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.

26. 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.

27. 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

28. Ms. Khan submitted, or allowed for the submission of, claims to ABC when she should have known she was not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- c. 62 claims worth approximately \$3,430 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; and

29. 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.

30. Ms. Khan submitted, or allowed for the submission of, 62 claims worth approximately \$3,430 for more than one pharmacy service per patient per day in the absence of an exclusion under the Alberta Health Ministerial Order.

Particular 1d

31. Ms. Khan submitted, or allowed for the submission of, claims to ABC when she should have known she was not entitled under the Pharmacy's agreement with ABC to the fees claimed, including the submission of:

- d. seven claims worth approximately \$1,840 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.

32. 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

33. Ms. Khan failed to create or maintain required and accurate pharmacy records for:
- a. 69 prescriptions that were not provided by the Pharmacy to support the claims to ABC; and
  - b. three care plan assessments where the CACP or SMMA Initial Assessment was missing the pharmacist's signature or the updated CACP or SMMA was not re-signed by the pharmacist.

Admission of Unprofessional Conduct

34. Pursuant to section 70 of the *Health Professions Act*, Ms. Nasima Khan provided a written admission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.
35. Ms. Khan acknowledged and admitted to the conduct in Allegations 1 and 2 of the Notice of Hearing.
36. Ms. Khan agreed and acknowledged that her conduct in these matters:
- Breached her 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.
37. Ms. Khan further agreed and acknowledged that her conduct constituted 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*.

38. Ms. Khan acknowledged that she had received legal advice prior to entering into the Admission of Unprofessional Conduct and that she understood that if the Hearing Tribunal accepted her Admission of Unprofessional Conduct, the Hearing Tribunal could proceed to issue one or more orders set out in section 82(2) of the *Health Professions Act*.

## V. SUBMISSIONS ON THE ALLEGATIONS

39. Ms. Costigan detailed the basis for the Allegations brought forward and the chronology of how the complaint materialized. She explained each Allegation in detail.
40. 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. Ms. Costigan contended that the agreed documents provided by the parties demonstrate that the admissions made by Ms. Khan are supported by the evidence. Further, Ms. Khan's conduct amounts to unprofessional conduct based on the evidence presented and should be accepted by the Hearing Tribunal.
41. Ms. Costigan contended that Ms. Khan's submission of claims and her 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 Code of Ethics, as cited in the Notice of Hearing.
42. Ms. Costigan commended Ms. Khan and Mr. Code for their cooperation in the investigative process and for their part in establishment of the Agreed Statement of Facts. In light of the Admission of Unprofessional Conduct and the Agreed Statement of Facts, the Complaints Director would not be required to call any witnesses. The Hearing Tribunal would have to decide whether the Allegations in the Notice of Hearing were proven on the balance of probabilities and whether Ms. Khan's conduct constituted unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drugs Act*.
43. Mr. Code explained that Ms. Khan has had the full benefit of independent legal advice. Her admission of guilt was made with full knowledge of the consequences, and she plead guilty to all of the Allegations.
44. Mr. Code highlighted the "nature" of the first Allegation. The Allegation says, "should have known" and does not say that she "knew" she was not entitled to submit the claims. He pointed out that there was no allegation of actual knowledge. Mr. Code noted that there is no allegation that Ms. Khan knew that she was doing something wrong only that what she did was wrong, and she should have known it.

45. Mr. Code submitted that the Notice of Hearing does not say that her conduct undermined the integrity of the profession or that it decreased the public trust. The Notice of Hearing says the conduct had the potential to do both. Mr. Code noted that this is the level of guilt that Ms. Khan has admitted to.
46. Mr. Code noted that there are no specific allegations of harm to the public or of harm to patients. He contended that harm did arise from the relationship between Ms. Khan and the pharmacy and ABC. He pointed out that many mistakes were made by Ms. Khan. 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 what happened to Ms. Khan. She submitted claims to ABC and when these claims were not rejected, she assumed that the claim was valid and in line with all of the rules and requirements.
47. Mr. Code submitted that this was really a series of 2000 mistakes that ABC permitted for some time that were all corrected. Ms. Khan has been educated now in terms of the proper rules and proper conduct with respect to the submission of these types of claims. As such, she will not make these mistakes again.
48. Mr. Code noted his intention was to explain how the events unfolded and confirmed that Ms. Khan has admitted to the Allegations and that her conduct is unprofessional conduct under the *Health Professions Act*.

## **VI. FINDINGS ON THE ALLEGATION**

49. During the hearing on June 14, 2022 the Hearing Tribunal verbally advised the parties that after consideration of the submissions and the evidence presented, the Hearing Tribunal accepted Ms. Khan’s admissions of unprofessional conduct. The facts as admitted by Ms. Khan support the admissions.
50. Ms. Khan was a registered Alberta pharmacist and the licensee of Douglasglen Pharmacy and Travel Clinic (ACP License number #2930) from September 1, 2015 to March 19, 2019 and at all relevant times when the facts and events in Allegations 1 and 2 occurred.
51. As a pharmacist and licensee, Ms. Khan is expected to be aware of, and comply with, the applicable legislation governing the practice of pharmacy and the operation of pharmacies in Alberta. Ms. Khan acknowledged this as part of her admission on the Allegations. 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 specify compliance both in terms of the letter and the spirit of the law.
52. Ms. Khan failed to attain an adequate understanding of the eligibility and limitations of the claims submitted to ABC for professional services. Furthermore, it was her responsibility

to understand how each professional service could be submitted legitimately. She relied simply on the adjudication result by ABC for her submission. The ABC adjudication message was never intended to “validate” submissions. This “short cut” is inadequate in the view of the Hearing Tribunal. Information is readily available to all pharmacists in the Alberta Blue Cross Pharmacy Agreement and the Pharmacy Benefits. The public expects pharmacists to have complete and up-to-date knowledge about the appropriate submission of claims for professional services. Furthermore, the self-regulatory nature of the profession relies upon this.

53. The Standards of Practice 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 audit performed by ABC, 69 prescriptions could not be provided to support the claims made to ABC and 3 care plan assessments did not have proper signatures by the pharmacist. The public must have the confidence that pharmacists maintain accurate and complete records at all times. The potential for serious health consequences is significantly heightened in the absence of this. Ms. Khan is responsible both as the pharmacist and the licensee of this pharmacy for the failure to create or maintain accurate records.
54. The Hearing Tribunal also considered the Allegations as they relate to the Code of Ethics. In particular, 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 Ms. Khan, result in breaches of these principles. Every submission for a professional service must be evaluated for its eligibility as a claim for reimbursement. Failure to do so invites error and potential for inaccurate records that could impact patient health. Ms. Khan failed on this front as she assumed that her claim submissions were valid based on previous submissions for other patients. In addition, by failing to comply with the legislation and laws governing the practice of pharmacy, Ms. Khan has breached Principle 10.
55. 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.
56. 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. Ms. Khan’s conduct in Allegations 1 and 2 also undermined the integrity of the profession.
57. ABC is also a member of the public. Irrespective of the fact that ABC has a contractual relationship with Ms. Khan, ABC too must be able to have confidence that pharmacists conduct themselves in accordance with all laws and Standards governing the practice of

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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.

pharmacy. There is no practical way to monitor the thousands of transactions that occur each day across Alberta. Therefore, the conduct of Ms. Khan undermines the integrity of the profession and has affected the public's trust in the profession.

58. The Hearing Tribunal also concluded that Ms. Khan ought to have reasonably understood her obligations relative to record keeping of prescriptions. Her 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 is also a failure to exercise the professional and ethical judgement expected of an Alberta pharmacist and a pharmacy licensee and undermines the integrity of the profession and is detrimental to the best interests of the public.
59. The Hearing Tribunal was satisfied that Ms. Khan's admitted and proven conduct in Allegations 1 and 2 constitutes 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 Drugs Act*.

## **VII. SUBMISSIONS ON SANCTION**

60. Mr. Chen advised the Hearing Tribunal that the parties were submitting a Joint Submission on Sanction. The Joint Submissions on Sanction was entered as Exhibit 2.
61. In the Joint Submissions on Sanction, the parties jointly propose the following sanctions:
1. Ms. Khan shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has received an unconditional pass on the Center for Personalized Education for Professionals (CPEP) Probe Ethics and Boundaries Course. Ms. Khan is responsible for the costs of the course.
  2. Ms. Khan shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Ms. Khan is responsible for the costs of the program.
  3. Ms. Khan's practice permit shall be suspended for 4 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. 3 months to be held in abeyance pending Ms. Khan's completion of Orders 1 and 2 above.

If Ms. Khan fails to complete Orders 1 and 2, the Complaints Director shall be at liberty to impose the remaining 3-month suspension on Ms. Khan's practice permit. If Ms. Khan successfully completes Orders 1 and 2, the remaining 3-month suspension held in abeyance shall expire.

4. Ms. Khan shall pay fines of \$5,000 with respect to Allegation 1 and \$5,000 with respect to Allegation 2, for total fines of \$10,000. 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 Ms. Khan receives a copy of the Hearing Tribunal's written decision.
  5. Ms. Khan shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of 3 years, commencing on the date she 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 Ms. Khan not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from date the Complaints Director provides notice to Ms. 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. Ms. Khan shall be responsible for payment of all 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 Ms. Khan receives a copy of the Hearing Tribunal's written decision.
62. Mr. Chen explained in detail the proposed Orders in the Joint Submission on Sanction. He submitted that the Hearing Tribunal's decision on sanctions should reflect sanctioning principles, as they apply to this case. Sanctions serve the following purposes: the protection of the public, the maintenance of the integrity of the profession, the fairness to the investigated member, and deterrence to Ms. Khan and the profession more generally.
63. He suggested that the Hearing Tribunal may find it useful to consider the factors set out in the case *Jaswal v. Newfoundland Medical Board* in determining whether the four purposes above were served. Mr. Chen reviewed the *Jaswal* factors and related the facts of this case to each. Mr. Chen submitted that the proven conduct in this case was serious and constitutes unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drug Act*. As a licensee and a pharmacist in Alberta, Ms. Khan is expected to be adequately aware of and comply with the applicable legislation that governs the practice of pharmacy and the operation of pharmacies in Alberta. Mr. Chen noted that the Allegations are serious because they demonstrate that Ms. Khan breached the ethical and professional duties of a pharmacist and licensee.

64. Mr. Chen submitted that pharmacists and licensees are expected to create and maintain accurate pharmacy records. The public expects this of a self-regulated profession and, as such, failure to do so is serious.
65. Mr. Chen pointed out that Ms. Khan is an experienced pharmacist and licensee. Therefore, her conduct cannot be excused for lack of experience.
66. As a mitigating factor, Mr. Chen noted that the Complaints Director is not aware of any prior findings of unprofessional conduct against Ms. Khan. Further, Mr. Chen noted that it is important to recognize that Ms. Khan has admitted to both the Allegations and has accepted responsibility for her conduct. Mr. Chen also recognized the cooperation of Ms. Khan and her lawyer throughout the investigative process and in the development of the Agreed Statement of Facts, the Admission of Unprofessional Conduct and the Joint Submission on Sanction. Mr. Chen also noted that Ms. Khan had independently educated herself by reviewing the Ministerial Order and has changed her practice.
67. Mr. Chen submitted that the conduct was not a one-time occurrence but was repeated many times over a two-year period.
68. Mr. Chen pointed out that ABC was repaid approximately \$75,000 and the Pharmacy's agreement with ABC is still in place. However, in the view of the Complaints Director, this repayment is not a penalty.
69. Mr. Chen suggested that the proposed sanctions promoted specific and general deterrence by reminding members of the importance of upholding their obligations and the consequences of failing to do so. He continued that self-regulating professions are statutory bodies that exist by the creation of legislation. It is important to send a clear message to the legislators and to the public through discipline proceedings that the profession takes its professional and ethical responsibilities seriously and that appropriate sanctions will be levied if the obligations are not upheld.
70. Mr. Chen suggested that the sanctions proposed in the Joint Submission on Sanction are appropriate and compared the current case to some recent decisions of other Hearing Tribunals.
71. Mr. Chen noted that there has been the inclusion of remedial education in Orders 1 and 2 of the joint submission. This course requires Ms. Khan to take an ethics course, as well as Parts A & B of the Alberta College of Pharmacy Licensee Education Program. Ms. Khan has advised that she has changed her practice, ABC has no further concerns, and the pharmacy holds an agreement with ABC that has not been amended in any way. For this reason, the parties believe it is not necessary to restrict Ms. Khan's ability to serve as a licensee. However, there is potential engagement of restriction under Order 6 should the conduct reoccur.
72. Mr. Chen pointed out that any suspension order is serious. This functions as a deterrent and a penalty. The combination of a fine and a suspension serve as a specific and a general

deterrent. They reinforce that there are serious consequences in failing to fully understand one's professional obligations as a pharmacist and a licensee.

73. Mr. Chen commented on the requirement to provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee for 3 years is important to ensure that similar conduct is not repeated.
74. Mr. Chen contended that members of the profession should not be responsible for paying for the costs of the discipline proceedings that result from unprofessional conduct of its individual members. Ms. Khan will be paying for 100% of the costs.
75. Mr. Chen encouraged the Hearing Tribunal to accept the Joint Submission on Sanction. He acknowledged the autonomy of the Hearing Tribunal but referred to *R. v. Anthony-Cook* that is often applied to disciplinary proceedings. This case defines a "public interest test" for decision-makers evaluating a joint submission on sanction. The public interest test says that the decision-maker should not depart from a joint submission on sanctions unless the proposed sanctions would bring the administration of justice into disrepute or would be contrary to the public interest. Mr. Chen submitted that this joint submission meets the sentencing principles as well as the public interest test set out in *R. v. Anthony-Cook* and that it protects the public and the integrity of the profession.
76. Mr. Code submitted that there had been great cooperation between the parties to create the Joint Submission on Sanction. In his view, the level of deference owed by the Hearing Tribunal to a Joint Submission is very high. The Hearing Tribunal should not have to focus too much themselves on the *Jaswal* factor analysis that has been presented as this work has been done through the joint submission process. Mr. Code continued that the sanctions proposed in the joint submission are in line with the *Jaswal* Factors, in the appropriate range and serve the public interest.
77. Mr. Code suggested that ABC made money on the transactions with Ms. Khan and was fully reimbursed. Ms. Khan has admitted guilt but was paid for services that were made in the best interests of her clients and patients and in accordance with what she believed to be the rules and requirements.
78. Mr. Code submitted that the deterrence factors on sanctions were on the high end of the possible range.
79. Mr. Code submitted that Ms. Khan serves specific linguistic and cultural community and losing her for more than has been suggested in the Joint Submission on Sanction would not be in the public interest.
80. After the Hearing Tribunal had an in-camera discussion, some questions arose that were asked of the parties.
81. Ms. Gagnon, independent counsel to the Hearing Tribunal, asked a question relative to proposed Order number 6, which applies in the event of a referral to a hearing. She noted that the Order can take effect on a referral to a hearing, without a finding of unprofessional

- conduct. Ms. Gagnon asked the parties to clarify the authority for that type of Order and how would it work in practice.
82. Mr. Chen pointed out that the Hearing Tribunal has authority under section 82 (1)(1) of the *Health Professions Act* to “make any order that the Hearing Tribunal considers appropriate for the protection of the public”.
  83. Mr. Chen continued that the deterrent effect of this Order is triggered on referral to a hearing. However, this would only occur if the Complaints Director determined that the complaint was of a similar nature and an investigation determined that referral to a hearing was appropriate. He further noted that similar orders have been imposed in previous Alberta College of Pharmacy matters.
  84. Mr. Code agreed with Mr. Chen’s assessment and described that the language created a “low threshold with an open discretion”. The extent of the discretion the Complaints Director has, is governed by statute and so the same protocol for the assessment and management of complaints must be followed.
  85. Ms. McDonald asked the parties to confirm her understanding that the public interest is served because if there is enough evidence through investigation to call a hearing, the sanction would be put in place. The process would not require a separate Hearing Tribunal to impose the sanction. Ms. Khan is protected because the Complaints Director has to assess the complaint and then start an investigation if warranted and only refer to a hearing if warranted. Frivolous or vexatious complaints would not proceed to investigation.
  86. Mr. Chen and Mr. Code agreed with the assessment from Ms. McDonald. Mr. Code added that all the steps required of the Complaints Director must occur before the sanction could be triggered.
  87. Ms. Mellick asked for confirmation that no action would be taken by the Complaints Director unless an investigation report was completed. Mr. Code pointed out it was in fact one step further and that Order 6 would be imposed only if the Complaints Director, after completing the investigation, believed that a hearing should be held which was likely to result in a finding of unprofessional conduct.
  88. Mr. Krempien offered his interpretation. His understanding was that he would need to receive a complaint of a similar nature. He noted that under Part 4 of the *Health Professions Act* he has several options to resolve complaints, but the only way a complaint can be referred to a Hearing Tribunal is after an investigation. If the complaint was of a similar nature, he would have the matter investigated. After the conclusion of the investigation, under s. 63 of the *Health Professions Act*, the complaint would either be dismissed (and Order 6 would not be triggered) or if sufficient grounds exist to suggest that unprofessional conduct occurred warranting referral to a Hearing Tribunal, then Order 6 would be triggered.

## **VIII. FINDINGS ON SANCTION**

89. The Hearing Tribunal assessed the Joint Submission on Sanction for appropriateness of sanction and effectiveness as a deterrent for Ms. Khan and the profession at large. The submissions of both parties were reviewed and considered.
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 acknowledged that deference should be provided to joint submissions on sanction and that it should not depart from the Joint Submission unless it considered the sanctions to bring the administration of justice into disrepute or be contrary to the public interest.
91. The Hearing Tribunal considered that sanctions must serve several purposes: public protection, maintenance of the profession's integrity, fairness to Ms. Khan, and specific and general deterrence. The Hearing Tribunal considered several factors before arriving at a decision.
92. Ms. Khan was a registered Alberta pharmacist and the licensee of Douglasglen Pharmacy and Travel Clinic (ACP License #2930) at all times relevant to the Allegations. Ms. Khan was first registered as a pharmacist with the Alberta College of Pharmacy on July 7, 2009 and the Hearing Tribunal considered her experience as a factor. Ms. Khan ought to have reasonably been expected to understand her obligations to understand the criteria for eligibility of billing for professional pharmacy services. Furthermore, she should have sought out appropriate resources (eg. Pharmacy Benefacts) if she required clarification. The fact that the conduct recurred over 2900 times over a two-year period suggests that she 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 recognized that the fines specified in the Joint Submission on Sanction are lower than in the comparative cases provided, however, there were additional allegations in the other cases. Therefore, the Hearing Tribunal viewed the sanctions proposed in this case as appropriate.

97. In addition, requiring Ms. Khan to provide a copy of the Hearing Tribunal's decision to any pharmacy employer or licensee of a pharmacy where she is employed for a period of 3 years and the ability of the Complaints Director to direct that Ms. Khan not serve as the owner, proprietor or licensee of a pharmacy for a period of time if similar allegations are referred to a hearing serve to protect the public interest and serve as a deterrent to Ms. Khan specifically and to the profession generally.
98. Finally, the Hearing Tribunal noted the joint agreement that Ms. Khan pay the full costs of the investigation and hearing. The Hearing Tribunal found this was an appropriate case to order the full payment of costs.
99. The Hearing Tribunal applied the public interest test and found 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.

#### **IX. ORDERS OF THE HEARING TRIBUNAL**

100. The Hearing Tribunal accepts the Joint Submission on Sanction and makes the following orders under Section 82 of the *Health Professions Act*:
  1. Ms. Khan shall, within 12 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has received an unconditional pass on the Center for Personalized Education for Professionals (CPEP) Probe Ethics and Boundaries Course. Ms. Khan is responsible for the costs of the course.
  2. Ms. Khan shall, within 3 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that she has completed Part A and Part B of the Alberta College of Pharmacy Licensee Education Program. Ms. Khan is responsible for the costs of the program.
  3. Ms. Khan's practice permit shall be suspended for 4 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. 3 months to be held in abeyance pending Ms. Khan's completion of Orders 1 and 2 above.

If Ms. Khan fails to complete Orders 1 and 2, the Complaints Director shall be at liberty to impose the remaining 3 months suspension on Ms. Khan's practice permit. If Ms. Khan successfully completes Orders 1 and 2, the remaining 3-month suspension held in abeyance shall expire.

4. Ms. Khan shall pay fines of \$5,000 with respect to Allegation 1 and \$5,000 with respect to Allegation 2, for total fines of \$10,000. 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 Ms. Khan receives a copy of the Hearing Tribunal's written decision.
5. Ms. Khan shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of 3 years, commencing on the date she 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 Ms. 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 Ms. 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. Ms. Khan shall be responsible for payment of all costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearing Director. The costs shall be paid within 24 months of the date Ms. Khan receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the Hearing Tribunal by the Chair on September 30, 2022.

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

Rick Hackman, Chair