

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

ANAMARIA MURESAN

Registration number: 7622

DECISION OF THE HEARING TRIBUNAL

December 1, 2021

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Anamaria Muresan on October 27, 2021. The following persons were in attendance on behalf of the Hearing Tribunal: Ted Szumlas, Chair, Anjali Acharya, Pharmacist, June McGregor, Public Member, and Jim Lees, Public Member. Katrina Haymond acted as independent counsel to the Hearing Tribunal.

The hearing took place via videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

The following persons were also in attendance at the hearing: Annabritt Chisholm and Raymond Chen, legal counsel for the College, and James Krempien, Complaints Director. Anamaria Muresan, the Investigated Person, was also present. She was represented by legal counsel, Brett Code, Q.C. and Gillian Broadbent.

Margaret Morley, Hearings Director, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing.

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 Amended Notice of Hearing was included in the Agreed Exhibit that was marked as Exhibit 1. The allegations set out in the Amended Notice of Hearing were as follows:

IT IS ALLEGED THAT, between February 1, 2017 and August 31, 2019, while you were both a registered Alberta pharmacist and the licensee of Irricana Remedy's RX Pharmacy (ACP Licence #3017) (the "Pharmacy"), you:

1. Failed to act ethically or honestly¹ in your dealings with Alberta Blue Cross, including when you:
 - a. Submitted approximately \$33,887 worth of claims for Ensure, Ensure Plus, Ensure SCFOS, Glucerna and Ensure High Protein (the "Health Care Products") and Infusion Sets to Alberta Blue Cross without being able to provide the required supporting supplier invoices for the claims,
 - b. Failed to obtain a patient signature on approximately 125 Comprehensive Annual Care Plans in contravention of Article 3.1 of your agreement with Alberta Blue Cross and section 2(16) of the Alberta Health Ministerial Order,

¹ As indicated below the word "honestly" was replaced with "professionally" at the outset of the hearing.

- c. Submitted claims for more than one pharmacy service per patient per day in the absence of an exclusion and in breach of Article 3.1 of your agreement with Alberta Blue Cross and section 2(5) of the Alberta Health Ministerial Order, and
 - d. Failed to take appropriate steps to try to provide required records to Alberta Blue Cross when the Pharmacy underwent a compliance verification review in 2019 in breach of Article 3.11 and Appendix B of your agreement with Alberta Blue Cross.
2. Failed to ensure the Pharmacy had an effective system for the creation, maintenance, secure storage and availability for retrieval of required records.
 3. Allowed members of the public to purchase and then deliver some of the Health Care Products to patients without assessing the quality of the product or ensuring the correct product was selected.
 4. Failed to create or maintain required and accurate pharmacy records, including when you:
 - a. made claims for the Health Care Products when there are no records to show any stock was ever received by the Pharmacy in respect to these claims, which represented 53% of the claims made to Alberta Blue Cross for the Health Care Products during the Audit Period,
 - b. made claims for the Infusion Sets when there are no records to show any stock was ever received by the Pharmacy in respect to these claims, which represented 55% of the claims made to Alberta Blue Cross for the Infusion Sets during the Audit Period, and
 - c. created dispensing records for the Health Care Products although the Pharmacy did not have the corresponding stock to have dispensed the Health Care Products to patients.

IT IS ALLEGED THAT your conduct in these matters:

- a. Failed to demonstrate the ethical conduct and professional judgment expected and required of an Alberta pharmacist and pharmacy licensee,
- b. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy licensee,
- c. Created the potential for patient harm,

- d. Decreased the public's trust in the profession, and
- e. Undermined the integrity of the profession.

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

- Standards 1 and 18, and Sub-sections 1.1, 1.2 and 18.7 of the ACP Standards of Practice for Pharmacists and Pharmacy Technicians,
- Standards 1 and 8, and Sub-sections 1.1, 1.2, 8.1(a, d, e), 8.3, 8.5, and 8.6 of the ACP Standards of Practice of the Operation of Licensed Pharmacies,
- Principles 1(1, 5, 6, and 12), 7(2) and 10(1, 2²) of the ACP Code of Ethics,
- Sections 10(1)(a and d(iv)) and 10(1.1) of the *Pharmacy and Drug Act*, and
- Sections 12(1) and 25(a) of the Pharmacy and Drug Regulation.

III. PRELIMINARY MATTERS

At the outset of the hearing, Ms. Chisholm indicated that the Notice of Hearing that was originally served on Ms. Muresan had been amended to refer to the hearing date of October 26th.

Further, Ms. Chisholm indicated that she was seeking to amend the Amended Notice of Hearing so that it aligned with Ms. Muresan's admissions. In particular, the word "honestly" should be substituted for the word "professionally" in Allegation 1, and the reference to principle 10(2) should be struck from the alleged breaches of the statutes and standards that govern the profession.

There were no other preliminary matters raised by either of the parties.

IV. EVIDENCE

The hearing proceeded by way of an Agreed Statement of Facts and other agreed exhibits, including an Admission of Unprofessional Conduct. No witnesses were called to testify.

The following exhibits were entered by agreement of the parties:

Exhibit 1	Agreed Book of Exhibits
Exhibit 2	Joint Submission on Sanction

² The reference to s. 10(2) was deleted at the outset of the hearing.

Agreed Statement of Facts

A copy of the text of the Agreed Statement of Facts (paragraphs 1-15) is attached to the Hearing Tribunal's decision as Appendix A. The exhibits referred to therein have not been reproduced but are listed below:

Exhibit A	Email and Final Report of Alberta Blue Cross, dated December 22, 2020
Exhibit B	Memo from J. Krempien to file, dated January 11, 2021
Exhibit C	Letter from J. Krempien to A. Muresan, dated January 11, 2021
Exhibit D	Email from A. Muresan to J. Krempien, dated January 12, 2021
Exhibit E	Email from A. Muresan to J. Krempien, dated January 14, 2021
Exhibit F	Email from A. Muresan to J. Krempien, dated January 19, 2021
Exhibit G	Email from A. Muresan to J. Mosher, dated February 10, 2021
Exhibit H	Memo from J. Mosher to file, dated March 24, 2021

Admission of Unprofessional Conduct

The Agreed Book of Exhibits included an Admission of Unprofessional Conduct signed by Ms. Muresan on October 26, 2021. In the Admission, Ms. Muresan indicated that while she did not admit that her conduct was dishonest, she did admit that she had engaged in the conduct referred to in the Notice of Hearing, and further admitted that the conduct constitutes "unprofessional conduct" as defined in the *Health Professions Act* (HPA).

The Admission also indicated an acknowledgement on behalf of the Complaints Director that Ms. Muresan has been fully cooperative throughout the investigation, and the hearing process, and expressly noted that there was no allegation that Ms. Muresan had acted dishonestly.

V. SUBMISSIONS

Ms. Chisholm made brief opening submissions, in which she indicated that the hearing was proceeding by way of an Admission of Unprofessional Conduct pursuant to section 70 of the HPA, and that the panel would have to review the evidence presented to determine whether it is prepared to accept that the allegations have been proven on a balance of probabilities.

Ms. Chisholm indicated that the hearing arose due to information received from Alberta Blue Cross with respect to a Compliance Verification Review (the "Audit") that it had undertaken at Irricana Remedy's RX Pharmacy, where Ms. Muresan is the owner, proprietor and licensee. Following the Audit, Alberta Blue Cross uncovered a significant number of claims for third party benefits made over a period of two years that could not be supported by the pharmacy's records. Following the College's investigation, the Notice of Hearing was issued reflecting four allegations arising from the Audit. Ms. Chisholm reviewed the allegations in the Notice of Hearing and submitted that it is the Hearing Tribunal's task to determine if the allegations are proven, whether the conduct is "unprofessional conduct", and if so to determine penalty.

Mr. Code briefly indicated that the parties had worked cooperatively to be able to come to an agreement, and that Ms. Muresan's admissions should assist in bringing the matter to a reasonable conclusion.

Ms. Chisholm then proceeded to review both the Admission of Unprofessional Conduct and the Agreed Statement of Facts. She indicated that at all material times, Ms. Muresan was a registered member of the College and that she was the pharmacist, owner, proprietor, and licensee at Irricana Remedy's RX Pharmacy (the "Pharmacy"). The conduct came to the Complaints Director's attention on December 22, 2020, after receiving information from Alberta Blue Cross. The information received included the Final Report (the "Report") outlining their findings, including that Ms. Muresan had submitted claims in the amount of \$33,887 for Health Products and Infusion Sets without providing required documentation. The Report also concluded that the pharmacy made claims for the Health Care Products although there were no records to show any stock was ever received regarding those claims and noted a similar concern with respect to claims for Infusion Sets.

Ms. Chisholm also outlined concerns in the Report that Ms. Muresan had submitted claims for more than one patient per day in the absence of an exclusion and in breach of the Pharmacy's Agreement with Alberta Blue Cross and s. 2(5) of the Alberta Ministerial Order.

She indicated that Alberta Blue Cross recovered the full amount that was owed by the pharmacy to it following the Audit.

Following notification to Ms. Muresan of the complaint, Ms. Muresan provided information through a series of emails from January 12 – January 19, 2021. She provided explanations for the discrepancies but did not dispute the findings in the Report. Subsequently, Ms. Muresan provided a written response to the complaint, in which she indicated that records were created and maintained but had not been scanned. Efforts were made to scan documents but there were issues with the scanner. Ms. Muresan denied submitting claims for services that were not provided, and she indicated in her response that any failure to uphold her obligations was unintentional.

Ms. Chisholm noted that information provided by Alberta Blue Cross during the investigation was that Ms. Muresan had a driver who would sometimes pick up nutritional products from other stores for her, and that she paid the driver in cash but did not retain receipts. During the College's investigation, Ms. Muresan explained that when her clients required items on short notice, she would purchase them from a local retailer and deliver them to the client (or have clients deliver items to other clients) but was not aware that she was required to keep or maintain these receipts. Further, some records were destroyed by a flood.

The information from Alberta Blue Cross also provided supporting documentation to indicate that Ms. Muresan failed to obtain patient signatures on 125 Comprehensive Annual Care Plans, which resulted in a \$36,000 overpayment.

During the College's investigation, Ms. Muresan indicated that she had previously kept paper records in bins, and while she tried to scan those records, some of the scanned

records had not been saved. Ms. Chisholm noted that Ms. Muresan had implemented several changes to her record-keeping procedures since the audit, such as scanning her records every day, scanning and shredding all documents, but retaining paper copies of narcotic prescriptions. She was not previously aware of the requirement to obtain a patient's signature prior to providing service but was now aware and had changed her practice. She did indicate that some patients were reluctant to come into the pharmacy because of the pandemic.

Ms. Chisholm submitted that the Agreed Statement of Facts demonstrates sufficient facts in order that the Hearing Tribunal could determine that it was appropriate to accept Ms. Muresan's admission and find her guilty of unprofessional conduct. As a business owner and licensee, Ms. Muresan had an obligation to ensure records were kept in accordance with the standards for the Operation of Licensed Pharmacies, as well as in compliance with the Agreement with Alberta Blue Cross. Although Ms. Muresan states that she put patients first, all pharmacists must understand that appropriate services include maintaining an effective record-keeping system. The public should be entitled to expect that pharmacists and licensees maintain a high degree of ethics and professionalism and uphold their obligations while providing pharmacy services. Financial interests of ensuring claims are processed should not outweigh professional obligations. Here, Ms. Muresan clearly had an ineffective system in place, which led to her inability to fulfill her obligations and led to concerns being raised.

Allowing others to purchase items and deliver them to patients without assessing the quality of the product was also problematic. While there is no evidence of patient harm, the conduct creates the potential for patient harm, since the pharmacist cannot verify that the patient has received the correct product. Further, Alberta Blue Cross must be able to rely on the accuracy of claims that are submitted by pharmacies in Alberta. The volume is too large to check and verify claims individually.

Ms. Chisholm then reviewed the relevant provisions in the Standards of Practice for Pharmacists and Pharmacy Technicians, the *Pharmacy and Drug Act*, and the Code of Ethics which Ms. Muresan acknowledged she had breached.

Mr. Code indicated that while Ms. Chisholm's summary was generally correct, not everything she stated was what had been agreed upon. Mr. Code encouraged the Hearing Tribunal to rely on the agreement as it was written.

VI. FINDINGS

After hearing submissions from the parties, the Hearing Tribunal adjourned to deliberate. The Hearing Tribunal then advised the parties that it accepted Ms. Muresan's admissions of unprofessional conduct and finds the allegations in the Amended Notice of Hearing (as further amended by Ms. Chisholm) to be proven.

Allegation 1

Allegation 1 is that Ms. Muresan failed to act ethically and professionally in her dealings with Alberta Blue Cross. The Hearing Tribunal reviewed the Agreed Statement of Facts, and the supporting documentation that was provided. Ms. Muresan admitted each of the particulars referred to in Allegation 1, which reflected the allegations set out in the Amended Notice of Hearing. The particulars included submitting claims for Health Care Products and Infusion Sets that were not supported by invoices, failing to obtain patient signatures on Comprehensive Annual Care Plans, submitting claims for more than one pharmacy service per patient per day, and failing to take appropriate steps to provide required records to Alberta Blue Cross during the Audit.

The Hearing Tribunal found that Ms. Muresan's admissions were consistent with the Agreed Statement of Facts, and the Report by Alberta Blue Cross following its Compliance Verification Review of Irricana Remedy's Rx Pharmacy, for the period February 1, 2017 – August 31, 2019 (Agreed Statement of Facts, Exhibit A).

The Hearing Tribunal also considered whether the conduct in issue constitutes "unprofessional conduct" and finds that Ms. Muresan's actions failed to demonstrate ethical conduct and professional judgement expected of a pharmacist and a licensee and constituted both unprofessional conduct under the HPA and misconduct pursuant to the *Pharmacy and Drug Act*.

The regulatory framework that governs pharmacists makes it clear that record-keeping is central to the role of both pharmacists and licensees. Standard 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians outlines the information that must be maintained by pharmacists, including a record of care provided. Standard 18 requires patient records to be current and maintained in a manner that information can be easily retrieved. Ms. Muresan failed to meet the minimum requirements expected of her on multiple occasions. The failures were not isolated incidents and represented a pattern of conduct over a lengthy period.

The Hearing Tribunal was particularly concerned that although Ms. Muresan submitted claims when she created Comprehensive Care Plans for 125 patients, she failed to collect the required patient signatures, which contravenes s. 2(16) of the Alberta Health Ministerial Order imposing this requirement. Ms. Muresan stated that this was due, in part, to the pandemic, but also indicated she was not aware of this requirement. Pharmacists have the privilege of being able to provide these services to the public subject to certain specific conditions. Ms. Muresan's ignorance is not an excuse for failing to obtain the required signatures. Pharmacists are obligated to inform themselves of regulatory requirements. The failure to comply with record-keeping requirements is of great concern, since it has the potential to negatively impact public trust in pharmacists' ability to provide services in a professional manner.

For the same reasons, the Hearing Tribunal was also concerned that Ms. Muresan submitted claims for more than one pharmacy service assessment on the same day, in contravention of Article 3.1 of the Agreement and s. 2(5) of the Alberta Health Ministerial Order.

Although there is no evidence that Ms. Muresan's conduct was dishonest, the fact that her conduct was not intentional does not justify her actions. Her conduct breached her agreement with Alberta Blue Cross and was both unethical and unprofessional.

Allegation 2

The Hearing Tribunal also finds that there are sufficient facts to support Ms. Muresan's admission with respect to Allegation 2, which is that she failed to ensure that the Pharmacy had an effective system for the creation, maintenance, secure storage and availability for retrieval of required records.

Ms. Muresan's response to the complaint, referenced in the Agreed Statement of Facts, indicated that pharmacy staff scanned documents nearly non-stop after receiving Alberta Blue Cross' notice of the Audit. However, due to issues with the scanner, some documents were not saved or were not scanning properly. Further, the Agreed Statement of Facts references that Ms. Muresan had a driver pick up nutritional products from other stores, and after paying the driver in cash, she did not retain a purchase receipt. On other occasions she purchased items on short notice from other retailers but did not retain the receipts. The Agreed Statement of Facts also described her record-keeping practices, including storage of paper records in "bins", and the failure to scan and save the records properly due to not being aware of having to complete an acknowledgement step to save a scan.

Ms. Muresan clearly did not have adequate systems in place to ensure that she created and retained the types of records pharmacies are required to maintain. While she stated that some records were destroyed in a flood six months previously, this does not explain all the missing documentation. If she had adequate record-keeping systems in place, she should have been able to easily retrieve the records sought by Alberta Blue Cross, in accordance with the Pharmacy Agreement.

The Hearing Tribunal finds that the conduct constitutes unprofessional conduct. Ms. Muresan's conduct fell below the standards expected of a licensee. Standard 8 of the Standards for Operation of Licensed Pharmacies establishes the licensee's obligation with respect to record-keeping, and to ensure that there is an effective system for the creation, maintenance, secure storage, availability, and retrieval of records. Ms. Muresan did not create the records that were required, nor did she retain them. Although she explained that some records were destroyed in a flood, licensees are required to ensure that there is a computer system that ensures that storage, protection, and retrieval of information.

The licensee of a pharmacy plays an integral role in ensuring that the pharmacy operates in accordance with the legislation and complies with any conditions imposed on the license. The licensee must ensure that the pharmacy operates in compliance with the *Pharmacy and Drug Act*, the Standards for the Operation of Licensed Pharmacies, and all other regulatory requirements, including record-keeping. The Hearing Tribunal finds that Muresan's record-keeping systems were not effective and did not meet the minimum requirements.

Allegation 3

Ms. Muresan admitted that she permitted members of the public to purchase and then deliver some of the Health Care Products to patients without assessing the quality of the product or ensuring that it was correct. This included Ensure, Ensure Plus, Ensure SCFOS, Glucerna and Ensure High Protein.

While the issues arose with respect to health care products, not drugs, this does not diminish the inappropriateness of Ms. Muresan's actions. While Ms. Muresan states that she had the best interests of her patients in mind, the Code of Ethics provides that pharmacists must provide non-prescription medications or health related products from safe and proven sources, and that are of good quality only. In a number of instances, items were purchased by a driver from other retailers, and then delivered directly to clients. This system did not provide Ms. Muresan with the opportunity to verify that the correct item was purchased or delivered, nor did it provide her with an opportunity to verify the quality of the item.

Accordingly, Ms. Muresan's conduct in relation to Allegation 3 constitutes unprofessional conduct pursuant to the HPA.

Allegation 4

Ms. Muresan admitted that she failed to maintain accurate pharmacy records for claims for Health Care Products and Infusion Sets, and that she created dispensing records for Health Care Products although there was no record that the pharmacy had stock which was dispensed. Ms. Muresan's admissions are consistent with the findings set out in the Report and are consistent with the explanations provided by Ms. Muresan during the College's investigation.

The Hearing Tribunal finds that Ms. Muresan's conduct constitutes unprofessional conduct pursuant to the HPA. Pharmacists and licensees must comply with record-keeping requirements set out in both the Standards of Practice of Pharmacists and Pharmacy Technicians and the Standards for Operation of Licensed Pharmacies. While minor record-keeping errors will not be sufficient to rise to the level of unprofessional conduct, the Hearing Tribunal finds that there were numerous record-keeping issues spanning a period of over two years. Ms. Muresan's conduct fell significantly below the standards expected and constitutes unprofessional conduct.

In considering this matter, the Hearing Tribunal notes that the Standards of Practice of Pharmacists and Pharmacy Technicians, Standards for Operation of Licensed Pharmacies, and the ACP Code of Ethics establish the expectations for members of the pharmacy profession and reinforce what is unique about the contributions of pharmacists and pharmacy technicians to patients, society, and to their professions. Consistent ethical behavior and compliance with the Code of Ethics and Standards of Practice creates a positive image of the regulated member and reflects well on the profession. In contrast, actions that contravene the Code of Ethics and Standards of Practice reflect poorly on both the regulated member and have the potential to diminish the trust and confidence that

members of the public have in both the regulated member, and the profession itself. Ms. Muresan's actions fell below the standards expected of members of the pharmacy profession, and her conduct constitutes unprofessional conduct in the circumstances.

VII. SUBMISSIONS ON SANCTION AND PUBLICATION

After the Hearing Tribunal deliberated, the Hearing Tribunal advised the parties that it accepted the Admission of Unprofessional Conduct by Ms. Muresan and determined that the allegations were proven. The Hearing Tribunal invited the parties to make submissions with respect to sanction.

Mr. Chen provided the Hearing Tribunal with a Joint Submission on Sanctions, signed by both Ms. Muresan and Mr. Krempien. Mr. Chen indicated that the parties were jointly proposing a number of sanctions, including: a suspension of Ms. Muresan's practice permit for a period of 4 months (with 3 months held in abeyance); fines in the amount of \$40,000; the provision of the decision to any pharmacy employer or licensee where she is employed for a period of 3 years; and 80% of the costs of the hearing.

Mr. Chen reviewed the "Facts Relevant to the Joint Submission on Sanction" set out at paragraphs 11-15 of Exhibit 1. He indicated that Ms. Muresan's conduct was unprofessional, but not dishonest. Further, Ms. Muresan has learned from the audit and complaint process, and now has new processes in place for storing and retrieving records and has worked successfully with Alberta Blue Cross without issue or complaint. She is no longer engaged in practices of having a third party deliver health care products to clients. Mr. Chen also noted that there was no evidence that Ms. Muresan delivered drugs to clients using a similar process. Finally, there are no prior findings of unprofessional conduct pertaining to Ms. Muresan.

Mr. Chen also referred to some of the factors set out in *Jaswal v. Medical Board (Newfoundland)* that are relevant to sanction. He submitted that the allegations are serious, that Ms. Muresan is an experienced pharmacist and has been registered since 2006, and that she is also an experienced licensee. The conduct was not an isolated incident but occurred over a period of two years. While there is no evidence of patient harm, the practices followed by Ms. Muresan created a potential risk of patient harm. Further, the proposed sanctions will serve as a deterrent since if further issues arise, Ms. Muresan may be restricted from serving as the owner, proprietor and licensee for a period of three years. Ms. Muresan's admission of unprofessional conduct was a significant mitigating factor that must be taken into account. Further, the public must be able to maintain confidence in the profession.

Mr. Chen also referred to several precedent cases, decisions involving Colin Porozni and Mohamed Haggag.

Mr. Chen also made submissions regarding the role of the Hearing Tribunal when considering a joint submission on sanctions. He explained that a Joint Submission is the product of negotiation, and that while the Hearing Tribunal is not bound to accept it, the Hearing Tribunal should not stray from it unless it undermines the public interest.

Mr. Code also made submissions on behalf of Ms. Muresan. Mr. Code noted that the Hearing Tribunal can only depart from a Joint Submission if there are very good reasons to disagree with it. In this case, the Joint Submission is modelled on prior cases, and uses the same factors and principles as in those cases.

Mr. Code also submitted that Ms. Muresan paid for the Health Care Products, but then had to reimburse Alberta Blue Cross for those products following the Audit. As such, she suffered a financial loss (although there is no evidence to substantiate this).

The sanction in this case includes the maximum fines but permits Ms. Muresan to continue to operate the pharmacy without the suspension as a licensee as was the case in the precedent decisions provided. This is in accordance with the public interest, since there is only one pharmacy in Irricana, and closure of the pharmacy would be a loss to the public.

Following the submissions on penalty, the Hearing Tribunal asked the parties whether any consideration was given to a remedial component in the sanctions (e.g., education or follow up audits). Ms. Chisholm indicated that the Complaints Director accepted Ms. Muresan's assurances that she has changed her practice and has a new system in place. Mr. Code indicated that the Joint Submission does provide that if there are similar allegations within 5 years from today's date, the Complaints Director can direct Ms. Muresan not to serve as owner, proprietor, or licensee for a period of 3 years, which serves as a deterrent.

The parties were also asked to clarify whether Ms. Muresan had to undertake the current licensee education program that has been introduced by the College. It was confirmed that Ms. Muresan had to complete Part B, but not Part A.

Mr. Code also requested that the Hearing Tribunal consideration making a recommendation to the Registrar to publish the decision in a manner that does not identify Ms. Muresan by name. Mr. Code referred to a decision from 2013 where the pharmacist's name was redacted and submitted that the open court principle has already been complied with given that the hearing itself was held in public and the decision will be made available to the public. He further submitted that the fact that she practices in a small community should be taken into account, and the Hearing Tribunal should consider whether there is any public interest benefit from publishing her name and would do more harm than good.

Ms. Chisholm submitted that pursuant to s. 119 and s. 81 of the ACP Bylaws, decisions about publication are made by the Registrar, and the Hearing Tribunal does not have jurisdiction to make decisions. The Registrar may decide to publish in a manner that does not identify the regulated member by name, after considering whether publication is likely to cause harm (apart from harm to the regulated member's reputation).

She further submitted that there is a need for transparency in discipline processes, and the fact that Ms. Muresan works in a small community is even more important, since it demonstrates how seriously the College takes the conduct.

VIII. ORDERS AND REASONS FOR ORDERS

After considering the submissions of both parties, the Hearing Tribunal accepts the Joint Submission on Sanctions, and makes the following orders pursuant to s. 82 of the HPA:

1. Ms. Muresan's practice permit shall be suspended for 4 months, with
 - a. 1 month to be served on dates acceptable to the Complaints Director and completed within 6 months from the date the Hearing Tribunal issues its written decision; and
 - b. 3 months to be held in abeyance on the basis of there being no concerns similar to the allegations in the Notice of Hearing coming to the attention of and referred to an investigation by the Complaints Director, for a period of 3 years from the date the Hearing Tribunal issues its written decision.

If the Complaints Director refers concerns similar to the allegations in the Notice of Hearing to an investigation under section 55(2)(d) of the *Health Professions Act* within 3 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to impose the remaining 3 months suspension on Ms. Muresan's practice permit. If the Complaints Director does not refer concerns similar to the allegations in the Notice of Hearing to an investigation for a period of 3 years from the date the Hearing Tribunal issues its written decision, the remaining 3 months suspension shall expire.

2. Ms. Muresan shall pay fines of \$10,000 with respect to Allegation 1, \$10,000 with respect to Allegation 2, \$10,000 with respect to Allegation 3 and \$10,000 with respect to Allegation 4, for total fines of \$40,000. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The fines shall be paid within 1 year of the date Ms. Muresan receives a copy of the Hearing Tribunal's written decision.
3. Ms. Muresan shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which she is employed for a period of 3 years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
4. If the Complaints Director refers concerns similar to the allegations in the Notice of Hearing to a hearing under section 66(3)(a) of the *Health Professions Act* within 5 years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall be at liberty to direct that Ms. Muresan not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years, commencing one month from date the Complaints Director provides notice to Ms. Muresan of the Complaints Director's intention to effect this Order. If the Complaints Director does not refer concerns similar to the

allegations in the Notice of Hearing to a hearing for a period of 5 years from the date the Hearing Tribunal issues its written decision, this order shall expire.

5. Ms. Muresan shall be responsible for payment of 80% of the costs of the investigation and hearing. Payment will occur in accordance with a payment schedule satisfactory to the Hearings Director. The costs shall be paid within 24 months of the date Ms. Muresan receives a copy of the Hearing Tribunal's written decision.

The Hearing Tribunal carefully considered the submissions by the parties with respect to the Joint Submission. The Hearing Tribunal recognizes that there is a high degree of deference that it must apply when considering a Joint Submission. This is because it is a product of negotiation between the parties, and there are sound policy reasons for encouraging parties to proceed by way of joint submissions. As such, a hearing tribunal should not interfere with a joint submission unless it fails to meet the public interest test. This occurs where the joint submission brings the administration of justice into disrepute, which is a very high bar.

The Hearing Tribunal was concerned that the Joint Submission did not include any remedial education (course work or follow up audits). As such, there is no independent verification to confirm whether Ms. Muresan has in fact implemented systems within the pharmacy to prevent similar issues from recurring in the future. Further, the Hearing Tribunal was concerned that the penalties proposed did not include a restriction on Ms. Muresan's ability to serve as a licensee, as was the case in the Haggag and Porozni decisions that were provided as precedents. The Hearing Tribunal wishes to emphasize the importance of the role of the licensee in ensuring that legislative requirements are followed, and adequate systems are in place within the pharmacy to ensure compliance with regulatory requirements.

If the parties had not provided a Joint Submission, the Hearing Tribunal would have considered imposing restrictions on Ms. Muresan's ability to serve as a licensee (as was the case in the precedent decisions provided). Further, the Hearing Tribunal would have considered requiring Ms. Muresan to complete additional requirements around record-keeping, or alternatively the requirement to participate in follow up audits.

Despite these concerns, the Hearing Tribunal considered that it is only appropriate to reject or vary a Joint Submission in circumstances where the Joint Submission would bring the administration of justice into disrepute. The Hearing Tribunal did not think its concerns rose to such a level to merit interference in this case. The Hearing Tribunal took some comfort in knowing that if there are any further concerns that arise, the Complaints Director will be at liberty to restrict Ms. Muresan from continuing to serve as owner, proprietor, and licensee. While this may serve as a deterrent, hopefully it will also encourage Ms. Muresan to avail herself of any training or education that is available. Ms. Muresan is specifically encouraged to voluntarily complete Part A of the Licensee Education Program.

While the Hearing Tribunal is prepared to accept the Joint Submission, the Hearing Tribunal wishes to make it clear that remedial orders and restrictions on the ability to serve

as licensee should continue to be considered in appropriate cases. Further, the Hearing Tribunal did not find the argument advanced on behalf of Ms. Muresan regarding the impact that restricting her role as licensee would have on her community to be persuasive. Pharmacists and licensees who reside in small communities cannot be sanctioned more leniently merely because there are no other pharmacists in their community. To accept that argument would mean that there is a different standard of discipline that applies depending on the geographic location in which the pharmacist lives. The Hearing Tribunal does not agree.

The Hearing Tribunal also considered the application on behalf of Ms. Muresan requesting that the Hearing Tribunal recommend that the Registrar publish the decision in a manner that does not identify her by name. Pursuant to s. 119 of the HPA and the College's Bylaws, decisions regarding publication are made by the Registrar, and the Hearing Tribunal has no jurisdiction in this regard. Given that decisions about publication are within the authority of the Registrar, the Hearing Tribunal does not believe that it should interfere with the Registrar's discretion or become involved in matters relating to publication, unless there are exceptional circumstances. The Hearing Tribunal does not believe that there are any exceptional circumstances that warrant a recommendation with respect to publication.

While the Hearing Tribunal declines to make a specific recommendation, this is not a circumstance where the tribunal would have made such a recommendation in any event. There are no specific privacy concerns that arise in this case, other than impact to Ms. Muresan's reputation. While the tribunal recognizes that the decision is within the discretion of the Registrar, the Hearing Tribunal does not believe that concerns with respect to reputation are sufficient to override the public's interest in transparency following a finding of unprofessional conduct.

Signed on behalf of the Hearing Tribunal by the Chair on the 1st day of December 2021.

Per: 
T.A. (Ted) Szumlas (Dec 1, 2021 13:13 MST)
Ted Szumlas, Chair

Appendix A

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*,
being Chapter H-7 of the Revised Statutes of Alberta, 2000

AND IN THE MATTER OF AN INVESTIGATION
REGARDING THE CONDUCT OF ANAMARIA
MURESAN, A REGULATED MEMBER OF THE
ALBERTA COLLEGE OF PHARMACY

AGREED STATEMENT OF FACTS

1. At all relevant times, Ms. Muresan was a registered member of the Alberta College of Pharmacy on the clinical pharmacist register and practiced as a pharmacist and was the owner, proprietor and licensee of Irricana Remedy's RX Pharmacy (ACP Licence #3017) (the "Pharmacy"). Ms. Muresan was first registered as a clinical pharmacist with the Alberta College of Pharmacy on July 1, 2006. Ms. Muresan served as a licensee at three licensed pharmacies between 2007 and 2015 and became the licensee of the Pharmacy on March 18, 2016.
2. On December 22, 2020, the Complaints Director considered information provided in an email from the Manager of Government Health Benefits at the Alberta Blue Cross including a Final Report respecting a Compliance Verification Review of the Pharmacy by Alberta Blue Cross. The December 22, 2020 email and Final Report from Alberta Blue Cross are attached as **Exhibit "A"** to this Agreed Statement of Facts and outlines:
 - a. The Pharmacy
 - i. submitted \$33, 887.01 worth of claims for Ensure, Ensure Plus, Ensure SCFOS, Glucerna and Ensure High Protein (the "Health Products") and Infusion Sets to Alberta Blue Cross without providing the required supporting supplier invoices for the claims [see Appendices B to D of the Final Report];
 - ii. made claims for the Health Care Products when there are no records to show any stock was ever received by the Pharmacy in respect to these claims, which represented 53% of the claims made to Alberta Blue Cross for the Health Care Products during the Audit Period [see Appendix D of the Final Report];
 - iii. made claims for the Infusions Sets when there are no records to show that any stock was ever received by the Pharmacy in respect to these claims, which represented 55% of claims made to Alberta Blue Cross for the Infusion Sets during the Audit Period [see Appendices B to D of the Final Report];
 - iv. submitted claims for more than one pharmacy service per patient per day in the absence of an exclusion and in breach of Article 3.1 of the Pharmacy's

Agreement with Alberta Blue Cross and section 2(5) of the Alberta Ministerial Order [see Appendix E of the Final Report];

- v. except where missing patient signatures, the Pharmacy did not provide a sufficient response to the findings in the Draft Report.
 - b. The Pharmacy Agreement between Alberta Blue Cross and the Pharmacy remains in full force and effect;
 - c. Alberta Blue Cross recovered the full amount owed by the Pharmacy following the Compliance Verification Review.
3. The Complaints Director treated the information received from Alberta Blue Cross as a complaint and commenced an investigation into the conduct of Ms. Muresan. He appointed himself and Ms. Jennifer Mosher as investigators. Ms. Mosher's investigation resulted in this complaint being referred to a hearing.

Facts Relevant to the Complaint

4. On January 11, 2021, the Complaints Director spoke with Ms. Muresan and advised her of the complaint. Mr. Krempien's summary of that conversation is attached as **Exhibit "B"** to this Agreed Statement of Facts.
5. On January 11, 2021, the Complaints Director sent a letter to Ms. Muresan notifying her about the investigation and requesting a written response to the complaint. Attached as **Exhibit "C"** to this Agreed Statement of Facts is the letter and enclosures provided by the Complaints Director to Ms. Muresan.
6. On January 12, 14, and 19 2021, the Complaints Director received a series of emails and enclosed documentation from Ms. Muresan, including Patient Audit History reports, data reports, Drug Movement Totals reports, PhamaClik reports and patient testimonials. Attached as **Exhibits "D", "E" and "F"** to this Agreed Statement of Facts are the emails and attachments provided by Ms. Muresan.
7. On February 10, 2021, Ms. Muresan provided her written response to the complaint. In the letter, Ms. Muresan stated
- a. that the required records were created and maintained but had not been scanned and that it would normally take 2-3 hours to pull a hard copy of a patient record at the request of a physician;
 - b. that pharmacy staff scanned documents nearly "non-stop" after receiving Alberta Blue Cross' notice of the Compliance Verification Review. However, due to issues with the scanner, some documents were not saved or were not scanning properly;
 - c. she denied submitting claims to the Alberta Blue Cross for services that were not provided;

- d. any failure to uphold her professional responsibilities was unintentional and that her primary focus had always been patient care. She provided several patient letters of recommendation and further pharmacy documentation.

Ms. Muresan's written response to the complaint and supporting documentation is provided as **Exhibit "G"** to this Agreed Statement of Facts.

8. On February 18, 2021, Alberta Blue Cross provided the Complaints Director with additional documentation relevant to the Compliance Verification Review. The documentation provided by Alberta Blue Cross supported the findings in the Final Report. The documentation also included

- a. correspondence between Ms. Muresan and Alberta Blue Cross in which Ms. Muresan advised she had a driver that would sometimes pick up nutritional products from other stores for her and that she paid the driver in cash and did not retain a purchase receipt;
- b. supporting documentation indicating the Pharmacy failed to obtain a patient signature on 125 Comprehensive Annual Care Plans which resulted in a \$36,260.00 overpayment from Alberta Blue Cross to the Pharmacy.

9. On March 24, 2021, Ms. Mosher spoke with Ms. Muresan. Ms. Muresan stated that she has owned the pharmacy since 2016. In relation to the Alberta Blue Cross audit, she indicated the following:

- a. She previously kept paper records in "bins", but did try to scan as many records as possible into her pharmacy dispensing software. Ms. Muresan indicated that several of these "batches" of scanned documents were not saved, as she was not aware that she had to complete an acknowledgement step to save a scan. She stated that she did not have time to rescan the documents before the auditors' arrival;
- b. She has implemented several changes to her record-keeping procedure since the Alberta Blue Cross audit, such as scanning her records every day, scanning and shredding all documents but retaining paper copies of narcotic prescriptions and associated records, downloading and saving narcotic invoices, and ensuring that this procedure is consistent amongst her pharmacy staff;
- c. She now understands the requirements to obtain a patient signature prior to service but previously was not aware of this requirement. She also noted that some patients were hesitant to come into the pharmacy and provide a physical signature due to the COVID-19 pandemic;
- d. Regarding claims of insufficient drug inventory, she stated that her clients often require items from the pharmacy on "short notice," and in these instances she would purchase the item at a local retailer and deliver it to the client, or have clients deliver items to other clients if it was more convenient. She also indicated she was not aware that she was required to keep or maintain these receipts and that if she did keep them she would not know where to look. She stated that she would

struggle to locate invoices emailed to her, such as those for insulin pump supplies she ordered. Some patient records were destroyed during a flood approximately six months prior;

- e. She was not aware of the Ministerial Order prohibiting more than one assessment fee claimed on the same day, but has since reviewed the Order and ceased this practice;
- f. She acknowledged that her previously record-keeping procedure was “horrendous,” but that it had greatly improved since the Blue Cross audit;
- g. She now ensures her patients understand the service they receive and that this service is “paid by the government for their benefit;”
- h. She acknowledged that she had made mistakes and was not “educated” on proper procedure prior to the Alberta Blue Cross audit;

Ms. Mosher’s summary of her call with Ms. Muresan is attached as **Exhibit “H”** to this Agreed Statement of Facts.

10. Ms. Muresan acknowledges that she has received legal advice prior to entering this Agreed Statement of Facts and that she understands that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing.

Facts Relevant to the Joint Submission on Sanction

11. Ms. Muresan did not have the benefit of legal advice through the investigation. In advance of the hearing and in cooperation with the Complaints Director and legal counsel for the College, Ms. Muresan and her legal counsel came to an agreement that while Ms. Muresan’s conduct was unprofessional, it was not dishonest.

12. Ms. Muresan has advised the Complaints Director she has learned much from the audit and complaint process and she has new processes in place for storing and retrieving required records. She also advises she has been successfully working with Alberta Blue Cross since the audit that led to these issues, without issue or complaint.

13. As admitted in paragraph 8a. above, members of the public, rather than Ms. Muresan directly, purchased Health Care Products and delivered them to her clients. Ms. Muresan has advised the Complaints Director that this prior practice is no longer occurring. Ms. Muresan has also advised that her prior practice was a function of a busy, wide-ranging rural practice in a time when supplies of certain products are easily accessible elsewhere but not necessarily easily accessible in Irricana itself and a failure to understand such a practice was not acceptable. She has stated that her clients are dispersed broadly around rural Alberta and as often happened, if she had a prescription to be delivered, and if the client also used Ensure, then she would have her delivery person buy some Ensure, for example, at Walmart in Airdrie on the way to wherever the client lived. She would then reimburse the driver and seek reimbursement for the amount from Alberta Blue Cross. Often, there were no invoices kept.

14. The Complaints Director is not aware of any evidence that Ms. Muresan used this convenient delivery method for prescribed drugs.

15. Ms. Muresan has no prior findings of unprofessional conduct or matters referred to a hearing tribunal.

THE ABOVE FACTS ARE AGREED TO BY:

ANAMARIA MURESAN

JAMES KREMPIEN,
COMPLAINTS DIRECTOR OF ALBERTA COLLEGE OF PHARMACY