

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF

KYLE KOSTYK
ACP COMPLAINT FILE 5554

DECISION OF THE HEARING TRIBUNAL

December 21, 2017

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Kyle Kostyk. In attendance on behalf of the Hearing Tribunal were: Tony Nickonchuk, Pharmacist and Chair; Mary Gunther, Pharmacist; Hugo Leung, Pharmacist; James Lees, Public Member; and Katrina Haymond, independent legal counsel to the Hearing Tribunal.

The hearing took place on October 30, 2017 at Alberta College of Pharmacists, 8215 112 St NW, Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were: James Krempien, ACP Complaints Director; David Jardine, counsel for the ACP representing the Complaints Director, Annabritt Chisholm, student at law; Kyle Kostyk, the investigated member and Karen Smith, legal counsel for Mr. Kostyk.

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following complaints or matters:

IT IS ALLEGED THAT while practicing as a pharmacist at Richmond Square Pharmacy in Calgary, Alberta on March 13, 2017 Mr. Kostyk:

1. Provided a patient, ■■■ with an updated receipt for her January 27, 2017 prescription;
2. Used ■■■'s health information to obtain her telephone number;
3. Sent a text message to ■■■'s residential landline in an attempt to contact ■■■ in order to arrange a personal encounter with her;

and that by engaging in this conduct he:

1. Accessed and used his patient's health information for the unauthorized purpose of contacting her to pursue a personal encounter;
2. Committed a professional boundary violation when he used his personal phone to attempt to contact ■■■, a 16-year old patient, to pursue a personal encounter; and
3. Misused his authority as a pharmacist and a health information custodian.

The Notice of Hearing alleged that the above-referenced conduct breached a number of statutes, regulations and standards governing the practice of pharmacy.

III. PRELIMINARY MATTERS

The only preliminary matter presented to the tribunal was from Mr. Jardine. He made it clear that every effort had been made to anonymize the complainant and her daughter by only using initials. Mr. Jardine asked that should anything be presented in the hearing that identifies either of those individuals, that it be redacted before being made public.

The Hearing Tribunal agreed with Mr. Jardine's request. If any information about the hearing is disclosed to any member of the public, any identifying information pertaining to the complainant or her daughter will be redacted.

IV. EVIDENCE

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

- Exhibit 1 – Notice of Hearing
- Exhibit 2 – Record of Decision
- Exhibit 3 – Agreed Statement of Facts
- Exhibit 4 – Admission of Unprofessional Conduct

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

No witnesses were called, and the only evidence was submitted by way of an Agreed Statement of Facts. The facts agreed to are reproduced below.

AGREED STATEMENT OF FACTS

1. Kyle Kostyk has been a registered regulated pharmacist with the Alberta College of Pharmacists since July 1, 2005.
2. On March 13, 2017, while practicing as a pharmacist at Richmond Square Pharmacy, in Calgary Alberta, Mr. Kostyk:
 - (a) received a new residential address from patient [REDACTED] and at her request, input this information onto her pharmacy record in order to update her registration information;
 - (b) viewed the updated/reprinted label sheet, which contained an updated prescription transaction record and receipt for [REDACTED]'s January 27, 2017 Mirena IUD;
 - (c) provided [REDACTED] with a reprinted prescription receipt for the Mirena IUD she had been dispensed at the pharmacy on January 27, 2017;

- (d) sent a text message to ■■■'s residential landline after he obtained the phone number for her residence from the updated receipt;
 - (e) sent the text message in an attempt to contact ■■■ in order to arrange a personal encounter between the two of them.
3. Mr. Kostyk did not dispense any prescriptions or provide health care advice or pharmaceutical counselling to ■■■ during her visit to the pharmacy on March 13, 2017.
 4. ■■■'s residential phone number was stated on the prescription transaction record.
 5. The prescription receipt provided to ■■■ stated the previously dispensed drug (the Mirena IUD), and her residential phone number.
 6. The text message sent by Mr. Kostyk to ■■■'s residential landline was received by her mother, Ms. ■■■ ("Ms. ■■■")
 7. Ms. ■■■ texted back to the phone number and after several contacts determined that the caller was Mr. Kostyk. Mr. Kostyk subsequently spoke with Ms. ■■■ and apologized for his actions.
 8. Mr. Kostyk did not obtain contact information for ■■■ by accessing her Netcare information.
 9. ■■■ did not know Mr. Kostyk or have any prior knowledge of the matter, and did not consent to him using her health information to contact her later for a personal purpose.
 10. Ms. ■■■, as the mother of ■■■, filed a complaint, which was received by the Alberta College of Pharmacists on March 20, 2017.

In addition, the parties entered an "Admission of Unprofessional Conduct" signed by Mr. Kostyk, in which Mr. Kostyk admitted to all of the allegations in the Notice of Hearing, and admitted that his conduct constitutes unprofessional conduct.

V. SUBMISSIONS

Submissions started with Mr. Jardine. He first presented the Agreed Statement of Facts and then the Admission of Unprofessional Conduct. In presenting the Admission, Mr. Jardine informed the Tribunal that the admission is not binding and that the Tribunal must evaluate it when it has heard the evidence and decide whether they are prepared to accept the admission.

If the Tribunal were to accept the Admission, then the hearing would proceed to the sanctions stage and if they did not, it would proceed to a full hearing. Mr. Jardine submitted that since there was cooperation and expediency in putting together an admission and agreed statement of facts, that both Mr. Jardine and Ms. Smith would be urging the Tribunal to accept the Admission.

Aside from the presented Agreed Statement of Facts, Mr. Jardine made a brief submission. He stated that the incident described in the Statement was a single incident, but it was still an incident in which health information was used clearly for a purpose that was not intended, as well as for a personal purpose.

Mr. Jardine stated that because there was an Agreed Statement of Facts, and that statement addressed enough relevant information for the evidence to support the statement and admission that both parties agreed to not put in a lot of background information.

He also wanted to clarify two points. First, he clarified that the individual to whom Mr. Kostyk attempted to send a text message for personal reasons was in fact 16 years of age at the time. However, Mr. Jardine stated that Mr. Kostyk was not aware of her age when he sent the text, and that there was no evidence to suggest otherwise. He also reiterated that Mr. Krempien did inquire with Alberta Netcare as to whether or not there was evidence that Mr. Kostyk attempted to access ■■■'s Netcare profile, and they confirmed that there was not.

Finally, Mr. Jardine once again emphasized that the College was in no way suggesting that Mr. Kostyk deliberately attempted to contact a minor in order to arrange a personal encounter. Mr. Jardine recognized that Mr. Kostyk's actions were still a problem, no matter the age of the individual he contacted, but that it was important to Mr. Kostyk that it was made clear he was unaware of the individual's age when he attempted to contact her. Mr. Jardine concluded by saying that regardless of all that, Mr. Kostyk's actions in whole were serious enough that he admitted to unprofessional conduct.

Ms. Smith then started her submission.

Her first point was that the facts in this case are straightforward. She stated that Mr. Kostyk did not take any deliberate steps to access information to find ■■■'s phone number. The phone number was seen by Mr. Kostyk in the process of viewing the receipt he printed for ■■■. Her date of birth was at no point apparent to Mr. Kostyk. Ms. Smith stated that Mr. Kostyk took the phone number from the receipt and used it to contact ■■■ for a personal encounter, as set out in the Agreed Statement of Facts.

Ms. Smith's second point was that from her interactions with Mr. Kostyk, and from reviewing the evidence, it is clear that the second Mr. Kostyk spoke to ■■■'s mother, he acknowledged he made an error. He was candid, advised who he was, where he worked, and that what he had done was wrong. He was fully cooperative when police came to his place of work to interview him about the incident, after ■■■'s mother contacted them. Based on that interview, no charges were laid, and no charges are pending. And in his dealings with the College, Mr. Kostyk, from the beginning, admitted this is what happened, that he did it, and that it was a mistake.

Ms. Smith's next point was that the actions by Mr. Kostyk represent a complete lack of proper judgment and that they represent unprofessional conduct, whether judged

by the Standards of Practice for Pharmacists and Pharmacy Technicians, the *Health Information Act*, or the Code of Ethics. She stated that Mr. Kostyk is embarrassed by what happened, that he is wholly responsible for it and that he is ready to accept any consequences that may arise from it.

Ms. Smith then went on to outline the importance of the Agreed Statement of Facts and Admission of Unprofessional Conduct. She emphasized that this is a very important part of professional regulatory proceedings as it allows the College and the investigated member to avoid a more costly and protracted contested hearing. She made it clear that Mr. Kostyk's admission and cooperation from the outset allows for a factual basis to be set out about what happened and that those actions constitute unprofessional conduct.

Ms. Smith outlined the job of the Tribunal as being to determine what the facts of the case are and whether those facts fall within the definition of unprofessional conduct. Her final submission was that Mr. Kostyk, through the Agreed Statement and Admission, allowed the Tribunal to complete that job as concisely as possible.

At the conclusion of Ms. Smith's submission, Mr. Jardine added that it was important for the Tribunal to know that the Admission of Unprofessional Conduct was in the same terms as the Notice of Hearing and that there was no change. Mr. Kostyk admitted to all of the wording in the Notice as originally laid out by the College.

The Tribunal then had an opportunity to question the parties. The Hearing Tribunal sought clarification regarding the involvement of the police. Mr. Jardine stated that the police did in fact attend Mr. Kostyk's workplace in order to question him about the incident, but that the interview did not result in any charges being laid. Ms. Smith did add a slight correction to this, stating that there was originally a charge laid under the *Health Information Act* regarding the unlawful access of a private computer, but that charge was subsequently withdrawn by the Crown.

The Hearing Tribunal clarified that the intent of the question was to determine whether there were any independent investigations occurring under the auspices of the *Health Information Act* or the Office of the Privacy Commissioner. Mr. Jardine stated that there was not.

VI. FINDINGS

The Tribunal accepted Mr. Kostyk's admission of unprofessional conduct pursuant to s.70 of the HPA. The Hearing Tribunal finds that the allegations set out in the Notice of Hearing are proven, and that the conduct constitutes unprofessional conduct as defined in s.1(1)(pp) of the HPA.

The facts were straightforward, the investigated member admitted to them in full, and admitted that they constituted unprofessional conduct. Even when a member makes an admission of unprofessional conduct, the Hearing Tribunal must consider the facts and the admission to determine whether there is sufficient evidence to find the

allegations proven. However, the task is much easier where the parties have cooperated and have proceeded by way of agreement.

The heart of the allegations before the Hearing Tribunal related to Mr. Kostyk's use of ■■■'s patient health information to contact her at home in order to pursue a personal encounter. Such conduct is inappropriate and is contrary to the fundamental principle that pharmacists must only use a patient's personal and health information for the specific purpose that it was collected. Here, Mr. Kostyk used information that was collected in order to provide pharmacy services to ■■■ for personal reasons. Mr. Kostyk has admitted his conduct, and acknowledged that his conduct is inconsistent with the standards expected of members of the pharmacy profession. The Hearing Tribunal finds that Mr. Kostyk's admission was appropriate in the circumstances.

Specifically, the Hearing Tribunal has considered whether Mr. Kostyk's conduct constitutes "unprofessional conduct" pursuant to s.1(1)(pp), which defines unprofessional conduct to include breaching a code of ethics or standard of practice, breaching another enactment that applies to the practice of the profession, and conduct that harms the profession. Mr. Kostyk's conduct breached s.27 of the *Health Information Act*, which requires custodians to use health information for specified purposes relating to the provision of health services. Mr. Kostyk's conduct also breached Principle 1 of the College's Code of Ethics, which requires members to maintain professional boundaries; Principle 4, which requires members to use information only for the purpose for which it was obtained; and Principle 10, which requires members to comply with the spirit and intent of the law. In addition, Mr. Kostyk's conduct breached Standard 1 and Standard 2 of the College's Standards of Practice.

Pharmacists are entrusted with a significant amount of personal and health information about patients, including personal contact information. It is a fundamental expectation that pharmacists will safeguard that information, and use it only for the purposes for which it was collected. Mr. Kostyk's decision to use ■■■'s personal information in furtherance of his personal objectives, and for purposes unrelated to her care constituted a serious violation of ■■■'s privacy and a breach of his fundamental obligations to the public and the profession.

VII. SUBMISSIONS ON SANCTIONS

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

JOINT SUBMISSION ON SANCTIONS

1. Subject to the Hearing Tribunal accepting the Agreed Statement of Facts and Mr. Kostyk's written admission of unprofessional conduct provided pursuant to section 70 of the *Health Professions Act* acknowledging that the allegations set out in the Notice of Hearing are true, and that his conduct represents unprofessional conduct

within the meaning of the *Health Professions Act*, Mr. Kostyk and the College make the following joint submission on the issue of sanctions:

- a. Mr. Kostyk's practice permit will be suspended for three months, subject to the following terms:
 - (i) the period of suspension will commence on December 1, 2017; and
 - (ii) commencing at the end of the first month of the suspension, the balance of the suspension will be held in abeyance for 12 months during which Mr. Kostyk will be required to complete successfully, the Centre for Personalized Education for Physician's (CPEP) Probe Course. A failure to successfully complete the CPEP Probe Course will result in the immediate application of the further two month suspension, and if the CPEP Probe course is not completed successfully within a further 12-month period, the matter will be remitted to the Hearing Tribunal for further consideration.
- b. Mr. Kostyk will pay a fine of \$1,000 within 60 days of receipt of the written decision.
- c. Mr. Kostyk will pay the full costs of the investigation and hearing to a maximum of \$10,000. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director with the total costs to be paid within 24 months from the date the Hearings Director sets the schedule and notifies Mr. Kostyk about the first payment.
- d. For a period of 2 years, Mr. Kostyk will provide any pharmacy employer or licensee with a copy of this decision so that they will be aware of the decision and the sanction orders.

Mr. Jardine proceeded to elaborate on the content of the Joint Submission on Sanctions.

The PROBE Course referred to in the Joint Submission is provided by the Center for Personalized Education for Physicians. It is used by many regulators for ethical issues around boundary violations. It is an intensive course that combines an essay component as well as in person learning and discussion in either Toronto or Vancouver. The course content is personalized for each individual in attendance. It is done at considerable personal cost to the investigated member, included the approximately \$1,800 USD registration fee and the travel expenses to travel to Toronto or Vancouver and stay there for 3 days.

The reason this course was included as a sanction was that it forces the investigated member to reflect on their boundary violation and self-reflect in order to minimize the possibility of a recurrence of the actions that constituted unprofessional conduct.

Mr. Jardine then outlined in general the purposes of professional disciplinary sanctions.

First, the number one purpose of the complaint process and any ensuing sanction is protection of the public. Second, the process is necessary to maintain the integrity of the profession. Thirdly, there is a need for specific deterrence for the investigated member, to ensure there is not a repeat of unprofessional conduct. But there is also a need for general deterrence, to deter other members of the profession from engaging in similar conduct. That really falls under the responsibility to protect the public. Finally, the process and outcome have to be fair.

Mr. Jardine then outlined the principles underpinning disciplinary sanctions based on the findings in *Jaswal v. Newfoundland Medical Board*.

The first of those principles is the nature and gravity of the proven allegations. It was the College's submission that this is a serious matter. Protection and confidentiality of health information is a major obligation of pharmacists and not upholding that obligation and misusing health information is serious.

The next principle is the age and experience of the pharmacist. Mr. Jardine stated that Mr. Kostyk is an experienced pharmacist, so it certainly is not a mitigating factor. It was clearly not an error of inexperience.

The next principle is the previous character of the investigated member. Mr. Jardine stated that since there are no prior complaints or findings against Mr. Kostyk, this constitutes a mitigating factor.

The next principle is the age of the complainant or patient. Mr. Jardine acknowledged that since the patient was 16, this was a concern. However, he reiterated that as agreed previously, Mr. Kostyk was not aware of this fact and was not acting consciously with that knowledge.

The next principle is the number of times the offence occurred. Mr. Jardine stated that this was a single event and a single, albeit significant, error in judgment. There was no suggestion from the evidence that this was indicative of an underlying pattern of behavior.

The next principle is acknowledgment of the investigated member of what occurred. Mr. Jardine argued that this was a mitigating factor in this case as Mr. Kostyk acknowledged responsibility for his actions from the outset. Mr. Jardine stated that even before Mr. Kostyk retained counsel, he was cooperative with the College and was clear that he wanted to ensure the matter was quickly and thoroughly addressed. Mr. Jardine posited that Mr. Kostyk's full admission and agreement to the statement of facts, with no qualification or change to those originally presented by the College, are evidence of the breadth of his acknowledgment.

The next principle is whether there have been other serious financial or other types of penalties for the investigated member. Mr. Jardine stated that to his knowledge, Mr.

Kostyk did lose previously scheduled shifts at the pharmacy he was employed at the time of the conduct in question. Mr. Jardine also pointed out that Mr. Kostyk had police come to his place of work and question him and he also had to deal with an initial charge, although it was subsequently withdrawn.

The next principle is the impact of the incident on the offended patient. ■■■'s mother was very concerned. In an interview with the patient, it was Mr. Jardine's opinion that she was not happy about the incident, but was not traumatized by it either.

The next principle is the need for specific and general deterrence. It was Mr. Jardine's position that the sanctions put forward in the Joint Submission were significant enough to deter Mr. Kostyk from further unprofessional conduct, and also to make other pharmacists think twice before committing even a single error in judgment.

Mr. Jardine also acknowledged that Mr. Kostyk's willingness to undertake the PROBE course at his own expense was positive. It suggested to the College that Mr. Kostyk was willing to take responsibility for his actions, not just in front of the Tribunal, but going forward.

The next principle is the need to maintain the integrity of the profession. Mr. Jardine stated that the sanctions are significant enough to maintain the public's confidence in the integrity of the profession. They show that even a single error in judgment, if serious enough, will result in substantial consequences and efforts toward rehabilitation. It shows that the profession has no tolerance for such behavior, even a single instance.

The next principle was the degree to which the conduct in question was considered outside the normal bounds of professional behavior. Mr. Jardine submitted that there was no need for elaboration, as the behavior was so clearly outside the bounds of professional conduct.

Finally, the last principle was the range of sentences in similar cases. Mr. Jardine was clear that it was difficult to find cases that were truly similar to this case. Mr. Jardine presented one case in which the individual did access Netcare to obtain personal information, something Mr. Jardine considered a more serious violation than the current case. The individual in that case was prosecuted by the Information and Privacy Commissioner, something that did not occur in this case. That member was suspended for 3 or 4 months.

There was another case in Alberta that represented a boundary violation, but in that case, the pharmacist reached down and appeared to touch the genital region of a young boy in the presence of his mother. There was no suspension in that case, but there was a requirement to take the PROBE course.

Mr. Jardine discussed a case from Ontario where a nursing instructor accessed the health information of 300 or 400 people for unjustified reasons. She was given a suspension of three months.

Mr. Jardine argued that although none of these cases were quite like Mr. Kostyk's case, they were similar enough that the sanctions given in this case could be considered to fall within the range of sanctions in similar cases.

Mr. Jardine then summarized the sanctions being put forth in the Joint Submission.

The first sanction is a three month suspension of Mr. Kostyk's practice permit. One month of the suspension would start December 1st and be served as a suspension. The balance of the suspension would be held in abeyance for 12 months on the basis that Mr. Kostyk successfully completes the PROBE course. If he does not successfully complete the course in that time, he would then serve a further two month suspension.

At that point, another 12 month period would be allowed in which he could complete the PROBE course. If it was not completed in that time, the matter would be referred back to the Hearing Tribunal.

The Joint Submission on Sanctions also asked for a fine of \$1,000. It also ordered payment of full costs of the investigation and hearing to a maximum of \$10,000, with the ability to make smaller payments on instalments over a period of up to 24 months, as agreed to by the Hearings Director.

Mr. Jardine stated that it was likely full costs would come under \$10,000 due to Mr. Kostyk's cooperation, a fact Mr. Jardine wanted the Tribunal to consider.

The final sanction in the Joint Submission was that for a two year period, Mr. Kostyk must provide any pharmacy employer or licensee with a copy of the Tribunal's decision.

Finally, Mr. Jardine discussed with the Tribunal the content of an earlier discussion between himself and Ms. Smith. They discussed the request by Ms. Smith, on behalf of Mr. Kostyk, to request publication of the Tribunal decision on an unnamed basis.

Pursuant to s.119 of the HPA once a Tribunal decision is sent to the Registrar, the Registrar retains the discretion regarding publication of the name of the investigated member. The Hearing Tribunal can make a recommendation to the Registrar regarding publication, but the Registrar is not obligated to heed that recommendation.

Mr. Jardine outlined previous cases where the Registrar chose to publish on an unnamed basis. He stated that in the cases of which he was aware, the decision not to publish the name of the member was due to more than just the embarrassment of the member.

Ms. Smith then began her submissions on sanctions. She focused mostly on the sanctions being very important for the purpose of rehabilitation. She highlighted that the aim of sanctions is not only to generally deter other members and specifically deter Mr. Kostyk, but to also help make Mr. Kostyk the best possible practitioner.

She emphasized that Mr. Kostyk had been in a stable position of employment at Safeway for a period of almost 11 years, with a record of ethical practice and responsibility, before moving on to Richmond Square Pharmacy. She said this demonstrates that the conduct leading to the Hearing represented an anomaly, not a pattern of systematic unprofessional conduct.

Ms. Smith went on to state that the age of the patient is irrelevant to an extent, as the conduct Mr. Kostyk engaged in was unprofessional regardless of her age. However, Ms. Smith acknowledged that the age of the patient presents an appearance of inappropriateness beyond that inherent in the misuse of personal health information. However, based on the information previously presented, she suggested that there was no nefarious or inappropriate intent in terms of the patient's age.

Ms. Smith highlighted the consequences that had already been faced by Mr. Kostyk as a result of his actions. He lost his employment position. He had an encounter with police during which he was questioned by them. And now, if the submission on sanctions is accepted by the Tribunal, he will face a significant personal financial cost. There is the \$1,000 fine, the up to \$10,000 expense for the costs of the hearing and investigation, and the cost of attending and completing the PROBE ethics course.

Ms. Smith then went on to discuss the matter of named publication. She argued that there was no need in any public interest or that of the membership to publish Mr. Kostyk's name. She suggested that the embarrassment of the whole experience was punishment enough for Mr. Kostyk and that further embarrassment by publishing his name was unnecessary. Ms. Smith suggested that part of the embarrassment in the publication of his name arose from the age of the patient, something Mr. Kostyk states he was not aware of when he contacted her. She also argued that publication would itself be a sanction, and was not included in the joint submission on sanctions.

Ms. Smith asked that the Hearing Tribunal consider requesting that the Registrar not publish Mr. Kostyk's name in the decision.

Ms. Smith concluded by reiterating the case law underpinning joint submissions and that the Tribunal had to have substantial justification for not accepting them as presented. She also established that she agreed that the sanctions as submitted met the right balance on the basis of the *Jaswal* factors and fell within the range of sanctions administered in similar cases.

At the conclusion of Ms. Smith's submissions on sanction, Mr. Jardine followed up with a comment on the College's position on publication. He simply stated that the College's position is that publication of the investigated member is a matter of transparency to the public, and that it is only not done in exceptional circumstances.

VIII. ORDERS AND REASONS FOR ORDERS

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

1. Mr. Kostyk's practice permit will be suspended for three months, subject to the following terms:
 - (i) the period of suspension will commence on December 1, 2017; and
 - (ii) commencing at the end of the first month of the suspension, the balance of the suspension will be held in abeyance for 12 months during which Mr. Kostyk will be required to complete successfully, the Centre for Personalized Education for Physician's (CPEP) Probe Course. A failure to successfully complete the CPEP Probe Course will result in the immediate application of the further two-month suspension, and if the CPEP Probe course is not completed successfully within a further 12-month period, the matter will be remitted to a Hearing Tribunal for further consideration.
2. Mr. Kostyk will pay a fine of \$1,000 within 60 days of receipt of the written decision.
3. Mr. Kostyk will pay the full costs of the investigation and hearing to a maximum of \$10,000. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director with the total costs to be paid within 24 months from the date the Hearings Director sets the schedule and notifies Mr. Kostyk about the first payment.
4. For a period of 2 years, Mr. Kostyk will provide any pharmacy employer or licensee with a copy of this decision so that they will be aware of the decision and the sanction orders.

The Hearing Tribunal carefully considered the submissions by Ms. Smith and Mr. Jardine with respect to the deference that must be exercised when considering a joint submission on penalty. The cases referred to by the parties established the principle that when a joint submission is made in any case, including those that come before professional disciplinary tribunals, the Tribunal has to pay significant attention to that. They cannot discard the joint submission unless it is unfit, unjust, or unreasonable, and unless the joint submission would bring the administration of justice into disrepute.

The Tribunal felt the orders set out in the joint submission were appropriate having regard to all of the factors that are relevant when assessing penalty, which were referred to by the parties in their submissions. Moreover, the Hearing Tribunal believes that the orders are sufficient to deter Mr. Kostyk from engaging in similar behavior in the future, and are sufficient to protect the public.

With regards to the matter of publication, the Hearing Tribunal declines to make a recommendation to the Registrar to consider withholding publication of Mr. Kostyk's

name. The recommendation to do so would merely be that, a recommendation. The Registrar would be under no obligation to accept that recommendation.

As well, the Tribunal felt there were no exceptional factors present in this case to warrant a deviation from the College's aim for transparency in disciplinary hearings. Two of the College's most important considerations in conducting disciplinary hearings are protection of the public and maintenance of the integrity of the profession.

The Tribunal felt that publication of an investigated member's name is an important signal to the public that not only does the College take unprofessional conduct seriously, but they address it in a transparent manner so that the public can be sure that the conduct of the College in the matter was fair and aimed at protecting the public from future unprofessional conduct.

Embarrassment of the investigated member alone does not constitute reasonable grounds to recommend against named publication. The complaints process must aim to protect the integrity of the profession. Part of that involves the investigated member taking full responsibility for their unprofessional conduct, which itself involves being transparent about who they are and what they did.

The Tribunal felt that unless the publication of the individual's name would pose a threat to their personal safety, or another equally serious consequence, there is no justification for the Tribunal to make a recommendation to the Registrar to not publish.

As such, the Hearing Tribunal declined to make a recommendation to the Registrar with respect to publication.

Signed on behalf of the hearing tribunal by
the Chair

Dated: December 22, 2017

Per: [Anthony Nickonchuk]
