

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT, R.S.A. 2000, c. H-7

AND IN THE MATTER OF THE HEARING REGARDING
THE CONDUCT OF

CRYSTAL McINTYRE
Registration No. 10509

DECISION OF THE HEARING TRIBUNAL

September 25, 2018

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Crystal McIntyre (ACP Cert. 10509), Registered Pharmacy Technician. The Hearing Tribunal members were: Ms. Pat Matusko, Public Member and Chair, Ms. Jennifer Teichroeb, Pharmacy Technician and Ms. Mary Gunther, Pharmacist.

Also in attendance were Mr. Craig Boyer, legal counsel for the Complaints Director of the College, Mr. James Krempien, Complaints Director for the College, and Ms. McIntyre. Ms. Melissa Rico, legal counsel for Ms. McIntyre was not present. The Hearing Tribunal confirmed that Ms. McIntyre had Ms. Rico's assistance in the lead up to the hearing. Ms. McIntyre was asked if she had had sufficient time and support from her legal counsel in order to proceed with the hearing. Ms. McIntyre said that she had.

Mr. Gregory Sim was also present and acted as independent legal counsel for the Hearing Tribunal.

The hearing took place on May 29, 2018 at the second-floor conference center, 8215 112 St NW, Edmonton AB. The hearing was held under the terms of the *Health Professions Act* (HPA).

II. ALLEGATIONS

The allegations to be considered by the Hearing Tribunal are as set out in the Notice of Hearing dated November 29, 2016

IT IS ALLEGED THAT:

1. During the period from approximately November 1, 2014 to July 14, 2016 you diverted over 81,000 oxycodone tablets (65,700 Ratio-Oxycocet; 11,000 OxyNeo 40 mg; 4700 Act-oxycodone CR 40 mg) and a significant but undetermined number of Dilaudid tablets from [REDACTED] ("the Pharmacy") in Calgary, Alberta where you were employed as a registered pharmacy technician by ordering extra tablets from the Pharmacy's suppliers which you diverted and by then adjusting the Pharmacy's inventory records in the Pharmacy's computer so that the diversions would not be detected;
2. During the period between August 2013 and October 31, 2014 you diverted substantial additional oxycodone tablets and Dilaudid tablets by ordering extra tablets from the Pharmacy's suppliers which you diverted and then adjusting the Pharmacy's inventory records in the Pharmacy's computer so that the diversions would not be detected;
3. You then gave the diverted tablets to another individual who you believed as associated with a criminal element thereby calling into question the safety of the persons who would be the end-users of the oxycodone and Dilaudid tablets;
4. You used your position within the Pharmacy to manipulate the pharmacy inventory records to facilitate the ordering, receipt and concealment of your diversion of the oxycodone and Dilaudid tablets; and

5. You continued with your ongoing diversions of the oxycodone and Dilaudid tablets until your diversion was discovered by your employer and your employment was terminated.

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 pharmacy technician by the Alberta College of Pharmacists and by your employer, and
- d. created a serious risk of patient harm to the persons who were the end users of the oxycodone tablets.

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 X (1, 2) and XI (1, 3, 4) 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), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*.

III. PRELIMINARY MATTERS

There were no objections to the composition of the Hearing Tribunal, the timeliness of the service of the Notice of Hearing or the jurisdiction of the Hearing Tribunal to proceed with the hearing. Neither party raised any other preliminary matters.

IV. EVIDENCE AND SUBMISSIONS

By agreement the parties entered the following as exhibits:

- | | |
|------------|-------------------------------|
| Exhibit 1: | Exhibit Book |
| Exhibit 2: | Agreed Statement of Facts |
| Exhibit 3: | Joint Submission on Sanctions |

At all material times, Ms. McIntyre was a Pharmacy Technician registered with the College and employed by [REDACTED] in Calgary.

On July 18, 2016, the Complaints Director received a telephone call from Ms. McIntyre's employer, [REDACTED]. [REDACTED] advised Mr. Krempien that Ms. McIntyre had been terminated for theft of narcotics and other drugs from the pharmacy.

Mr. Krempien treated [REDACTED] notification as a complaint as per section 57 of the HPA.

Mr. Krempien also spoke with Ms. McIntyre on July 18, 2016. Ms. McIntyre acknowledged the complaint and indicated that she would voluntarily relinquish and cancel her practice permit. Mr. Krempien then notified the College's Registration Manager, Ms. Linda Hagan and arranged for Ms. McIntyre's permit to be cancelled.

Mr. Krempien notified Ms. McIntyre that he would be investigating the complaint. Ms. McIntyre then engaged legal counsel, Ms. Melissa Rico, to assist her. Ms. Rico provided Ms. McIntyre's response to the complaint on September 19, 2016.

While Mr. Krempien then referred the complaint to a hearing and a hearing was scheduled, on March 17, 2017 the Complaints Director and Ms. McIntyre entered into a Stand-Still Agreement. The Stand-Still Agreement provided that Ms. McIntyre had been criminally charged based on the same conduct that led to the complaint, and that the ACP hearing would be deferred until after her criminal proceedings had been addressed. Ms. McIntyre agreed not to assert delay in the ACP hearing process while her criminal proceedings were pending.

In the Stand-Still Agreement, Ms. McIntyre also agreed that she would execute an admission of all of the allegations of Unprofessional Conduct in the Notice of Hearing, and that she had no intention of returning to practice as a Pharmacy Technician. Ms. McIntyre also acknowledged and agreed that one of the sanctions that would be imposed at her ACP hearing would be the cancellation of her registration as a Pharmacy Technician. Finally, the Stand-Still Agreement provided that Ms. McIntyre acknowledged having had the assistance of legal counsel prior to signing it.

Investigative records collected by Mr. Krempien from [REDACTED] indicated that:

- Video surveillance footage from [the] Pharmacy showed Ms. McIntyre taking two 500 tablet bottles of the narcotic Ratio-Oxycocet from the dispensary shelves and placing them into her purse, and then removing an unknown item from the shelf where OxyNeo is kept and placing it into her purse, on July 13, 2016.
- Ms. McIntyre had admitted to diverting Oxycocet to [REDACTED] and to the Calgary Police Service she further admitted to diverting OxyNeo and Oxycodone.
- [REDACTED]'s audit of medication orders received from suppliers vs. dispensed revealed discrepancies of more than 11,000 OxyNeo 40mg, 4,500 Oxycodone CR 40mg and 61,000 Ratio Oxycocet.

Ms. McIntyre's response to the complaint, prepared by her legal counsel, Ms. Rico, indicated that Ms. McIntyre diverted medications from the pharmacy including unspecified quantities of Percocet, OxyNeo, Dilaudid and Oxycodone.

Ms. Rico said Ms. McIntyre diverted the medications at the behest of [REDACTED], who physically and verbally abused Ms. McIntyre and repeatedly threatened to seriously harm or kill her and her family. Ms. Rico asserted that Ms. McIntyre only complied with [REDACTED]' demands under duress and this was a factor that should be taken into consideration. Ms. Rico asserted particulars of [REDACTED]' conduct, including that Ms. McIntyre believed he was affiliated with a gang and that he would attend and sit in the [REDACTED]

██████████ Pharmacy waiting room and watch Ms. McIntyre for extended periods time, and he would frequently call and text her. Ms. Rico also asserted that ██████████ had assaulted Ms. McIntyre physically and threatened further violence to persuade her to continue diverting the medications.

Ms. Rico's letter explained that Ms. McIntyre obtained the medications on some occasions by increasing the minimum order quantity in the Pharmacy's Simplicity ordering system, triggering an automatic order. On other occasions, she had decreased the Pharmacy's inventory in the Simplicity system, which also triggered an automatic order. On still other occasions, she had ordered medications directly from one of the Pharmacy's wholesale suppliers.

Ms. McIntyre was able to do this as she was the acting Pharmacy Manager and had access to the Simplicity inventory management system.

Ms. Rico's letter confirmed that Ms. McIntyre did not know what ██████████ did with the medications once she gave them to him, so she could not say who was using the medications, or in what quantities.

Mr. Krempien discussed ██████████' alleged behavior with ██████████. ██████████ did not recall any man sitting for extended periods in the ██████████ Pharmacy waiting room. She indicated the Pharmacy was small and she would have noticed someone loitering. ██████████ also denied noticing any changes in Ms. McIntyre's behavior in the three years leading up to her termination.

Mr. Krempien also discussed ██████████' alleged behavior with the Calgary Police Service, ██████████, who was the investigating officer in this matter. In a recorded and transcribed telephone discussion Cst. ██████████ advised Mr. Krempien that Ms. McIntyre had been asked but she had been unable to produce any evidence to substantiate the allegations she was making against ██████████. Cst. ██████████ also advised that he had been unable to find any evidence to substantiate Ms. McIntyre's claims.

Ms. McIntyre advised the Hearing Tribunal that her criminal proceedings are complete. She is convicted and she is currently serving a sentence of two years of house arrest, 250 hours of community service and a \$5,000 fine.

Submission by the Complaints Director regarding Unprofessional Conduct

Mr. Boyer explained that Ms. McIntyre's criminal proceedings are now complete and this matter is before the Hearing Tribunal by way of an agreed Exhibit Book, an Agreed Statement of Facts and an admission of unprofessional conduct.

Mr. Boyer pointed out that through communication with Ms. McIntyre's legal counsel, Ms. Rico, Ms. McIntyre had admitted to all of the allegations as outlined in the Notice of Hearing and further admitted that her conduct was unprofessional conduct as alleged in each of the allegations.

Mr. Boyer argued, that based on section 70 of the *Health Professions Act*, a regulated member can come before a Hearing Tribunal and make an admission of unprofessional conduct. Mr. Boyer invited Ms. McIntyre to confirm that she was admitting the allegations of unprofessional conduct before the Hearing Tribunal and Ms. McIntyre confirmed by stating, "I confirm this to be true"

In addition, Mr. Boyer argued that in spite of Ms. McIntyre's admissions, the Tribunal must be satisfied that the evidence supports these admissions. Mr. Boyer then reviewed the evidence in the Exhibit Book as summarized above, and argued that the evidence demonstrates that Ms. McIntyre's admissions are supported by the evidence and therefore reasonable.

Submission by Ms. McIntyre regarding Unprofessional Conduct

Ms. McIntyre did not wish to make submissions to the Hearing Tribunal at this time.

V. FINDINGS

The Hearing Tribunal carefully considered the evidence presented during the hearing, Ms. McIntyre's admissions to the allegations in the Notice of Hearing and the submissions made. The Hearing Tribunal makes the following findings:

Allegations

1. During the period from approximately November 1, 2014 to July 14, 2016 you diverted over 81,000 oxycodone tablets (65,700 Ratio-Oxycocet; 11,000 OxyNeo 40 mg; 4700 Act-oxycodone CR 40 mg) and a significant but undetermined number of Dilaudid tablets from [REDACTED] ("the Pharmacy") in Calgary, Alberta where you were employed as a registered pharmacy technician by ordering extra tablets from the Pharmacy's suppliers which you diverted and by then adjusting the Pharmacy's inventory records in the Pharmacy's computer so that the diversions would not be detected.

The Hearing Tribunal accepted Ms. McIntyre's admission of this allegation and finds it proven. The evidence presented to the Tribunal demonstrated there were many thousands of tablets of Ratio-Oxycocet, OxyNeo and Oxycodone as well as Dilaudid diverted from the Pharmacy. The evidence referred to video recordings showing Ms. McIntyre putting some of the diverted pill bottles directly into her purse from the Pharmacy's supplies. Ms. McIntyre acknowledged that she was responsible for this. The evidence also demonstrated that Ms. McIntyre had access to the Pharmacy's narcotics ordering code and that she used it to order narcotics directly from the Pharmacy's wholesale suppliers and then diverted it before it could be entered into the Pharmacy's inventory management system, Simplicity. The evidence also demonstrated that Ms. McIntyre had access to the Simplicity system and that she did adjust inventory records so that her conduct would not be detected.

The Hearing Tribunal considered that a Pharmacy Technician is a regulated member of the College. Where a regulated member of the College diverts medications, particularly medications that are prone to abuse like Ratio-Oxycocet, OxyNeo, Oxycodone and Dilaudid, and then makes those medications available to a suspected criminal element for distribution to members of the public, it is unprofessional conduct. It represents a breakdown in the profession's role in limiting access to dangerous drugs to only those with a valid reason to receive them. It also threatens the safety of those who would ultimately receive and use the diverted medications. It thereby undermines the integrity of the profession and is unprofessional. It represents a significant breakdown in accepted pharmacy practice, and a breach of the trust placed in Ms. McIntyre by the College and the public, her former employer and her patients.

The Hearing Tribunal agreed that Ms. McIntyre's conduct in her many diversions of medications from the Pharmacy breached statutes, regulations and standards governing the practice of pharmacy. These include:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require Pharmacists and Pharmacy Technicians to comply with both the letter and spirit of the law;
- Sections 31(2)(a) and 38 of the Pharmacy and Drug Act which provide that Schedule 1 Drugs may only be dispensed in accordance with a prescription;
- Section 4(1) and 5(1) of the Controlled Drugs and Substances Act, which provide that no one may possess or traffic in a Schedule 1, II or III drug without authorization;
- Section 31(1) of the Narcotic Control Regulations which provides that no pharmacist, including any person who is registered and entitled to engage in the practice of pharmacy, shall sell or provide narcotics except as expressly authorized; and
- Principles X(1,2) and XI(1.3 and 4) of the ACP Code of Ethics, which provide that regulated members of the College must comply with the law and act honestly, and they must practice only when fit to do so, and promptly declare and seek assistance for any circumstances that may call into question their fitness to practice or bring the profession into disrepute.

Ms. McIntyre's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

2. During the period between August 2013 and October 31, 2014 you diverted substantial additional oxycodone tablets and Dilaudid tablets by ordering extra tablets from the Pharmacy's suppliers which you diverted and then adjusting the Pharmacy's inventory records in the Pharmacy's computer so that the diversions would not be detected.

The Hearing Tribunal also accepted Ms. McIntyre's admission of this allegation and finds it proven. The evidence presented to the Tribunal demonstrated there were significant amounts of Oxycodone as well as Dilaudid diverted from the Pharmacy. Ms. McIntyre acknowledged that she was responsible for this. Ms. McIntyre had access to the Pharmacy's narcotics ordering code and that she used it to order narcotics directly from the Pharmacy's wholesale suppliers and then diverted it before it could be entered into the Pharmacy's inventory management system, Simplicity. The evidence also demonstrated that Ms. McIntyre had access to the Simplicity system and that she did adjust inventory records as a means of obtaining the medications and so that they would not be detected by others. For all of the same reasons discussed above, Ms. McIntyre's actions in diverting the medications were unprofessional conduct.

3. You then gave the diverted tablets to another individual who you believed was associated with a criminal element thereby calling into question the safety of the persons who would be the end-users of the oxycodone and Dilaudid tablets.

The Hearing Tribunal also accepted Ms. McIntyre's admission of this allegation and finds it proven. The evidence presented to the Tribunal was that Ms. McIntyre diverted the medication tablets to [REDACTED] who she believed was associated with a criminal element. Ms. McIntyre did not know what [REDACTED] did with the medications and so she could not say who would be the end-users of the medications, or in what quantities.

The uncontrolled and unsupervised provision of medications, particularly narcotics prone to abuse, to unknown members of the public is very dangerous. The Hearing Tribunal concluded that Ms. McIntyre's conduct undermined the integrity of the pharmacy profession, contravened accepted pharmacy practice, breached the trust placed in her by the ACP and her employer and

created a serious risk of harm to the public. The Hearing Tribunal also found that Ms. McIntyre's conduct breached:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require Pharmacists and Pharmacy Technicians to comply with both the letter and spirit of the law;
- Sections 31(2)(a) and 38 of the Pharmacy and Drug Act which provide that Schedule 1 Drugs may only be dispensed in accordance with a prescription;
- Section 4(1) and 5(1) of the Controlled Drugs and Substances Act, which provide that no one may possess or traffic in a Schedule 1, II or III drug without authorization; and
- Section 31(1) of the Narcotic Control Regulations which provides that no pharmacist, including any person who is registered and entitled to engage in the practice of pharmacy, shall sell or provide narcotics except as expressly authorized.

Ms. McIntyre's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

4. You used your position within the Pharmacy to manipulate the pharmacy inventory records to facilitate the ordering, receipt and concealment of your diversion of the oxycodone and Dilaudid tablets.

The Hearing Tribunal also accepted Ms. McIntyre's admission of this allegation and finds it proven. The evidence presented to the Tribunal demonstrated that Ms. McIntyre had access to the Pharmacy's inventory management system, Simplicity and she manipulated the system to order, receive and conceal her diversions.

Ms. McIntyre sometimes obtained medications by increasing the minimum order quantity for a particular medication thereby triggering an automatic order but when the medications were received she diverted them instead of entering them into the Pharmacy's inventory. On other occasions Ms. McIntyre decreased the Pharmacy's inventory in the Simplicity system which also triggered an order to replenish the inventory. Again, when the medications were received Ms. McIntyre diverted them instead of adding them to the inventory.

Ms. McIntyre's conduct was part of a chain of conduct that involved obtaining and diverting dangerous medications and concealing her conduct from others. For the same reasons set out above the Hearing Tribunal found that Ms. McIntyre's conduct undermined the integrity of the pharmacy profession, contravened accepted pharmacy practice, breached the trust placed in her by the ACP and her employer and created a serious risk of harm to the public. The Hearing Tribunal also found that Ms. McIntyre's conduct breached:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which require Pharmacists and Pharmacy Technicians to comply with both the letter and spirit of the law;
- Section 4(1) and 5(1) of the Controlled Drugs and Substances Act, which provide that no one may possess or traffic in a Schedule 1, II or III drug without authorization;

- Principles X(1,2) of the ACP Code of Ethics, which provide that regulated members of the College must comply with the law and act honestly.

Ms. McIntyre's conduct therefore represented unprofessional conduct as defined in section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

5. You continued with your ongoing diversions of the oxycodone and Dilaudid tablets until your employer discovered your diversion and your employment was terminated.

The Hearing Tribunal also accepted Ms. McIntyre's admission of this allegation and finds it proven. The evidence presented to the Tribunal demonstrated that Ms. McIntyre's conduct persisted for a significant period of time, between approximately August 2013 and July 2016.

The Hearing Tribunal has very serious concerns with the impact of Ms. McIntyre's behavior on the profession of pharmacy, most especially pharmacy technicians, the College and the public. The profession of pharmacy consists of both pharmacists and pharmacy technicians. Pharmacy Technicians have recently been granted the privilege of becoming self-regulated. This privilege comes with great responsibility. Ms. McIntyre's behavior places the profession of pharmacy in a very negative light. The public expects Pharmacy Technicians, like their Pharmacist colleagues, will conduct their activities in a manner that benefits and protects the public. Ms. McIntyre's diversion of narcotics spanned approximately two years and 11 month (i.e. August 2013- July 2016) as noted in her own legal counsel's response to the complaint. This is a considerable time for an experienced professional to knowingly place the public and its vulnerable members at grave risk. It should be noted that the inventory conducted by the store owner covered a period of 2 years 2014-July 14 2016. It is plausible that the amounts diverted may even be greater than the inventory demonstrated.

Ms. McIntyre has also violated the trust of her employer. The pharmacy owner, described Ms. McIntyre as "having worked for me since 1994 and in her current role is considered the Pharmacy Manager. She is responsible for inventory management. I had a high degree of trust in her": Exhibit Book page 20-21.

The Hearing Tribunal agreed that Ms. McIntyre's long standing pattern of diversions represented unprofessional conduct for the reasons set out above.

The Tribunal considered Ms. McIntyre's claim that she only acted under duress exerted by [REDACTED] as presented in her written response to the complaint, and in her response to a question about duress raised by the Tribunal. There was no evidence presented to substantiate Ms. McIntyre's claim of duress. Ms. McIntyre explained that in her criminal trial the trial judge had asked the same question but she was unable to provide evidence substantiating her claim of duress to the trial judge either.

VI. SUBMISSIONS ON SANCTIONS AND ORDERS

The Hearing Tribunal advised the parties that it had accepted the admissions of each allegation in the Notice of Hearing. Mr. Boyer and Ms. McIntyre were then invited to make submissions on sanctions.

Mr. Boyer informed the Tribunal that a joint submission on sanctions had been prepared and it was entered. The Joint Submission provided that Ms. McIntyre's practice permit shall be cancelled and she shall be responsible for the full costs of the investigation and hearing into her conduct, to a

maximum of \$20,000. Mr. Boyer clarified that the intention was that Ms. McIntyre's practice permit and registration with the ACP be cancelled and Ms. McIntyre confirmed this as well.

Mr. Boyer outlined the purpose of sanctions, those being deterrence for the member(s) and rehabilitation. Mr. Boyer argued that there are some cases, such as this one, in which the gravity of the proven conduct makes it inappropriate to consider rehabilitation as a goal. In preparing the sanction several factors were considered. These factors are as reference in *Jaswal v. Newfoundland (Medical Board)* 1996, Admin. L.R. (2d) 233:

Nature and gravity of the conduct

The evidence was that this is the largest case of narcotics diversion in the College's history. Mr. Boyer argued that the large volume of narcotics diverted over a long period of time was very serious. While there was no evidence that Ms. McIntyre was suffering from an addiction issue, there can be no doubt that our society is suffering from the opioid crisis and pharmacy professionals are an important line of defence in limiting unauthorized and dangerous access to these medications. Ms. McIntyre's conduct undermined those defences. This is an aggravating factor.

Age and experience

Ms. McIntyre is an experienced Pharmacy Technician and has worked in the profession since 1994. She is not young and inexperienced so this should not be considered a mitigating factor.

Previous character

There is no previous history with the College.

Number of times the offence was proven

The diversion occurred repeatedly over a period of years.

Acknowledgement

Ms. McIntyre has acknowledged her conduct and has been cooperative with the investigation. This is a mitigating factor.

Financial Consequences

Ms. McIntyre has not been employed since 2016 and she has been fined, required to perform community service and placed on house arrest as a result of the criminal proceedings. The Hearing Tribunal noted that she has had serious other consequences.

Deterrence

Pharmacy professionals are in a position of trust. Even if Ms. McIntyre's registration and practice permit are cancelled and there is no longer a need to deter her future conduct, conduct such as occurred here by others must also be deterred and the integrity of the profession maintained. The public must be protected and assured that the profession is acting in the public's best interest.

Other Similar Cases

Mr. Boyer proceeded to review cases similar to this that have been heard by the College and referenced in the preparation of the proposed sanctions. These cases were:

- Bassam Soufan 2008
- Leanne Rogalsky 2008
- Philip Leung 2011
- Bryan McIntyre 2013
- Calvin Boey 2013
- Karen Nevett 2015

While the cases Mr. Boyer referenced had many similar characteristics, none were of the same scale as this case. In the Soufan case some 16,000 tablets of Oxycontin were diverted and the relatively junior member of the profession was suspended for 2 years with further conditions and costs. In the Rogalsky cases, a senior 16 year member of the profession was found to have diverted some 40,000 tablets of narcotics and was suspended for 4 years with a fine and costs. There was also evidence of an addiction issue. In Leung, the member was cancelled and required to pay a large fine and costs following a finding that he diverted 4,000 tablets of narcotics. In Nevett, the member was also cancelled and required to pay costs after diverting 14,500 tablets of hydromorphone. There was evidence of an addiction issue in the Nevett case. In the Bryan McIntyre case the member was suspended for 6 months with an additional 24 months in abeyance and ordered to pay costs after being found to have diverted 37,000 tablets of narcotics. Mr. McIntyre practiced in a rural community with a significant need for pharmacy services. Finally in the Boey case the member was found to have diverted 11,000 tablets of Zopiclone and Clonozepan. There was evidence of an addiction issue. He was suspended for 18 months with conditions and ordered to pay costs.

These cases demonstrate a range of sanctions for significant drug diversions ranging from suspensions of 6 months (with additional suspension held in abeyance) at the low end to cancellation at the higher end. Relevant factors include the scope of medication diverted, the type of medication diverted and whether or not there is evidence of an addiction issue.

In conclusion Mr. Boyer argued that compared to these six similar cases, the amount of narcotics that had been diverted in this case was the highest the College has ever seen. The diversion occurred over the longest period, by an experienced professional.

For this reason the Complaints Director has proposed: cancellation of Ms. McIntyre's practice permit and registration and full costs of the investigation and hearing to a maximum of \$20,000. The Joint Submission also contemplated that payment of the costs could be made in accordance with a reasonable monthly payment schedule acceptable to the Hearings Director.

Mr. Boyer argued that the jointly submitted sanctions were appropriate in light of the Jaswal factors and in line with similar, previously decided cases. Mr. Boyer also provided a brief written argument on the Hearing Tribunal's obligation to defer to the Joint Submission on Sanctions. Mr. Boyer's written argument concluded with reference to the Supreme Court of Canada's decision in *R. v. Anthony-Cook*, 2016 SCC 43. In that case the Supreme Court confirmed that decision-makers evaluating a joint submission on sanctions must not depart from it unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

Submissions by Ms. McIntyre.

Ms. McIntyre made very limited submissions on sanction. She stated that she enjoyed her profession and the people she worked with. She concluded by saying she would be living with the consequences of her actions for the rest of her life.

VII. ORDERS and REASONS

The Hearing Tribunal considered the Joint Submission on Sanctions, the submissions of the parties and the similar cases provided by Mr. Boyer. The Hearing Tribunal accepted that the jointly submitted sanctions are appropriate and in the public interest. The Hearing Tribunal therefore makes the following orders:

1. Ms. McIntyre's registration and practice permit are cancelled;
2. Ms. McIntyre shall be responsible to pay the full costs of the investigation and hearing to a maximum of \$20,000, with payment to occur in accordance with a reasonable monthly payment schedule acceptable to the Hearings Director.

The scale of Ms. McIntyre's diversions is unprecedented at the College. Her conduct persisted over a period of years and while she attempted to explain that she acted under duress, she could not point to or provide evidence to substantiate her allegation that [REDACTED] actually compelled her to act as she did. Ms. McIntyre had ample time and opportunities to seek appropriate help, such as that of the police, regardless of what was happening in her life but she did not pursue those opportunities.

Ms. McIntyre's conduct was extremely serious. The medications she diverted are powerful and dangerous in any quantity, let alone the unprecedented quantities that she obtained and diverted onto the streets. Pharmacy professionals represent a line of defence to the opioid crisis but Ms. McIntyre's conduct seriously undermined that line of defence. Her conduct breached the public's trust in the profession of pharmacy and harmed its integrity.

The Hearing Tribunal was of the view that cancellation was reasonable and appropriate to achieve the necessary deterrent effect in this case. With cancellation, the need to deter the member under investigation, in this case Ms. McIntyre, is absent. There is a stronger need to deter other members of the profession who might consider diverting medications assuming the consequences would not be severe. This decision should serve as an example that the diversion of any quantity of dangerous medications should attract severe consequences, but particularly where the scale of the diversion is significant.

Signed on behalf of the Hearing Tribunal by its Chair this 25th day of September, 2018.

Per: [Pat Matusko]

Pat Matusko, Chair and Public Member