

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF A REGULATED MEMBER

**KATHRYN KIESER**  
Registration number 2914

**DECISION OF THE HEARING TRIBUNAL**

September 22, 2016

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Ms. Kathryn Kieser. The Hearing Tribunal consisted of: Mr. Naeem Ladhani, Pharmacist and Chairman; Mr. Rizwan Ahmed, Pharmacist; Ms. Denise Nilsen, Pharmacist; and Mr. Peter Kawalilak, Public Member. With the consent of all parties, the hearing was held concomitantly with related hearings into the conduct of Mr. Evan King and Mr. Robert Stadnyk.

The hearing took place on June 22, 2016 at the Varscona Hotel, Rutherford Room, located at 8202 106 Street NW in Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act* (the “Act”).

In attendance at the hearing were: Mr. James Krempien, Complaints Director for the Alberta College of Pharmacists (the “College”); Mr. David Jardine, counsel for the Complaints Director; Ms. Kathryn Kieser, investigated member; Mr. Evan King, investigated member in the concomitant related hearing; Mr. Robert Stadnyk, investigated member in the concomitant related hearing; Mr. Luke Day, counsel for Mr. Robert Stadnyk (by telephone conference); Ms. Terry Reid, court reporter; and Ms. Julie Gagnon, independent counsel for the Hearing Tribunal.

There were no objections to the composition of the Hearing Tribunal, the jurisdiction of the Hearing Tribunal to proceed with a hearing, or with the timeliness of service of the Notice of Hearing. Ms. Kieser was also advised of her right to be represented by legal counsel under section 72(1) of the Act. While she was represented by legal counsel, her counsel was not present at the hearing and she confirmed that she wished to proceed without counsel present. The hearing was open to the public.

## **II. ALLEGATIONS**

The allegations to be considered by the Hearing Tribunal, as set out in the Notice of Hearing are as follows:

IT IS ALLEGED THAT during the period from January 1, 2010 to December 31, 2014 as licensee and co-manager of the Medicine Hat Co-op Pharmacy located at 10 Northlands Way NE, Medicine Hat:

1. You were aware of and may have participated in negotiations conducted by your co-manager, Mr. Evan King, of drug purchases and vendor rebates or incentive payments based on the volume of each vendor’s drugs supplied to the pharmacy from four generic drug manufacturers: Actavis Canada (Cobalt); Apotex; Pharmascience; and Mylan (“the generic drug manufacturers”).
2. While the drug purchases and vendor rebates or incentive payments were negotiated by you or your co-manager, Mr. King, the drugs were purchased on behalf of the owner of the pharmacy, Medicine Hat Co-op, and Medicine Hat Co-op paid for all of the drugs purchased.
3. While some of the vendor rebates or incentive payments were paid by the generic drug manufacturers to Medicine Hat Co-op Limited by cheque or “rapid draft”, the bulk of the vendor rebates or incentive payments were provided directly to you or Mr. King for your personal use both at your home and at the pharmacy in the form of gift cards, prepaid credit cards, travel vouchers or paid trips, entertainment expenses and tickets.

4. Based on its review of its own records and records provided by the generic drug manufacturers, Medicine Hat Co-op Limited has alleged that the total pharmacy incentives, gifts, trips and gift cards received by you was \$303,663.00 as follows:

Actavis	2010-2013	\$113,298.00
Apotex	2010-2014	\$88,459.00
Pharmascience	2010-2013	\$76,501.00
Pharmascience	2014	\$6,163.00
Mylan	2010-2013	\$19,242.00

5. You admitted that you personally received and benefited from \$83,850.00 in vendor incentives and rebates (including the amount you indicate you used for employee gifts) and admitted personally benefiting from \$70,899.00 in vendor incentives or rebates but you did not:
- have a systematic or comprehensive list of the personal incentives or rebates that you received from the generic drug manufacturers (although through your written response you attempted to reconstruct a record of the incentives or rebates that you received); and/or
  - keep systematic or comprehensive records of any of the incentives or rebates that you received and for the incentives or rebates that you indicated you provided to other parties including Mr. King or pharmacy staff.
6. You benefited from rebates that were significantly larger than any nominal rebates provided by vendors for the personal benefit of pharmacists.
7. You did not report any of the personal incentives or rebates that you received to the Canada Revenue Agency.
8. You did not report any of the personal incentives or rebates to Alberta Blue Cross in respect to the drugs paid for by Alberta Blue Cross.
9. You did not report or account to Medicine Hat Co-op Limited in respect to any of the incentives or rebates that you received from the generic drug manufacturers and used personally.
10. On or about September 22, 2010 you signed an acknowledgment that you had reviewed Policy 13 which was the Medicine Hat Co-op Limited's Gift Policy that provided that any incentives provided by suppliers would be the property of Medicine Hat Co-op Limited and must be reported to senior management.
11. The vendor incentives and rebates that you received both at the pharmacy and at home and used for your personal benefit were for drugs purchased and paid for by Medicine Hat Co-op Limited, and by accepting and using these vendor incentives and rebates for your personal use, you breached the Gift Policy in a substantial and ongoing manner.

12. Although you indicated that you were not aware of the Gift Policy, the evidence gathered demonstrated that you acknowledged your awareness of the Gift Policy in September 2010.
13. Although you may not have directly negotiated the basic incentive or rebate programs with the generic drug manufacturers' representatives, you benefited equally with your co-manager, Mr. King, and in doing so diverted rebates away from Medicine Hat Co-op Limited.
14. You acknowledged that, at least for some of the family vacations you benefited from and the event tickets that you provided to your staff, you did liaise directly with the vendor representatives and the travel agency in obtaining these incentives or rebates.
15. You knew or ought to have known that these incentives or rebates were to have been passed on to Medicine Hat Co-op Limited who paid for the drugs that were then the subject of the rebates.
16. The lengthy time frame over which the incentives or rebates were received personally by you meant that you could have spoken to senior management of Medicine Hat Co-op Limited and received clear, documented direction about the receipt and use of the incentives and rebates.
17. You did not create or maintain any documentation in relation to:
  - any written agreements with the vendors for the provision of the incentives or rebates;
  - any pharmacy records to reconcile the amount of drugs purchased by the pharmacy and the amount of the incentives or rebates provided by the vendors;
  - any records to indicate the value of the incentives or rebates that you personally benefited from;
  - any records to show what was done with the incentives and rebates that you received but indicated that you gave to pharmacy staff; or
  - any records to support your suggestion that senior pharmacy staff were aware of the substantial incentives and rebates that you were receiving and using for your personal benefit.

IT IS ALLEGED THAT your conduct in these matters:

- a. undermined the integrity of the profession;
- b. was contrary to accepted pharmacist ethical standards;
- c. involved multiple receipts of vendor incentives or rebates that you used personally over an extended period from January 1, 2010 to December 31, 2014;
- d. ended only when your employer discovered from communications from the Canada Revenue Agency the extent of the incentives or rebates that you had received from the generic drug manufacturers and terminated your employment; and/or

- e. lacked honesty and integrity in your dealings with Medicine Hat Co-op Limited and in respect to your obligations to the Canada Revenue Agency.

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

- Section 1 and subsections 1.1 and 1.2 and 1.15 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections, 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*; and/or
- Principles 10(1 and 2) of the ACP Code of Ethics.

and that your conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(ii), and 1(1)(pp)(xii) of the *Health Professions Act*.

### **III. EVIDENCE**

There were three separate hearings with three separate Notices of Hearing (Kieser, King, and Stadnyk), but with the consent of the parties and their respective legal counsel, the hearings were consolidated into one proceeding to minimize costs. There were admissions of unprofessional conduct in each case. By agreement between the parties, Mr. Jardine entered the documents as Exhibits for all three hearings. The following Exhibits relate to this hearing:

- Exhibit 1 Notice of Hearing for Kathryn Kieser dated April 21, 2016 and revised version dated June 13, 2016 with revised date and location of hearing
- Exhibit 4 Admission of Unprofessional Conduct by Kathryn Kieser dated June 21, 2016
- Exhibit 7 Investigation Report of Ms. Kieser
- Exhibit 10 Joint Submission on Sanctions for Kathryn Kieser dated June 22, 2016

Mr. Jardine asked that page 65 of Exhibit 7 be subject to an order of confidentiality by the Hearing Tribunal given that the document contains personal information from the employment file of the investigated member. The Hearing Tribunal granted the request and as such, page 65 of Exhibit 7 is to be treated as confidential and shall not be disclosed by the College to any third party.

Exhibit 4 set out written admissions of unprofessional conduct by Ms. Kieser pursuant to section 70 of the Act. She acknowledged and admitted that:

During the period from January 1, 2010 to July 15, 2014, she was the licensee and co-manager of the Medicine Hat Co-op Pharmacy Ltd. located at 10 Northlands Way NE, Medicine Hat and remained as co-manager after July 15, 2014:

1. She was aware of negotiations conducted by her co-manager, Mr. Evan King, of drug purchases and vendor rebates or incentive payments based on the volume of each vendor's drugs supplied to the pharmacy from four generic drug manufacturers: Actavis Canada (Cobalt); Apotex; Pharmascience; and Mylan ("the generic drug manufacturers").

2. While the drug purchases and vendor rebates or incentive payments were negotiated by her co-manager, Mr. King, the drugs were purchased on behalf of the owner of the pharmacy, Medicine Hat Co-op, and Medicine Hat Co-op paid for all of the drugs purchased.
3. While some of the vendor rebates or incentive payments were paid by the generic drug manufacturers to Medicine Hat Co-op Limited by cheque or "rapid draft" or in the form of equipment for the pharmacy, the bulk of the vendor rebates or incentive payments were provided directly to her or Mr. King for their personal use both at her home and at the pharmacy in the form of gift cards, prepaid credit cards, travel vouchers or paid trips, entertainment expenses and tickets.
4. Based on its review of its own records and records provided by the generic drug manufacturers, Medicine Hat Co-op Limited has alleged that the total pharmacy incentives, gifts, trips and gift cards received by Ms. Kieser was \$303,663.00 as follows:

Actavis	2010-2013	\$113,298.00
Apotex	2010-2014	\$88,459.00
Pharmascience	2010-2013	\$76,501.00
Pharmascience	2014	\$6,163.00
Mylan	2010-2013	\$19,242.00

5. She personally received and benefited from \$83,850.00 in vendor incentives and rebates (including the amount she used for employee gifts) and admitted personally benefiting from \$70,899.00 in vendor incentives or rebates but she did not:
  - have a systematic or comprehensive list of the personal incentives or rebates that she received from the generic drug manufacturers (although through her written response she attempted to reconstruct a record of the incentives or rebates that she received);
  - keep systematic or comprehensive records of any of the incentives or rebates that she received and for the incentives or rebates that she indicated she provided to other parties including Mr. King or pharmacy staff.
6. She benefited from rebates that were significantly larger than any nominal rebates provided by vendors for the personal benefit of pharmacists.
7. She did not report any of the personal incentives or rebates that she received to the Canada Revenue Agency.
8. She did not report any of the personal incentives or rebates to Alberta Blue Cross in respect to the drugs paid for by Alberta Blue Cross.
9. She did not report or account to Medicine Hat Co-op Limited in respect to any of the incentives or rebates that she received from the generic drug manufacturers and used personally.

10. On or about September 22, 2010 she signed an acknowledgment that she had reviewed Policy 13 which was the Medicine Hat Co-op Limited's Gift Policy that provided that any incentives provided by suppliers would be the property of Medicine Hat Co-op Limited and must be reported to senior management.
11. The vendor incentives and rebates that she received both at the pharmacy and at home and used for her personal benefit were for drugs purchased and paid for by Medicine Hat Co-op Limited, and by accepting and using these vendor incentives and rebates for her personal use, she did not comply with the Gift Policy as written in a substantial and ongoing manner.
12. Although she may not have directly negotiated the basic incentive or rebate programs with the generic drug manufacturers' representatives, she benefited with her co-manager, Mr. King.
13. For at least for some of the family vacations she benefited from and the event tickets that she provided to her staff, she did liaise directly with the vendor representatives and the travel agency in obtaining these incentives or rebates.
14. She ought to have known that these incentives or rebates were to have been passed on to Medicine Hat Co-op Limited who paid for the drugs that were then the subject of the rebates.
15. The lengthy time frame over which the incentives or rebates were received personally by her meant that she could have spoken to senior management of Medicine Hat Co-op Limited and received clear, documented direction about the receipt and use of the incentives and rebates.
16. She did not create or maintain any documentation in relation to:
  - any written agreements with the vendors for the provision of the incentives or rebates;
  - any pharmacy records to reconcile the amount of drugs purchased by the pharmacy and the amount of the incentives or rebates provided by the vendors;
  - any records to indicate the value of the incentives or rebates that she personally benefited from;
  - any records to show what was done with the incentives and rebates that she received but indicated that she gave to pharmacy staff; or
  - any records to support her suggestion that senior pharmacy staff were aware of the substantial incentives and rebates that she was receiving and using for personal benefit.
17. She received multiple receipts of vendor incentives or rebates that she used personally over an extended period from January 1, 2010 to December 31, 2014
18. Vendor incentives and rebates reduced substantially in 2014 and stopped in 2015, apparently as a result of changes in the wider pharmaceutical industry. She did not communicate to Medicine Hat Co-op Limited the extent of the incentives or rebates until her employer discovered from communications from the Canada Revenue Agency the extent of the incentives or rebates that she had received from the generic drug manufacturers and terminated her employment; and

19. Her conduct reflected a lack of full disclosure and integrity in her dealings with Medicine Hat Co-op Limited and in respect to her obligations to the Canada Revenue Agency.

Ms. Kieser further agreed and acknowledged that her conduct constituted a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 and 1.15 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections, 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*; and
- Principles 10(1 and 2) of the ACP Code of Ethics.

and that her conduct set out above and the breach of some or all of these provisions constituted unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(ii), and 1(1)(pp)(xii) of the *Health Professions Act*.

As Complaints Director, Mr. James Krempien acknowledged that Ms. Kieser and her legal counsel were fully cooperative throughout the investigation and hearing process, that her participation in the receipt of rebates did not affect patient care and that no patient complaints or concerns came forward in respect to these matters. He also acknowledged that Ms. Kieser has not been the subject of any prior complaints, investigations or complaint hearings dealing with a similar matter.

Ms. Kieser acknowledged that she 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 may proceed to issue one or more of the orders set out in section 82(1) of the Act.

Mr. Jardine noted that there were minor, non-substantive differences in wording between the allegations in the Notice of Hearing and the admissions in the Admission of Unprofessional Conduct. These changes in wording were acceptable to the Complaints Director.

Mr. Jardine called Mr. James Krempien, Complaints Director for the College as a witness to present Exhibit 7, which was Mr. Krempien's investigation report into Ms. Kieser. The following key points were presented:

- Mr. Joe Carroll, Pharmacy Operations and Marketing Manager for Federated Co-Op Limited (FCL), contacted the College in November 2015 with concerns regarding the conduct of Ms. Kieser, Mr. King and Mr. Stadnyk, specifically related to generic pharmaceutical company rebates not being fully remitted back to Medicine Hat Co-Op and its parent company, FCL.
- It was common industry practice for pharmacies to receive an incentive or "rebate", cash or otherwise, from generic pharmaceutical companies valued at a portion of the cost of drugs purchased, based on the volume of medications purchased from that particular company.
- Mr. Carroll had discovered that the amount of rebates remitted to Medicine Hat Co-Op and FCL at Ms. Kieser's pharmacy (Medicine Hat Co-Op pharmacy located at 10 Northlands Way NE in Medicine Hat, AB) was noticeably lower than other pharmacies. Around the same time, FCL had also been approached by the Canada Revenue Agency (CRA)

regarding outstanding tax owing on rebates provided by generic pharmaceutical manufacturers but not declared as income to the CRA.

- In November 2015, the College received a formal complaint about the conduct of Ms. Kieser from Mr. Mike Clement, General Manager of Medicine Hat Co-Op, specifically: diversion of revenue from Medicine Hat Co-Op and FCL by personally using and profiting from generic pharmaceutical company rebates and incentives, which violated the company policy on business ethics and receipt of gifts.
- Ms. Kieser was co-manager of Medicine Hat Co-Op pharmacy, along with Mr. King, from 2006 to 2015 (she was the pharmacy licensee from 2006 to 2014, and Mr. King was the licensee from July 2014 to June 2015). Ms. Kieser was terminated from her employment with Medicine Hat Co-Op in November 2015.
- In 2014, the amount of rebates provided by generic pharmaceutical companies was drastically reduced, and by 2015, all rebates, as little as they were relative to previous years, were going directly to Medicine Hat Co-Op and were not being provided to the pharmacy managers, including Ms. Kieser.
- Rebates that were provided directly to Medicine Hat Co-Op were provided in the form of a cheque or electronic funds transfer. Rebates directly provided to Ms. Kieser were in the form of family vacations, gift cards, pre-paid credit cards, and event tickets.
- In Ms. Kieser's response to the complaint, she noted that she was not directly involved in the negotiating of rebate arrangements, but she acknowledged receiving them. According to her, some of the rebates were used personally and others were passed on to other employees of the pharmacy. According to Ms. Kieser, some rebates were specifically requested and received for the personal use of senior members of the management team of Medicine Hat Co-Op. She provided an attempted reconstruction of some of the rebates she may have received personally as well as those that went to other pharmacy staff.
- According to Mr. Clement, based on a meeting between Mr. Krempien and Mr. Clement, upon initial hire, pharmacy staff, including managers, were provided with a copy of the policies and procedures of Medicine Hat Co-Op, including Policy and Procedure Number 13, related to Gifts and Incentive Programs. The policy clearly notes that: "any incentive received from a supplier will become the property of Medicine Hat Co-Op." The policy further requires "any incentives offered over \$50 [to] be reported to the most senior management." According to Mr. Clement, Ms. Kieser was specifically reminded about the policy around September 2014. Additionally, there is a copy of a September 2010 letter signed by both Ms. Kieser and Mr. King, as well as another pharmacist, indicating their acceptance of the policy. Mr. Clement had very positive things to say about the operation of Ms. Kieser's pharmacy, and aside from the concerns regarding rebates, she was an excellent pharmacist in terms of patient care, and there were no specific pharmacy practice or patient care concerns. According to Mr. Clement, management was not aware of the amounts of personal rebates provided to Ms. Kieser. They would likely have been aware of some of what he termed, "nominal" gifts such as hockey tickets.
- Ms. Kieser did not have any records or accounting of any personal rebates or incentives received, and she did not have any records pertaining to rebates that were apparently passed on to staff members.

- Medicine Hat Co-Op had received summaries of rebates provided directly to Ms. Kieser from Actavis-Cobalt, Pharmascience, Mylan, and Apotex from 2010-2014. For at least two of those companies, the companies were prepared to provide signed receipts of rebates provided directly to Ms. Kieser, at her home address. The information provided by Apotex was a total amount of rebates provided, and the amount was not broken down as it was with the other companies.
- There was a disagreement between Ms. Kieser and Medicine Hat Co-Op on the exact amount of rebates that were personally received by Ms. Kieser. There was, however, agreement that a very significant amount of personal rebates were received. From the College's perspective, they had not attempted to do any sort of forensic accounting.
- There was no indication that receipt of rebates and incentives by Ms. Kieser influenced her professional judgment or caused any patient harm. The rebates were related to a specific brand of generic medication being purchased and used by the pharmacy; the different brands of generic medication are all approved by Health Canada and are therapeutically equivalent.

## **V. SUBMISSIONS ON ALLEGATIONS**

### **Submissions of the Complaints Director**

Based on the admissions of unprofessional conduct, Mr. Krempien's testimony, the Investigation Report, and supporting documentation, Mr. Jardine asked the Hearing Tribunal to accept the admissions of unprofessional conduct. Mr. Jardine reminded the Hearing Tribunal that the Complaints Director bears the onus of 1) proving the factual allegations in the Notice of Hearing, based on the civil standard of proof, which is a balance of probabilities; and 2) establishing that the proven facts constitute unprofessional conduct under the *Health Professions Act*. In this case, there were allegations in the Notice of Hearing of breaches of each of the Act, Code of Ethics and Standards of Practice. A breach of any of these may constitute unprofessional conduct. In this case, there was an additional element of unprofessional conduct, namely conduct that harms the integrity of the regulated profession.

Section 70 of the Act allows an investigated member to submit a written admission of unprofessional conduct at any time before a Hearing Tribunal has made a decision. An admission was entered in this case, and it was acceptable to the Complaints Director. The admissions made by the investigated member were essentially full admissions on the allegations in the Notice of Hearing, as the allegations in the Notice of Hearing closely mirrored the admissions made by Ms. Kieser in Exhibit 4, with only a few changes. One notable difference was that Ms. Kieser did not accept the value of rebates alleged by Medicine Hat Co-Op that she personally received. She did acknowledge that it was a substantial amount, in the range of \$70,000 to \$80,000, compared to the approximately \$300,000 that was alleged. The Complaints Director did not feel it necessary to quantify the exact amount, as the issue from the College's perspective was one of ethics and personal use of substantial amounts of rebates on drugs that were purchased by the employer, and which were not reported to the employer or the CRA.

Mr. Jardine reiterated that Ms. Kieser had been fully cooperative with the College and had entered an admission of unprofessional conduct, which reduced costs, shortened the hearing proceedings, and benefited all parties.

## **Submissions of the Investigated Member**

Ms. Kieser did not have any submissions.

## **VI. FINDINGS AND DECISION OF THE HEARING TRIBUNAL**

The Hearing Tribunal considered and accepted the admission of unprofessional conduct by Ms. Kieser, based on the admissions made and the evidence presented. The Hearing Tribunal considered the Exhibits and the evidence of Mr. Krempien, and finds that the conduct in the Allegations has been proven on a balance of probabilities.

The Hearing Tribunal also considered whether the conduct that has been proven to occur is conduct that constitutes unprofessional conduct as defined in the *Health Professions Act*. The Act defines unprofessional conduct at section 1(1)(pp) and includes conduct that contravenes the Act, a code of ethics and standards of practice, and conduct that harms the integrity of the profession.

The conduct in this case raises serious ethical issues. Ms. Kieser received substantial personal benefits which she was not entitled to, and which were not reported to her employer or to the CRA. Furthermore, these personal benefits were received in a perceivably clandestine manner, specifically pre-paid family vacations and substantial values of gift cards and pre-paid credit cards delivered to Ms. Kieser's home. The ACP Code of Ethics requires that all members must act with honesty and integrity. Principle 10 (1 and 2) of the ACP Code of Ethics is directly relevant to the conduct and Ms. Kieser's conduct was in breach of this Principle. Principle 10 states, in part:

1. Comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies.
2. Am honest in dealings with
  - a. patients;
  - b. other pharmacists, pharmacy technicians, health professional and the college; and
  - c. contractors, suppliers and any others encountered in business dealings related to the practice of my profession or the operation of a pharmacy.

Honesty and integrity are core values of the profession of pharmacy and these principles are set out in the ACP Code of Ethics. All members must conduct themselves within both the spirit and letter of it. The Hearing Tribunal finds that the conduct in this case is serious. It is a breach of the ACP Code of Ethics and it undermines the integrity of the profession. The lack of transparency with the investigated member's employer and the failure to report the substantial personal benefits or keep any records does not comply with the spirit of the Code as it relates to honesty and integrity. The breaches are sufficiently serious to constitute unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*.

Similarly, Standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians require members to practice in accordance with the laws that govern the practice of pharmacy, including the Act and Code of Ethics and additionally require that members comply with both the letter and spirit of the laws. As determined above, Ms. Kieser's conduct was in breach of both the letter and spirit of the Code as it relates to honesty and integrity. Standard 1.15 prohibits members from accepting gifts or other benefits or entering into association with a patient, regulated health professional or any other person that could have the effect of compromising his or her professional independence, judgement or integrity. While the personal benefits received by Ms. Kieser did not compromise her professional independence or judgement in terms of patient care, there is a significant issue, in the eye of the public, of potential and perceived compromise of professional

independence, judgment or integrity, especially with the substantial values involved, the perceivably clandestine manner of the rebates, and the fact that Ms. Kieser received these rebates on drug purchases that were paid by her employer. These breaches are sufficiently serious to constitute breach of Standards 1.1, 1.2, and 1.15 of the Standards of Practice and further constitute unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*.

In addition, the conduct at issue undermines the integrity of the profession. All pharmacists are expected to conduct themselves honestly and with integrity. The lack of transparency and failure to report substantial personal benefits in this case undermines the integrity of the profession. As such, the conduct also constitutes unprofessional conduct on the basis that it harms the integrity of the profession under section 1(1)(pp)(xii) of the *Health Professions Act*.

## **VI. SUBMISSIONS ON SANCTION**

### **Submissions of the Complaints Director**

Mr. Jardine presented joint submissions on sanctions to the Hearing Tribunal. Joint Submission on Sanctions for Kathryn Kieser dated June 22, 2016 was entered as Exhibit 10.

The following sanctions were submitted:

1. A two month suspension of Ms. Kieser's practice permit to be imposed on the following basis:
  - a. One month of the suspension must be served in one or two periods of time over a one-year period starting from the date of this decision on a basis approved by the Complaints Director; and
  - b. One month of the suspension will be suspended on the condition that there are no further complaints regarding similar acceptances of inducements or rebates for a period of three years;
2. A fine of \$5,000 to be paid on terms satisfactory to the Alberta College of Pharmacists;
3. A condition will be placed on Ms. Kieser's practice permit requiring that she must disclose this decision to any pharmacy employer or licensee for a period of three years from the date of this decision;
4. An order that Ms. Kieser pay the costs of the investigation and hearing to a maximum of \$15,000 on a periodic basis satisfactory to the Alberta College of Pharmacists.

Mr. Jardine reminded the Hearing Tribunal that the complaints process is a very important part of a self-regulating profession. The complaints process has to address three key principles: protection of the public; protection of the integrity of the profession in the eyes of the public as well as in the eyes of fellow professionals; and fairness to the member. Following suit, sanctions imposed must provide a specific deterrent to the member, general deterrence to the broader membership, and must allow opportunity for rehabilitation of the member.

Mr. Jardine then went through the factors to be considered in determining appropriate sanctions based on *Jaswal v. Medical Board (Newfoundland)* (1996), 42 Admin L.R. (2d) 233:

The nature and gravity of the proven allegations

This case was on the serious end of the spectrum but not the extreme end. It is not a case of significant drug diversions by an ungovernable individual. However, there was a serious ethical breach, with significant issues of integrity and personal benefit to the member, involving substantial dollar values.

Age and experience of the member

This factor is not particularly relevant as a mitigating factor, as Ms. Kieser is a very senior, experienced pharmacist and manager.

Previous character of the member and in particular the presence or absence of any prior complaints or convictions

Ms. Kieser does not have any similar complaints or findings. She is of good character

Age and mental condition of the offended patient

There is no allegation or indication that patient care was affected.

Number of times the offence was proven to have occurred

It is an aggravating factor that this was not a single occurrence, but was a very regular occurrence over a period of three to four years

Role of the member in acknowledging what had occurred

This is a significant mitigating factor in this case. Ms. Kieser was very cooperative throughout. She has acknowledged the issue and cooperated in bringing it to a hearing in the most efficient manner, with admissions.

Whether the member has already suffered other serious financial or other penalties as a result of the conduct

Ms. Kieser was terminated from long-term employment as a manager. There is also potential for other matters, whether related to the Canada Revenue Agency or civil matters.

Impact on the offended patient

This factor is not relevant.

Presence or absence of any mitigating circumstances

Ms. Kieser has acknowledged that what she did was wrong. Inducements in themselves are not new, but the manner in which they were personally received was an issue. Ms. Kieser has a long record of employment, as a good pharmacist and manager, aside from this issue.

The need to promote specific and general deterrence

It is unlikely that Ms. Kieser would re-offend and put herself through the same process again. This is one of the first cases of its kind in Alberta, so there is an important role for general deterrence and education.

The need to maintain the public's confidence in the integrity of the profession

Given the amounts involved and the length of time, there needs to be significant sanctions to show that this was taken seriously by the profession and that it was not acceptable conduct and has significant consequences.

The degree to which the offensive conduct is outside the range of permitted conduct

While it is not at the very outer ranges of permissible conduct, it is significant.

The range of sentence in other similar cases

There needs to be some level of consistency in sanctions between similar cases. Unfortunately, there are no good directly related cases. There is one case from 2003 from the Ontario Divisional Court. Pharmacists through their corporations were convicted of tax evasion in connection with undeclared volume rebates received from pharmaceutical companies. While different, in this case, the Discipline Committee suspended the members from practice for three weeks for their failure to report.

There are two more recent cases from Ontario, but they are related to specific legislation in Ontario that limits rebates and requires specific reporting. There was a deliberate breach of legislation and false reporting. These cases are therefore different than the case at hand.

Mr. Jardine made further submissions on the specific sanctions in the joint submission. A two-month suspension is significant but reasonable given that there is no concern about patient care. Any recorded suspension is a serious matter. However, it also recognizes the mitigating factors and the cooperation. The maximum fine for a particular finding is \$10,000 and \$5,000 was sought in this case. The Complaints Director feels this is appropriate as it indicates the conduct was inappropriate but recognizes the other costs to Ms. Kieser, specifically the costs of dismissal from employment, the costs from the suspension, and the costs of the hearing. A condition requiring Ms. Kieser to provide the decision to any pharmacy employer for a period of three years was reasonable as this case involved not reporting to an employer. Finally, Ms. Kieser will be responsible for the costs of the investigation and hearing up to \$15,000. It is unlikely the costs will be greater than \$15,000 and it would be unfair to leave the amount open-ended, especially in light of her cooperation.

Mr. Jardine noted that there was a conscious decision to put forward the same joint submission on sanctions in each of the three related cases (Kieser, King, and Stadnyk). The idea of assessing degrees of fault, given the cooperation from all parties, and the close relationship between the parties did not seem appropriate. The College also did not want to play one member against another. Finally, these hearings all arose out of essentially the same complaint, over the same time period, the same employer, and the same city.

Mr. Jardine reminded the Hearing Tribunal, that while it was not bound by a joint submission on sanctions, it must give it serious consideration, and it should not depart from them unless there is something that is unreasonable in them.

**Submissions of the Investigated Member**

Ms. Kieser did not have any submissions.

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

### **Hearing Tribunal's Decision on Sanctions**

The Hearing Tribunal carefully considered the joint submission on sanctions and accepts the joint submission as written.

The proposed sanctions meet the basic principles of protection of the public; protection of the integrity of the profession in the eyes of the public as well as in the eyes of fellow professionals; and fairness to the member. The Hearing Tribunal accepts the submissions as they relate to the factors in Jaswal, as outlined by Mr. Jardine.

The Hearing Tribunal recognizes that there were no prior decisions that were directly on point. The other cases involved proprietors who were evading tax. In this case, the rebates did not belong to Ms. Kieser in the first place. This decision therefore is important and significant in terms of general deterrence and education of the membership with respect to rebates. It must be mentioned that rebates in themselves are not illegal or unethical and previously, before being drastically reduced, were common and the normal part of commercial terms of pharmacy businesses. The distinction in this case is that rebates belonged to the owner of the pharmacy, Medicine Hat Co-Op, not to Ms. Kieser as pharmacy manager, but they were personally received and used by Ms. Kieser without reporting to her employer or to the Canada Revenue Agency as income.

Ms. Kieser did not appear to be trying to actively conceal her conduct from her employer, but rather she did not take the initiative to report the rebates, as she was ethically and contractually required to do, under the policy of her employer and under the spirit and letter of the ACP Code of Ethics.

Fundamentally, protection of the public is not the concern in this case; rather the integrity of the profession and confidence of the public is at the heart of this case. The ACP Code of Ethics, underpinned by honesty and integrity, is the foundation of the profession. All members must conduct themselves within both the spirit and letter of it. The Hearing Tribunal finds that the conduct in this case is serious. It is a breach of the ACP Code of Ethics, and it undermines the integrity of the profession. If the investigated member had not reached an agreement with the College on sanction, the Hearing Tribunal would have likely imposed a more severe penalty. However, the Hearing Tribunal recognizes that agreements between investigated members and the College are to be encouraged, as they give some certainty to the process and greatly reduce the length and cost of the hearing and eliminate the need to call witnesses, who must take time out of their schedules to attend the hearing. As such, the Hearing Tribunal recognizes the need for deference to be given to the negotiated agreement and that the agreement should be accepted unless it is unreasonable, unfit, or does not protect the public interest. The Hearing Tribunal finds that the proposed sanction is reasonable and protects the public interest and therefore accepts the proposed sanctions.

As such, the Hearing Tribunal orders:

1. A two month suspension of Ms. Kieser's practice permit to be imposed on the following basis:
  - a. One month of the suspension must be served in one or two periods of time over a one-year period starting from the date of this decision on a basis approved by the Complaints Director; and

- b. One month of the suspension will be suspended on the condition that there are no further complaints regarding similar acceptances of inducements or rebates for a period of three years;
2. A fine of \$5,000 to be paid on terms satisfactory to the Alberta College of Pharmacists;
3. A condition will be placed on Ms. Kieser's practice permit requiring that she must disclose this decision to any pharmacy employer or licensee for a period of three years from the date of this decision;
4. An order that Ms. Kieser pay the costs of the investigation and hearing to a maximum of \$15,000 on a periodic basis satisfactory to the Alberta College of Pharmacists.

Signed on behalf of the Hearing Tribunal by the  
Chair

Dated:  
September 22, 2016

Per:  
[Naeem Ladhani]  
Mr. Naeem Ladhani