

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF
POURAN MANZOURI, A REGULATED MEMBER

DECISION OF THE HEARING TRIBUNAL

July 28, 2017

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Pouran Manzouri. The Hearing Tribunal was comprised of Kelly Olstad, Pharmacist and Chair, Brian Popp, Public Member, Judi Parrott, Pharmacist and Anil Goorachurn, Pharmacist. Mr. Gregory Sim was present as the independent legal counsel to the Hearing Tribunal.

The hearing took place on February 28, 2017 at College Plaza, 8215 112th Street in 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, Complaints Director for the College and David Jardine, legal counsel for the Complaints Director. Ms. Manzouri also attended in person with her legal counsel Timothy Dunlap.

There were no objections to the composition of the Hearing Tribunal, the timeliness of service of the Notice of Hearing or any other objections to the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. ALLEGATIONS

The Hearing Tribunal held a hearing into the following allegations concerning Ms. Manzouri:

IT IS ALLEGED THAT you:

1. On or about June 5, 2016, stole 100 X PMS-Oxycodone 10 mg tablets from Costco Pharmacy #251 while you were practicing as a pharmacist; and
2. Gave the stolen tablets to another individual to be provided to a further individual without authorization and under circumstances that call into question the safety of the person who was reported to be the end user of the oxycodone.

IT IS ALLEGED THAT your conduct in these matters:

- a. undermined the integrity of the profession;
- b. is contrary to accepted pharmacy practice;
- c. breaches the trust placed in you as a pharmacist the by Alberta College of Pharmacists and by your employer; and
- d. created a serious risk of patient harm to the person who was reported to have been the end user of the oxycodone.

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 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*;
- Section 31(1) of the Narcotic Control Regulations; and
- Principles I (1,7) and X (1,2) 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 section 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*.

At the outset of the hearing the parties advised the Hearing Tribunal that Ms. Manzouri would not be making any formal admissions but the facts would not be disputed.

III. PRELIMINARY MATTERS

Mr. Dunlap advised at the beginning of the hearing that he would be making an application to close certain parts of the hearing pursuant to section 78 of the *Health Professions Act*. He indicated that he would be making this application at the relevant point in time. The substance of the application, the decision on the application, and the Hearing Tribunal's reasons are set out in detail below.

IV. EVIDENCE

Mr. Jardine proceeded to call one witness, Mr. Krempien, Complaints Director for the College. Mr. Krempien gave the following key evidence:

- Mr. Krempien received a voice message about a new complaint on July 12, 2016 from Mr. Lawrence Varga of Costco Head Office in Ottawa, Canada.
- Mr. Krempien testified that Mr. Varga said that Ms. Manzouri had recently stolen 100 X PMS Oxycodone 10 mg tablets from her place of pharmacy employment, Costco Pharmacy #251 and that Costco had Ms. Manzouri's written admission of her theft.
- Mr. Krempien spoke with Mr. Varga on July 12, 2016. Mr. Varga advised him that Ms. Manzouri took the Oxycodone on June 5, 2016 and then left on vacation immediately after. The discrepancy in the narcotics count came to the attention of the store on June 13, 2016. The store determined that they had not dispensed any Oxycodone 10 mg tablets since the previous narcotics count and the wholesaler confirmed that their inventory was correct. CCTV camera footage showed Ms. Manzouri had removed one bottle of PMS-Oxycodone 10 mg (100 tablets) from the narcotics cabinet, placed it in her lab coat, and then walked into an area where she put it in her purse. Upon her first day returning to work, which was on or about July 10, 2016, she was warned and spoken to by loss prevention and the warehouse manager at Costco. At this time she confessed both verbally and in writing to having taken the Oxycodone tablets.

Mr. Varga advised that Ms. Manzouri's employment was terminated over this incident, as per company policy.

- Mr. Krempien then appointed himself as investigator and commenced an investigation into the complaint.
- On July 13, 2016 Mr. Krempien spoke with Mathew Heffering, Licensee of Costco #251. Mr. Krempien testified that Mr. Heffering confirmed the theft of Oxycodone by Ms. Manzouri. Mr. Heffering also advised Mr. Krempien that pharmacy staff conduct a weekly narcotic verification and have tight control on their narcotic inventory. Mr. Heffering confirmed that no other narcotics have been unaccounted for, that Ms. Manzouri was a casual pharmacist employed at Costco #251 where she worked one shift per week, and that Ms. Manzouri also worked as a pharmacist at PADIS.
- Mr. Krempien met with Ms. Manzouri on July 21, 2016. Mr. Krempien confirmed Ms. Manzouri had been a regulated member of the College for approximately 15 years. She admitted to taking 100 Oxycodone 10 mg tablets as alleged by Mr. Varga and she said that she had been asked to bring the Oxycodone overseas to give to her cousin for an uncle who had been ill.
- Mr. Krempien testified that Ms. Manzouri was fully cooperative, that she expressed remorse for her actions and that he felt she did not fully remember taking the medication which may have been due to various stressors in her life. Mr. Krempien said that Ms. Manzouri reported feeling very sick, nervous and stressed.
- Mr. Krempien said that he was advised that Costco had referred the matter to the Calgary Police Service.
- Mr. Krempien testified that upon reviewing all of the evidence he had collected, including Ms. Manzouri's written admission of her conduct, he prepared an investigation report and determined that the matter should be referred to a hearing. He prepared a record of his decision to that effect. Mr. Krempien testified he did so having recognized that Ms. Manzouri was fully cooperative with the investigation and admitted the theft, she had no prior history of complaints and there were no other concerns about her conduct. Mr. Krempien also noted that Ms. Manzouri's conduct involved the theft of a strong narcotic, Oxycodone, the drug was taken out of the country and it was provided to another party for what amounted to self-treatment of a very serious medical condition.
- On cross-examination, Mr. Krempien acknowledged that he did not put his mind towards encouraging the complainant to communicate with Ms. Manzouri to resolve the complaint themselves, nor did he consider attempting to resolve the complaint using alternate complaint resolution under the *Health Professions Act*. Mr. Krempien said there are many different ways to address complaints but with allegations of theft of narcotics he has never done anything other than investigate the matter and where sufficient evidence is gathered, to refer the matter to a hearing. Mr. Krempien acknowledged that there are exceptional cases in which there have been small amounts of medication diverted for personal use but this was not such a case.

- Mr. Krempien also acknowledged that Ms. Manzouri had properly reported the receipt of a surplus of OxyIR by the pharmacy just three weeks before her theft of the Oxycodone 10 mg tablets.
- Further, Mr. Krempien acknowledged that no pharmacists have knowledge or control over how medication is used once it leaves the pharmacy, but he said that pharmacists dispensing pursuant to a prescription would expect the physician to have prescribed the medication after a proper assessment and to provide appropriate ongoing supervision.

Ms. Manzouri did not testify and Mr. Dunlap called no other witnesses.

V. SUBMISSIONS

On behalf of the Complaints Director Mr. Jardine made the following arguments:

Mr. Jardine submitted that there are two things that must be proven on the balance of probabilities. First, the College must prove the specific allegations in the Notice of Hearing and then prove that the allegations constitute unprofessional conduct.

With respect to the allegations that Ms. Manzouri:

1. On or about June 5, 2016, stole 100 X PMS-Oxycodone 10 mg tablets from Costco Pharmacy #251 while practicing as a pharmacist, and
2. Gave the stolen tablets to another individual to be provided to a further individual without authorization and under circumstances that call into question the safety of the person who was reported to be the end user of the oxycodone.

Mr. Jardine argued the evidence clearly establishes the factual allegations. He also advised that the factual allegations were not in dispute.

Mr. Jardine submitted that the allegations are proven by Ms. Manzouri's admissions to Mr. Krempien during his investigation and proven by the materials obtained from Costco. Mr. Jardine indicated that the College accepts Ms. Manzouri's statement that she provided the Oxycodone tablets to her cousin for her ill uncle in Iran. There is no evidence to the contrary.

Mr. Jardine argued that the College's concern is that Oxycodone tablets are to be dispensed only pursuant to a triplicate prescription by a physician. The patient, in order to receive such a prescription, must be assessed by a physician, and the medication must be sent out with treatment directions and with counselling by the physician. Additionally, narcotics should be properly recorded in the pharmacy. It is paramount that they can be tracked and the reasons why they were dispensed can be understood. Mr. Jardine said that in this circumstance there was no suggestion there were controls, no suggestion that the medication was being moved to another medical professional or otherwise, and no appropriate means for that to occur. Mr. Jardine

submitted that there were potential safety problems if the medication did go to Ms. Manzouri's uncle. If the medication did not go to her uncle, the safety concerns would be even worse as there is no way to know who would use the medication, what their medical condition was, or if they had a tolerance to opioids.

Mr. Jardine then went on to state the Complaints Director's next responsibility to prove that Ms. Manzouri's conduct was unprofessional conduct. He submitted that the evidence proved Ms. Manzouri's conduct:

1. Undermined the integrity of the profession;

Mr. Jardine submitted that the integrity of the profession is impacted in the eyes of the public but also in the eyes of fellow professionals as pharmacists are trusted to handle drugs responsibly, safely and in accordance with strict rules.

2. Was contrary to accepted pharmacist practice;

Accepted pharmacist practice with narcotics includes processes and procedures around such things as the triplicate prescription program.

3. Breaches the trust placed in her as a pharmacist by the Alberta College of Pharmacists and by her employer; and

The College and employers place trust in pharmacists to follow the rules and the accepted practice of pharmacy.

4. Created a serious risk of patient harm to the person who was reported to have been the end user of the oxycodone.

Sending out 100 tablets of oxycodone, which is a serious narcotic, in uncontrolled circumstances creates a serious risk to the end user, whoever it is.

Mr. Jardine then submitted that Ms. Manzouri's 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 of the Standards of Practice for Pharmacists and Pharmacy Technicians
- Sections 31 (2) (a) and 38 of the *Pharmacy and Drug Act*
- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*;
- Section 31(1) of the Narcotic Control Regulations; and
- Principles I (1,7) and X (1,2) of the ACP Code of Ethics;
- Some or all of the provisions of sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*.

On behalf of Ms. Manzouri, Mr. Dunlap made the following arguments:

Mr. Dunlap acknowledged that Ms. Manzouri was not disputing the facts of the case.

Mr. Dunlap asked the Hearing Tribunal to consider that Ms. Manzouri's conduct was a single occurrence, not a repetitive act. Mr. Dunlap also suggested that Ms. Manzouri did not intend to undermine the integrity of the profession as her conduct was a very quick act and she had not taken any time to reflect as to whether or not her actions would undermine the integrity of the profession.

With respect to Mr. Jardine's submission that it was against accepted pharmacy practice, Mr. Dunlap acknowledged that Ms. Manzouri's actions clearly demonstrate a violation of accepted pharmacist practice. Mr. Dunlap also did not take exception to Mr. Jardine's submission that Ms. Manzouri breached the trust placed in her as a pharmacist.

With respect to the submission that Ms. Manzouri's actions created a serious risk of patient harm, Mr. Dunlap argued that Ms. Manzouri would have given her cousin instructions for her uncle to take the drug, the same instructions that she would have given had she been dealing with that person over the counter. Mr. Dunlap said that Ms. Manzouri was not asked about this in the investigation. Mr. Dunlap then pointed out that Ms. Manzouri had no control over how the ultimate person took the drug but nor does any pharmacist once it leaves the pharmacy. Mr. Dunlap further pointed out that Ms. Manzouri's uncle is still living and there is no proof that her conduct actually did any harm.

In response, Mr. Jardine explained that the Complaints Director was alleging that Ms. Manzouri's conduct created a risk of harm, not that it caused actual harm. Mr. Jardine said there was a serious risk as there was a lack of control. Mr. Jardine further submitted that the integrity of the profession is compromised if the public comes to be of the belief that pharmacists can hand out narcotics without prescriptions. He submitted that if this becomes acceptable practice it would harm the general perception and integrity of the profession, both internally among pharmacists, and externally.

VI. FINDINGS

The Hearing Tribunal carefully considered the evidence presented during the hearing and the submissions from both the Complaints Director and the Member. The Hearing Tribunal made the following findings:

With respect to the first allegation that on or about June 5, 2016 Ms. Manzouri stole 100 X PMS-Oxycodone 10 mg tablets from Costco Pharmacy #251 while she was practicing as a pharmacist, the Hearing Tribunal finds that the allegation is factually proven. The Hearing Tribunal made this finding based on:

- Ms. Manzouri's admission to Mr. Krempien that she stole 100 X PMS-Oxycodone 10 mg tablets from Costco Pharmacy #251;
- The July 10, 2016 Costco Loss Prevention Investigation Summary of the pharmacy's CCTV surveillance footage showing Ms. Manzouri stealing the oxycodone tablets from the pharmacy in her purse on June 5, 2016;
- Ms. Manzouri's statement provided to Costco Loss Prevention personnel on July 10, 2016 in which she admits to the theft of Oxycodone tablets;
- Mr. Heffering's completed *Controlled Drugs and Substances Loss or Theft Report* which was faxed to Health Canada on July 15, 2016.
- Mr. Dunlap's indication on behalf of Ms. Manzouri that she did not dispute the facts alleged in the allegations.

With respect to the second allegation that Ms. Manzouri gave the stolen tablets to another individual to be provided to a further individual without authorization and under circumstances that call into question the safety of the person who was reported to be the end user of the oxycodone, the Hearing Tribunal finds the allegation factually proven. The Hearing Tribunal made this finding based on:

- Ms. Manzouri's admission to Mr. Krempien that she provided the stolen Oxycodone tablets to her cousin who then gave them to Ms. Manzouri's uncle.
- The lack of any evidence to the contrary.
- The lack of any evidence that Ms. Manzouri took any steps to ensure the medication would be used safely.
- Mr. Dunlap's indication on behalf of Ms. Manzouri that she did not dispute the facts alleged in the allegations.

The Hearing Tribunal considered whether Ms. Manzouri's proven conduct constitutes unprofessional conduct. The Tribunal reviewed the submissions of the Complaints Director and Ms. Manzouri and found Ms. Manzouri's conduct to have breached the following provisions governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians

The Hearing Tribunal found that Ms. Manzouri's conduct clearly constitutes a breach of these Standards; specifically that she did not practice in accordance with the laws that govern pharmacy practice and did not comply with its letter and spirit to ensure that the public and each patient receive the full protection of the law.

- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*

The Hearing Tribunal found that the Oxycodone was not dispensed or sold through a licensed pharmacy, contrary to section 31(2)(a) and 38 of the *Alberta Pharmacy and Drug Act*.

- Section 4(1) and 5(1) of the *Controlled Drugs and Substances Act*

The Hearing Tribunal found that neither Ms. Manzouri, nor the parties she provided the stolen Oxycodone to were authorized to possess it, contrary to the federal *Controlled Drugs and Substances Act*.

- Section 31(1) of the *Narcotic Control Regulations*;

The Hearing Tribunal found that Ms. Manzouri contravened section 31(1) of the *Narcotic Control Regulations* by providing the Oxycodone to her cousin for her uncle without a written order signed and dated by a practitioner.

- Principles I (1,7) and X (1,2) of the ACP Code of Ethics;

The Hearing Tribunal found that Ms. Manzouri contravened these sections of the Code of Ethics. By providing the Oxycodone to an individual without a valid prescription she did not act in the best interests of the patient and she did not safeguard the well-being of the patient. Further, by stealing the narcotics Ms. Manzouri failed to comply with the letter and spirit of the law and she was dishonest in her dealings with her pharmacy employer.

The Hearing Tribunal found that the conduct set out above and the breaches of the Standards of Practice, *Pharmacy and Drug Act*, *Controlled Drugs and Substances Act*, *Narcotic Control Regulations* and the Code of Ethics constitute unprofessional conduct as defined by the *Health Professions Act*, specifically the provisions of sections 1(1)(pp)(ii), 1(2)(pp)(iii), and 1(1)(pp)(xii). Section 1(1)(pp) of the *Health Professions Act* states that "unprofessional conduct" means one or more of the following has occurred:

- (ii) contravention of this Act, a code of ethics or standards or practice.
- (iii) contravention of another enactment that applies to the profession
- (xii) conduct that harms the integrity of the regulated profession

The Hearing Tribunal agrees with the Complaints Director's submission that Ms. Manzouri's actions undermined the integrity of the profession and were contrary to accepted pharmacy practice. The integrity of the profession depends on the public having confidence that pharmacists will follow rules and regulations, especially involving the movement of narcotics and controlled substances. Employers and pharmacists also must also have confidence that laws and standards, which are put in place for a reason, are being followed. The pharmacist is trusted to comply with all legislation.

The Hearing Tribunal considered, as Mr. Dunlap argued, that Ms. Manzouri's conduct was a very quick, one-time act; and the member had no time to think about undermining the integrity of the profession. The Tribunal did not accept that this excused Ms. Manzouri's conduct. Regardless of whether Ms. Manzouri considered the impact of her actions on the profession at large, her actions did undermine the integrity of the profession, even if this was not the intent of the member. We agree with the Complaints Director's submission that if pharmacists hand out narcotics without a prescription it will undermine the integrity of the profession, it is contrary to accepted pharmacy practice, and it breaches the trust placed in pharmacists by the Alberta College of Pharmacists and employers. With regard to a serious risk of patient harm, the Hearing Tribunal accepts that narcotics given out by a pharmacist without a valid prescription or medical supervision poses a serious risk of patient harm. Mr. Dunlap argued that there was no evidence of actual harm to the end user, but as Mr. Jardine pointed out, the issue is not whether there was actual harm, but the risk of harm. The Hearing Tribunal felt that the concern over the risk of patient harm was justified. The Hearing Tribunal will consider the isolated nature of Ms. Manzouri's conduct in relation to sanctions.

VI. SUBMISSIONS ON SANCTIONS

Both the Complaints Director and Ms. Manzouri were invited to make submissions on sanctions.

Complaints Director's Submissions on Sanctions

Mr. Jardine argued that the purposes of sanctions are to:

- Protect the public;
- Protect the integrity of the profession, both internally and otherwise;
- Be fair to the member, and
- To deter the member and to educate and deter other members from similar conduct in the future.

Mr. Jardine also provided the Hearing Tribunal with a decision from the Newfoundland Supreme Court Trial Division, *Jaswal v. Medical Board (Newfoundland)*, 1996 CanLII 11630 which listed a number of factors to be taken into consideration when determining the appropriate sanctions in disciplinary matters. Mr. Jardine asked the Hearing Tribunal to consider that:

- Nature and gravity of the conduct – theft and diversion of narcotics is a serious matter but this case is not the most serious instance the College has ever had to address. There was no systematic diversion over an extended period of time in this case. This was not a diversion for profit or with the intention that the medications would be sold on the street.
- Age and experience of the member – Ms. Manzouri was practiced for over 15 years so inexperience is not a factor in this case.
- Prior offences – There have been no previous complaints or convictions against Ms. Manzouri.
- Number of times the offence was committed – As indicated above, the Hearing Tribunal should consider that Ms. Manzouri’s conduct was an isolated incident.
- Role of the member in acknowledging what has occurred – In this case Ms. Manzouri fully cooperated with the investigation and admitted the alleged conduct.
- Whether the member has already suffered financial or other penalties as a result of the allegations – Mr. Jardine noted the evidence that Ms. Manzouri was terminated from her employment from Costco as a result of her admitted theft.
- The impact of the incident on the patient – in this case Mr. Jardine acknowledged there is no evidence of any harm or other impacts on any patient.
- Whether the type of conduct falls outside the range of permitted conduct – Mr. Jardine argued that Ms. Manzouri’s conduct was outside the range of acceptable conduct and was quite clearly not acceptable.

Mr. Jardine submitted that, in this case, general deterrence is of the utmost importance. He argued that it was of critical importance to have sanctions to educate and warn other members of the profession that this type of conduct is unacceptable and will have serious consequences. Mr. Jardine submitted that the concern was not so much whether Ms. Manzouri would reoffend, but the impact of the unprofessional conduct on the reputation of the profession. The sanctions, he argued, must be such that the public sees that this matter is taken seriously and that infractions are dealt with properly by the College.

Mr. Jardine also provided six previous decisions in which pharmacists were sanctioned for conduct involving diversion and theft.

In the case of Pharmacist Registrant A, a 2010 decision of the Hearing Tribunal, the member was found to have stolen front store merchandise worth less than \$1,000 from the store, to have left the pharmacy without securing the dispensary and to have made several medication errors without completing any quality assurance processes. Following a partial agreement on sanctions the Hearing Tribunal imposed a 30 day suspension with a further 90 day suspension stayed provided the member complied

with conditions, ordered the member to pay a \$2500 fine and the costs of the investigation and hearing and ordered a summary of the case to be published. The Hearing Tribunal indicated that it was satisfied that publishing the member's name may have an unwarranted impact on his wife and daughter in their small community so it directed that publication not include the member's name. Mr. Jardine explained that this decision pre-dated the College's bylaw enacted pursuant to section 119(1)(f) of the *Health Professions Act* which gives the College's Registrar the discretion to publish decisions with the member's name so it is no longer within the discretion of a Hearing Tribunal.

In the case of Pharmacist Registrant B, a 2013 decision of the Hearing Tribunal, the member was found to have stolen front store merchandise and medications with a value of up to \$2500 from her employer pharmacy on multiple occasions. The Hearing Tribunal ordered Pharmacist Registrant B to receive a reprimand, a suspension until she provided proof that she was fit to practice, that she enroll in a monitoring/assistance program under the care of a mental health practitioner, that upon returning to practice she would practice under direct supervision for 200 hours, that she pay a fine of \$2000 and costs of the investigation and hearing. Based on a joint recommendation from the member and the Complaints Director, the Hearing Tribunal also recommended that the Registrar consider not publishing the member's name. In doing so the Hearing Tribunal noted that it had received detailed psychiatric evidence that the member's mental status was in jeopardy and that the member's ex-husband may use the published information to harass or abuse her.

In the case of Saeed Sattari, a 2016 decision of the Hearing Tribunal, the member was found to have diverted a large quantity of medications from the pharmacy with a value of approximately \$13,500 and that his diversions were for other than just his personal use. The Hearing Tribunal imposed a 12 month suspension, a \$5000 fine, costs of the investigation and hearing to a maximum of \$20,000, an order that for 5 years the member must disclose the Hearing Tribunal's decision to any pharmacy employer and that the member be unable to be an owner, proprietor or licensee of a pharmacy for a period of 5 years.

In the case of Trent Walsh, a September 20, 2011 decision of the Hearing Tribunal, the member was found to have failed to comply with the terms of an after-care agreement and to have diverted medications from his employer pharmacy for his own use. The Hearing Tribunal ordered that Mr. Walsh's interim suspension that commenced on May 24, 2011 would continue until December 31, 2011. The Tribunal also imposed conditions on Mr. Walsh's practice permit including that he not hold the position of licensee for 5 years, he provide a copy of the Tribunal's decision to any pharmacy employer for 5 years, he enter into a monitoring and recovery program, he submit to narcotic audits for a period of 3 years and that he pay the costs of the investigation and hearing.

In the case of Calvin Boey, a 2013 decision of the Hearing Tribunal, the member was found to have diverted a large quantity of medications for personal use, to have routinely practiced while incapacitated and abused his position of trust by altering the pharmacy's electronic inventory records to initiate and conceal his diversion of

medications. The Hearing Tribunal ordered that Mr. Boey's suspension that commenced on June 26, 2012 would continue until December 31, 2013, that his practice permit would be subject to conditions to enroll in a monitoring and recovery program, that he must provide a clean drug screen before returning to practice, that he must notify any pharmacy employer of the Tribunal's decision for a period of 3 years, that he practice under supervision for 6 months, that he not be a pharmacy licensee for 5 years and that he pay the costs of the investigation and hearing to a maximum of \$10,000. On the issue of costs the Tribunal commented that it considered that Mr. Boey had already suffered a significant financial impact as a result of his interim suspension, the loss of his employment and as a result of a demand for \$35,000 from his former employer for breach of a scholarship agreement.

Finally Mr. Jardine provided the case of Leonard Johnson, a 2013 decision of the College's Hearing Tribunal. The member was found to have diverted and misused narcotics and targeted substances from his pharmacy employer, to have obtained and used medications that were not prescribed for him and to have abused his position of trust by altering pharmacy records and creating false records to conceal his diversions. The Hearing Tribunal ordered the member to be suspended for 6 months with a further 18 months of suspension in abeyance pending compliance with the other sanctions. The member was also ordered to participate in a recovery and monitoring program for 5 years, he was prohibited from acting as an owner, proprietor or licensee for 5 years, he was ordered to practice under supervision for 12 months, he was required to advise employers of the Hearing Tribunal's decision for 5 years and he was responsible for the costs of the investigation and hearing.

Mr. Jardine then provided the Complaints Director's position on sanctions for this case. The Complaints Director sought the following sanctions:

- A suspension of Ms. Manzouri's practice permit for a period of three months;
- The costs of the investigation and hearing to a maximum of \$20,000 on a schedule satisfactory to the College;
- For a period of five years, Ms. Manzouri must provide any pharmacy licensee or employer with a copy of the Hearing Tribunal's decision and the sanctions orders so that they are aware of the Tribunal's decision;
- For a period of five years, Ms. Manzouri may not serve as an owner, proprietor or licensee of a pharmacy.

Ms. Manzouri's Submissions on Sanctions

Mr. Dunlap began his submissions on sanctions on behalf of Ms. Manzouri by asking the Hearing Tribunal to consider Ms. Manzouri's personal circumstances. Mr. Dunlap stressed that the Tribunal should not sanction anyone without acknowledging their personal circumstances.

Mr. Dunlap then indicated that he was applying pursuant to section 78 of the *Health Professions Act* to close part of the hearing to deal with information about Ms. Manzouri's personal circumstances. Mr. Dunlap indicated that he would be making submissions about Ms. Manzouri's family, and the stress she had been under at the time

of her conduct, even though that information was not in evidence. Mr. Jardine indicated he would not object to this process but he would reserve the ability to apply to reopen the hearing if required.

The Hearing Tribunal caucused to consider the application to close part of the hearing under section 78 of the *Health Professions Act*. Section 78(1)(a) provides, in part, that a hearing is open to the public unless the Hearing Tribunal holds part of the hearing in private on an application of any person on grounds that the hearing should be in private (ii) to protect the safety of the person, or (iii) because not disclosing a person's confidential personal information outweighs the desirability of having the hearing open to the public. Mr. Dunlap indicated he would be making submissions about Ms. Manzouri's family life and the difficulties she was experiencing at the material time as these should be considered mitigating factors. After hearing from Mr. Dunlap and noting that Mr. Jardine did not object, the Hearing Tribunal determined that it would close the portion of the hearing during which Mr. Dunlap would make submissions about Ms. Manzouri's family difficulties. The Hearing Tribunal accepted that these submissions would involve very personal details of Ms. Manzouri's family life. The Tribunal also noted that open disciplinary proceedings are valuable in order to maintain public confidence in the College's ability to regulate the pharmacy profession in the public interest, and to deter unprofessional conduct by others, but closing just this portion of the hearing would have a minimal impact on the valuable public nature of the overall proceeding. The Hearing Tribunal noted that the public nature of the proceedings would be preserved since the remainder of the hearing remained open to the public and the public will still have access to the Hearing Tribunal's written decision.

Mr. Dunlap acknowledged that a theft of narcotics should generally lead the Hearing Tribunal to consider a suspension but he argued that there are many mitigating factors to consider. Mr. Dunlap argued that the following factors should be considered mitigating:

- Ms. Manzouri's difficult family circumstances at the material time;
- Ms. Manzouri did not take any lengths to conceal the theft;
- It was an inexplicable one time incident with no prior planning and no sophistication to it;
- Ms. Manzouri was under significant pressure from her family to obtain the medication for a sick family member;
- Ms. Manzouri was completely cooperative, admitted to the theft and sought to deal with the matter as quickly as possible;
- Ms. Manzouri has already suffered due to the catastrophic consequences of her actions including the loss of her job, shame and embarrassment. A license suspension would essentially take away her livelihood.

Mr. Dunlap argued that his was a case in which no suspension should be ordered. He referenced *College of Physicians and Surgeons of Ontario v. Boodoosingh*, [1990] O.J. No. 921 (Ont. Div. Ct.) in which the Ontario Divisional Court overturned a disciplinary decision revoking a physician's license to practice and substituting a 3 month

suspension instead. The physician had been found to have committed professional misconduct by having a sexual relationship with a patient. The Divisional Court said that revocation should be reserved for repeat offenders and the most serious cases. Mr. Dunlap argued that a suspension was equivalent to revocation and that Ms. Manzouri's conduct was not sufficiently serious to justify a suspension.

In response to the cases referenced by Mr. Jardine Mr. Dunlap argued that in the Pharmacist Registrant A case there was some evidence of advance planning of the thefts. He also argued that the Pharmacist Registrant A case was an example of not publishing the member's name and he said this case before the tribunal was a more compelling case to not publish Ms. Manzouri's name. Mr. Dunlap argued that the Pharmacist Registrant B case demonstrated that not publishing a member's name could be appropriate where it would cause embarrassment in the member's community. He also referenced the Calvin Boey case and suggested costs could be capped at \$10,000 in this case.

Mr. Dunlap then referenced the factors from the Jaswal case and argued:

- A less severe sanction may be imposed on an individual who genuinely recognizes that her conduct was wrong;
- Ms. Manzouri has good character and a long unblemished record of professional service. She has no prior discipline history and serious sanctions should be reserved for the most serious and repeat offenders;
- Ms. Manzouri's admission of her conduct to Mr. Krempien during the investigation should be taken as an acknowledgment of responsibility for her actions.

Mr. Dunlap asked the Hearing Tribunal to impose no suspension, to recommend that the Registrar not publish Ms. Manzouri's name and to cap the costs at a lesser amount, given that there were other avenues that could have been used to resolve the complaint in this case. Mr. Dunlap argued that costs of \$20,000 would be prohibitive for Ms. Manzouri who has been out of work since the notice of hearing was published. Mr. Dunlap then asked to adjourn the hearing so that Ms. Manzouri could obtain a letter from her physician, Dr. Smit that would be relevant to the issue of sanctions.

Complaints Director's Reply Submissions on Sanction

In reply, Mr. Jardine argued that the Hearing Tribunal cannot forget the public protection purpose of the *Health Professions Act*. Mr. Jardine argued that unlike Judges imposing sentences in the criminal courts, Hearing Tribunals must consider the impact of their decisions on the public and in particular on public confidence in the regulation and integrity of the profession. Hearing Tribunals are not free to focus almost entirely on the member's individual circumstances.

Mr. Jardine argued that the *Bodoosingh* case should be considered very different from this case. The *Bodoosingh* case was decided in 1990 and involved a physician having sexual contact with a patient. Today the statutory framework for professional discipline is very different and a 3 month suspension would not be imposed for similar conduct

in Ontario. As such the *Boodoosingh* case does not define the minimum severity of conduct that would justify a 3 month suspension. Further, the Complaints Director is seeking a suspension, not revocation of Ms. Manzouri's practice permit. A suspension is not equivalent to a revocation. There are a large number of pharmacists who have served a suspension and successfully returned to practice.

In relation to the Calvin Boey case, Mr. Jardine argued that in that case the member had incurred a significant additional financial penalty, a \$35,000 loan repayment and this accounted for the decision to cap the costs at \$10,000.

Mr. Jardine argued that the Hearing Tribunal should be careful before relying on any previous cases as justification for recommending publication without Ms. Manzouri's name. Mr. Jardine explained that cases where that has occurred in the past involved detailed psychiatric evidence that publication of the member's name would be harmful. There is no such evidence here.

On the issue of costs Mr. Jardine argued that the theft of narcotics was not the type of conduct that the profession should expect to be resolved by informal means. Mr. Krempien exercised his statutory discretion to investigate the matter and refer it to the Hearing Tribunal and the reasonable costs of those processes should be borne by the member responsible.

Mr. Jardine did not object to Mr. Dunlap's proposal to adjourn pending the receipt of Dr. Smit's letter.

Further Evidence and Submissions on Sanctions

On May 26, 2017 the Hearing Tribunal received a copy of a letter from Dr. Mudi Smit dated May 23, 2017. In the letter Dr. Smit indicated that Ms. Manzouri was a patient and had first seen Dr. Smit with symptoms of depression on January 19, 2016. Dr. Smit indicated Ms. Manzouri had been prescribed an antidepressant but did not take it. She was referred to a psychologist and started to see the psychologist on August 11, 2016. Dr. Smit indicated that Ms. Manzouri began to take antidepressants in October 2016 while attending counselling for her difficult family circumstances. Dr. Smit reported Ms. Manzouri continued to be under her care and was seeking ongoing counselling.

In June, 2017 Ms. Manzouri asked the Hearing Tribunal to permit her to submit a further letter submission as she said Mr. Dunlap had not followed her instructions during the hearing. The Hearing Tribunal noted that Mr. Jardine did not object to Ms. Manzouri submitting a letter and the Hearing Tribunal received and considered the letter. In her letter Ms. Manzouri provided additional details about her difficult family circumstances at the time of her impugned conduct. She also explained that she was providing support for her family financially and her financial circumstances required her to work up to 60 hours a week, often working double shifts in different locations. She indicated that she was also experiencing some health concerns at this time. Ms. Manzouri explained that she allowed all of these pressures to overwhelm her. Ms. Manzouri stated that she is a hard worker and a good pharmacist. She said she takes

her responsibilities seriously and has no history of mistakes or complaints. She wishes to be able to return to pharmacy practice.

In her letter Ms. Manzouri acknowledged that her conduct was very wrong and unprofessional. She said she takes full responsibility for it but she said she has no explanation for her actions. She attributed her actions to lack of sleep, constant headaches, tiredness and the side effects of medication. Ms. Manzouri also explained that she has been through the criminal process and that while sitting in criminal court she felt ashamed and embarrassed. Ms. Manzouri asked that the Hearing Tribunal consider recommending publication without her name. She said that if a publication indicates that she stole narcotics from her employer then that fact will be used by others to shame and punish her and her other family members. Ms. Manzouri suggested that these negative impacts of publishing her name would outweigh the benefits of transparency and general deterrence.

While Mr. Jardine did not object to the Hearing Tribunal receiving Ms. Manzouri's additional letter, he cautioned that the letter was a submission and not sworn evidence. Mr. Jardine pointed out that he had not had an opportunity to cross-examine Ms. Manzouri on the information or to seek clarification on it. The Hearing Tribunal took Mr. Jardine's comments into account when it was weighing Ms. Manzouri's letter.

Lastly, on July 12, 2017 Mr. Dunlap sent a letter to Mr. Jardine who in turn forwarded it to the Hearings Director for distribution to the Hearing Tribunal. Mr. Dunlap said that at the hearing he had indicated that Ms. Manzouri was working double shifts around and during the time of taking the drugs. The letter indicated that Ms. Manzouri had asked Mr. Dunlap to forward a copy of her schedule for the relevant months to confirm she was working a "huge" number of hours and that this contributed to her overall stress level at the time of her conduct. Attached to the letter was a photocopy of several pages from a 2016 day planner representing January through July. There are words, abbreviations and numbers written on many of the days represented by the day planner. Absent any evidence about what the handwriting says the Hearing Tribunal had a difficult time interpreting this information. The Hearing Tribunal has noted Mr. Dunlap's submission at the hearing that Ms. Manzouri was often working double shifts around the time of her unprofessional conduct. In considering the weight to be placed on the day planner the Hearing Tribunal also considered Mr. Jardine's earlier comments about the lack of an opportunity to cross-examine on this information or seek any clarification about it.

VI. ORDERS

The Hearing Tribunal carefully considered all the evidence and the submissions made by Mr. Jardine, Mr. Dunlap and by Ms. Manzouri herself including the *Jaswal* factors discussed above and the sanctions imposed in previous cases.

The Hearing Tribunal was in agreement with the sanctions proposed by the Complaints Director. The proposed sanctions balance specific and general deterrence and maintaining the integrity of, and public confidence in the pharmacy profession while balancing fairness to the member.

The Hearing Tribunal agrees that the theft of narcotics is a very serious issue. Following all applicable laws and standards, especially pertaining to narcotics and controlled drugs, is central to the core of basic pharmacist practice. Now more than ever, pharmacists play a critical role in ensuring narcotics are distributed safely and according to all applicable laws and standards. The Tribunal agrees that the protection of the public is paramount and outweighs Ms. Manzouri's individual mitigating circumstances. The Hearing Tribunal believes that general deterrence is a very significant consideration in imposing sanctions in this case. The Tribunal is sympathetic to Ms. Manzouri's argument that she has already suffered and she is unlikely to reoffend. However, there must be consequences for narcotic theft and diversion. The Tribunal does not accept that a suspension would be inappropriate in this case. The Tribunal believes that the proposed 90 day suspension properly reflects the seriousness of Ms. Manzouri's conduct and it is at the same time fair given Ms. Manzouri's cooperation and her willingness to take responsibility for her actions.

The Hearing Tribunal considered the letter from Dr. Smit but the letter did not offer any substantive information about Ms. Manzouri's health or medical condition that could be taken into account in determining the appropriate sanctions. The letter from Dr. Smit did not provide any useful information in relation to Mr. Dunlap's request that the Tribunal recommend publication without Ms. Manzouri's name either.

The letter directly from Ms. Manzouri to the Hearing Tribunal elaborated on the difficult family circumstances Ms. Manzouri was experiencing around the time of her impugned conduct and that she has experienced since then. The Tribunal considered that the letter was not sworn evidence subject to cross-examination, but it took Ms. Manzouri's letter at face value. The information in the letter suggests that publishing Ms. Manzouri's name could expose her or her other family members to harm in the community. The Tribunal was satisfied that this was a very unusual case. In these unique circumstances, the negative impacts of publishing Ms. Manzouri's name outweighs the value of transparency in the discipline process. The Tribunal will therefore recommend that the College's Registrar publish this matter without identifying Ms. Manzouri by name.

With respect to costs, the Hearing Tribunal accepted the Complaints Director's submission. It was Ms. Manzouri's own conduct that led to the need for a hearing. It is reasonable and proper that Ms. Manzouri should bear the costs of the investigation and hearing into her own conduct. In terms of the length of the hearing, it was necessary for the Complaints Director to prove the allegations even though Ms. Manzouri did not contest the facts. The hearing process was also lengthened due to the adjournment to wait for Dr. Smit's letter, Ms. Manzouri's own submission to the Hearing Tribunal and the letter from Mr. Dunlap with Mr. Manzouri's work schedule. The Hearing Tribunal was required to take additional time to consider all of these materials before coming to this decision.

Because of the nature of the concern in this case, narcotics theft and diversion, the Hearing Tribunal agrees that it is appropriate that there be sanctions requiring Ms. Manzouri to notify any pharmacy employer or licensee of this decision and a prohibition on her acting as an owner, proprietor or licensee for five years. These sanctions are directed at protecting the public interest and ensure a monitoring element aimed at deterring any future unprofessional conduct of this nature. These sanctions are in line with previous cases of narcotic theft and diversion.

Summary of Sanctions Orders

The Hearing Tribunal makes the following orders pursuant to section 82 of the *Health Professions Act*:

1. Ms. Manzouri's practice permit shall be suspended for a period of 3 months from the date of the Hearing Tribunal's written decision;
2. Ms. Manzouri shall pay the costs of the investigation and this hearing to a maximum of \$20,000 on a schedule satisfactory to the College;
3. For a period of five (5) years, Ms. Manzouri must provide any pharmacy employer or licensee with a copy of this decision of the Hearing Tribunal so that the employer or licensee is aware of the decision and the sanction orders;
4. For a period of five (5) years Ms. Manzouri shall not be permitted to be an owner, proprietor or licensee of a pharmacy.

In addition, the Hearing Tribunal recommends to the College's Registrar that a summary of this matter be published without Ms. Manzouri identified by name, due to the unusual circumstances described above.

Finally, the Hearing Tribunal believes that there are reasonable and probable grounds to believe that Ms. Manzouri has committed a criminal offence. Pursuant to section 80(2) of the *Health Professions Act* the Hearing Tribunal directs the Hearings Director to send a copy of this decision to the Minister of Justice and Solicitor General, and on the request of the Minister of Justice and Solicitor General, to also send a copy of the record of the hearing.

Signed on behalf of the Hearing Tribunal by
the Chair

Dated:

July 28, 2017

Per:

[Kelly Olstad]