

ALBERTA COLLEGE OF PHARMACY

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

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**SI HUU NGUYEN**  
Registration No. 4718

**HEARING TRIBUNAL DECISION ON MERIT**

March 15, 2019

# DECISION OF THE HEARING TRIBUNAL

## I. INTRODUCTION

[1] The Hearing Tribunal held a hearing into the conduct of Si Huu Nguyen. The following members of the Hearing Tribunal were in attendance:

### Hearing Tribunal:

Kelly Olstad, pharmacist and chair  
Tanner Bengry, pharmacist  
Mary Gunther, pharmacist  
Jim Lees, public member

The following persons were also in attendance:

Si Huu Nguyen, investigated person  
Sid Kobewka, counsel for the investigated person

James Krempien, Complaints Director  
David Jardine, counsel for the Complaints Director  
Annabritt Chisholm, counsel for the Complaints Director

Fred Kozak, independent legal counsel to the Hearing Tribunal

[2] The hearing took place on the 4th and 5<sup>th</sup> days of December 2018 at the second-floor conference center, 8215 112 St. NW, Edmonton, AB. The hearing was convened pursuant to the terms of Part 4 of the *Health Professions Act* (“HPA”).

## II. ALLEGATIONS

[3] The Allegations that were considered by the Hearing Tribunal are set out in the Notice of Hearing dated July 25, 2018 (“Exhibit 1”), and are as follows:

IT IS ALLEGED THAT as the licensee and sole practicing pharmacist of V-Can Pharmacy, 10767 97<sup>th</sup> St NW in Edmonton, Alberta, T5H 2M2, you:

1. Submitted approximately 775 claims (out of a total of approximately 908 claims) to Express Scripts Canada (ESC) between January 11, 2014 and January 10, 2016 (the “audit period”), for which you failed to provide supporting invoices as you were required to do in response to requests made during the course of a desk audit commenced on V-Can pharmacy by ESC on January 22, 2016;

2. Failed to comply or cooperate with ESC's desk audit of V-Can Pharmacy, including but not limited to the occasions when you:
  - a. Submitted invoices supporting only 17 of 63 claims that were being reviewed on February 10, 2016;
  - b. Failed to comply with ESC's June 14, 2016 request that you submit invoices to support all claims made within the audit period for Zovirax 5% Oint (DIN: 00569771), Diprosalic Oint (DIN: 00578436), Prevex B 0.1% CR (DIN: 00804541), Elidel 1% Cr (DIN: 002247238), Pennsaid 1.5% Top Sol (DIN: 02247265), Dovobet Gel (DIN 02319012), and Taro-Mometasone 0.1% Cr (DIN: 02367157)("the seven audited drugs") by only submitting invoices relating to the original 63 claims that were examined and by providing no invoices supporting the rest of the claims made during the audit period;
  - c. Failed to comply with ESC's requests of February 13, 2017 and February 16, 2017 that you contact them;
  - d. Failed to submit the documentation ESC requested from you (by email) on February 27, 2017;
  - e. Did not communicate in any fashion with ESC after February 10, 2017; and
  - f. Failed to pay the recovery amount of \$110,372.62 determined by the ESC audit
3. Submitted at least \$100,000 worth of claims for the seven audited drugs to ESC between January 11, 2014 and January 10, 2016, for which drugs were not provided to patients and for which V-Can Pharmacy did not have sufficient stock to account for the claims allegedly provided to patients;
4. Created false patient dispensing records and indicated that one or more of the seven audited drugs were dispensed and provided to a patient when they were not provided to the patient; and
5. Failed to properly create, maintain and store required pharmacy records and stored the pharmacy records of V-Can Pharmacy offsite (in a basement located outside of the licensed area of the pharmacy and also with his accountant) without having been granted the authority to do so by the Alberta College of Pharmacy.

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 a licensee;
- b. Failed to meet the record keeping obligations expected of an Alberta pharmacist and a licensee;
- c. Created an environment in which your patients were at risk of harm based on the false records created;
- d. Was contrary to accepted pharmacist standards and practice;
- e. Breached the trust placed in you as a pharmacist and a licensee by the Alberta College of Pharmacy; and,
- f. Harmed the integrity of the profession.

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

- Standards 1 (sub-sections 1.1 and 1.2) and 18 of the Standards of Practice for Pharmacist and Pharmacy Technicians;
- Standards 1(sub-sections 1.1 and 1.2) and 8 (sub-sections 8.1, 8.2, and 8.5a) of the Standards for the Operations of Licensed Pharmacies;
- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(ix), 10(1)(a), 10(1)(d)(iv) and 10(1.1) of the *Pharmacy and Drug Act*;
- Sections 12(1) and 12(3) of the *Pharmacy and Drug Regulation*;
- Principles 1 (1,9,12) and 10 of the ACP Code of Ethics;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(p)(xii) of the *Health Professions Act*;

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* and misconduct pursuant to the provisions of sections 1(1)(p)(i), 1(1)(p)(ii), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

### III. PRELIMINARY MATTERS

[4] 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. The hearing was open to the public.

### IV. EVIDENCE

[5] At the onset of the hearing, Mr. Nguyen made a verbal admission to the Allegations and a verbal admission that those admitted Allegations constitute unprofessional conduct (the "Admissions"). The Admissions were made by Mr. Nguyen through Mr. Kobewka, on the record.

[6] The only witness called by the Alberta College of Pharmacy (the "College") was Mr. James Krempien, Complaints Director for the College. Mr. Jardine advised that he had a witness from the insurance company, Express Scripts Canada ("ESC") who had traveled to Edmonton to testify, but Mr. Jardine advised the Hearing Tribunal that she would not be called as a result of the Admissions to the Allegations. Mr. Nguyen gave evidence on his own behalf at the Hearing.

[7] The following exhibits were entered into evidence by agreement of the parties:

Exhibit 1: Notice of Hearing dated July 25, 2018

Exhibit 2: Record of Decision dated June 20, 2018

Exhibit 3: Investigation Records

Exhibit 4: Invoice Binder of Mr. Nguyen

Exhibit 5: List of Exhibits of Mr. Nguyen

Exhibit 6: Mr. Nguyen's Calculation of Amount Owning by him to ESC

[8] Mr. Jardine proceeded to call Mr. Krempien, Complaints Director, as a witness. In support of his evidence, Mr. Krempien relied on portions of his Investigation Records (Exhibit #3) and the Notice of Hearing (Exhibit #2).

[9] On April 3, 2018, Mr. Krempien received a letter of complaint (the "Complaint") from [REDACTED] at ESC outlining ESC's concerns arising from a desk audit of prescription claims by V-Can Pharmacy ("V-Can") which were submitted by V-Can between January 11, 2014 and January 10, 2016 (Exhibit 3, Tab 1). The letter states that "of the 63 invoices requested, only 17 invoices were submitted in support of the claims", and that "due to concerns with the limited response, the pharmacy manager was informed by phone and email, the request for invoices was expanded to all claims for the selected DINs within the audit period." The Complaint outlines that "a final audit report was issued with 775 claims remaining for recovery where an invoice was not submitted."

[10] Mr. Krempien and Mr. Monty Stanowich were appointed as investigators to investigate the Complaint pursuant to s. 56 of the *Health Professions Act* (Exhibit 3, Tab 3). Mr. Krempien's evidence was that he conducted the investigation, and Mr. Stanowich played no role in the investigation. On April 10, 2018, Mr. Krempien wrote to Mr. Nguyen, providing him with a copy of the Complaint, requesting Mr. Nguyen's written response to the Complaint and asking that he provide a summary of relevant events (Exhibit 3, Tab 4). As part of his investigation, Mr. Krempien received and reviewed a copy of all documentation that ESC collected as part of its desk audit at V-Can (Exhibit 3, Tabs 5 and 7).

[11] On May 4, 2017, Mr. Nguyen responded to Mr. Krempien outlining the sequence of events from Mr. Nguyen's perspective, and enclosing a large number of additional documents (the

“Response”) (Exhibit 3, Tab 6). The documents included a letter from Mr. Nguyen to ESC on August 2, 2016 appending documents to support the 63 audited prescription claims.

[12] In his letter, Mr. Nguyen identified that the ESC desk audit commenced on January 22, 2016 and required him to provide documentation for 63 selected prescription claims for drugs within 30 days (the “ESC Audit Request”). Mr. Nguyen states in the letter, “I scanned all the 63 audited prescriptions with their original prescriptions, their hard copies and 19 invoices which I had on hand at that time.” Mr. Nguyen also explained that, because his tax year ends on January 31, 2018, “all the invoices were sent to our accountant.”

[13] Mr. Nguyen’s letter also advised ESC that he had suffered a number of unfortunate circumstances in the spring and summer of 2016:

- On March 5, 2016 he was involved in a severe car accident and was treated with physiotherapy for 21 days. Mr. Nguyen provided prescriptions written by his physician in relation to this car accident, presumably to demonstrate the severity of the accident.
- On March 7, 2016 his father-in-law died in Vietnam and he was busy with funeral preparations from March 7<sup>th</sup>, 2016 to April 25, 2016. Mr. Nguyen also provided supporting documents regarding his father-in-law’s death.
- On July 15, 2016, the basement of V-Can (where Mr. Nguyen stored old pharmacy records) flooded, and Mr. Nguyen suggested that some of the documents relevant to the Complaint were destroyed. Mr. Nguyen provided correspondence between himself and his insurer about the flood.

[14] According to Mr. Nguyen’s Response, on August 4, 2016, Mr. Nguyen sent more invoices to ESC to support the 63 prescription claims, and on January 12, 2017 he received the final audit report from ESC. The report indicated that V-Can owed \$110,372.62 from 876 claimed prescriptions. Mr. Nguyen disputed that these prescriptions were identified in ESC’s audit letter of January 22, 2016. Mr. Nguyen also included a copy of ESC’s final audit report from January 12, 2017 in his Response to Mr. Krempien. Mr. Krempien testified that the initial claim of around \$126,000 was amended to a total of around \$110,000.

[15] Mr. Nguyen's Response indicated that on November 27, 2017 he received a registered letter, indicating that V-Can was being sued by ESC, and that he contacted legal counsel in relation to ESC's claim.

[16] Mr. Krempien testified that on May 3, 2018 he received a letter from ESC including a CD containing all the information collected during the desk audit of V-Can, along with an audit chronology (the "ESC Audit Records") (Exhibit 3, Tab 7). The ESC Audit Records disclose that the genesis of the ESC desk-audit was a letter from ESC's client, Manulife Insurance, on November 26, 2015 requesting that ESC conduct a desk audit on V-Can regarding a number of claims that were being made by V-Can. The initial email from Carrie Willis (Manulife) to Patti Clayton (Audit Department of ESC) states, "As per our conversation today the provider of concern is V-Can Pharmacy in Edmonton. Initially our focus was around the amount of Zovirax being prescribed by MD Dr. Nam Thuat, during our analysis it came to light that other DINs may be involved including Elidel, Mometasone, Pennsaid, and Dovobet. The pharmacy has provided prescriptions for the claims, the patient has signed off saying they were received, and the MD has provided notes from the appointments. At this time we feel that an onsite or desk audit focusing on invoices may be our best option." ESC initiated the audit of 63 prescription claims, plus 27 compounded products on January 22, 2016.

[17] On June 14, 2016, ESC advised Mr. Nguyen that the ESC Desk Audit was expanded to include 7 drugs for a two-year audit period between January 11, 2014 and January 10, 2016 (Exhibit 3, Tab G). In that correspondence, ESC requested a number of additional invoices for review. ESC did not receive a response from Mr. Nguyen to that request. Additional attempts to contact Mr. Nguyen via phone and email were unsuccessful.

[18] On June 28, 2016 Nina Peroo of ESC emailed Mr. Nguyen to advise that she had not yet received any documentation despite her attempts to contact Mr. Nguyen many times without success (Exhibit 3, Tab H). As a result, ESC prepared its initial audit report of July 18, 2016 on the basis of the invoices submitted and the response received from Mr. Nguyen on February 10, 2016. (Exhibit 3, Appendix J). As none of the invoices requested in ESC's June 14, 2016 follow up request had been received from Mr. Nguyen, ESC advised that the claims for those invoices were listed for recovery.

[19] Mr. Krempien testified that the expanded audit was due to additional reports that ESC had received from Manulife in addition to the lack of complete documentation in the initial audit. ESC provided Mr. Nguyen with additional information from Manulife (Tab F) and stated that Manulife had received an anonymous letter from a client who reported that the pharmacist at V-Can has been purchasing third party information in exchange for sugar, rice, salt and milk.

[20] After the July 18, 2016 initial audit report, there was further communication between ESC and Mr. Nguyen. Mr. Krempien testified that ESC asked for the supporting documentation for the expanded claims, or the expanded period for those claims. Mr. Nguyen's response to those requests was limited to documentation relating to the initial 63 invoices. At no time did he provide additional documents to support the claims included in the expanded audit."

[21] In an email from Mr. Nguyen to Nina Peroo at ESC dated July 21, 2016 (Exhibit 3, Tab K), Mr. Nguyen requested more time to find the invoices from January 11, 2014 to December 30, 2014, but Mr. Nguyen was not able to provide invoices for the expanded period of 2016. Mr. Nguyen also stated that all the invoices were in his accountant's office in Calgary and that he was returning from vacation, and that the basement where he stored some documents was flooded.

[22] In a further email exchange between Mr. Nguyen and Nina Peroo on July 28, 2016 (Exhibit 3, Tab L), Nina Peroo clarified that ESC was not just looking for invoices relating to the initial 63 claims, and that ESC required documents to support the expanded audit. Ms. Peroo requested that Mr. Nguyen submit the documents that he was able to gather prior to the due date of August 17, 2016. Mr. Nguyen advised that he would provide invoices to support the initial 63 claims. Following receipt of that response, Ms. Peroo clarified by phone and by email that she required additional invoices in relation to the expanded audit. On August 5, 2016 Mr. Nguyen submitted additional documentation to ESC (Exhibit 3, Tab M) to support the initial 63 claims. No information was received in relation to claims included in the expanded audit.

[23] The final audit report dated January 12, 2017 (Exhibit 3, Tab N) states that the original recovery amount of \$126,168.28 was amended to \$108,959.55 to account for invoice credits applied as a result of additional information submitted by Mr. Nguyen on August 5, 2016. Mr. Krempien testified that these numbers are broken out in detail within the spreadsheets that were

provided to Mr. Krempien by ESC (Exhibit 3, Tab 7, sub-tab J). Mr. Krempien testified that in reviewing the detailed information provided to him by ESC, the findings of the final audit report were substantiated by the claims that they made and the documentation that they received from the pharmacy.

[24] ESC advised Mr. Nguyen in a February 10, 2017 telephone conversation that, due to the large recovery amount, ESC had contacted him to follow up regarding payment before initiating a withhold. In this conversation, Mr. Nguyen advised ESC that he did not accept the audit. Further attempts to contact Mr. Nguyen about the recovery amount outstanding were unsuccessful.

[25] On February 27, 2017, Ms. Johal wrote to Mr. Nguyen to further request information to support the claims in the expanded audit and advise that ESC was imposing a deadline of March 3, 2017 for Mr. Nguyen to either commence payments or to provide additional documentation. She advised that failure to do so would result in the electronic withholding of funds until the entire recovery amount has been satisfied. Mr. Nguyen did not submit claims to ESC after February 10, 2017.

[26] Mr. Krempien testified that he contacted Ms. Johal on May 5, 2018 to confirm that he had received and reviewed the ESC Audit Records. He concluded that the documents provided by Mr. Nguyen were sufficient to account for only 17 of the 90 submitted claims. Mr. Krempien also confirmed that the final audit report took into account the invoices sent by Mr. Nguyen on February 10, 2016 and August 5, 2016, and the audit determined there were insufficient invoices to support 775 claims for about \$110,000. He confirmed with Ms. Johal that Mr. Nguyen had not responded to any contact requests from ESC since February 10, 2017 including requests made on February 13 and February 16, 2017 or to the email sent to him on February 27, 2017. Mr. Krempien also confirmed that ESC had not recovered any of the monies owed by V-Can as a result of their audit.

[27] As part of his investigation, Mr. Krempien met with Mr. Nguyen at V-Can on May 9, 2018. Mr. Krempien testified that during the meeting, he took hand written notes and went back to the office the same day and created a memo documenting his observations during that visit (Exhibit 3, Tab 11). During this meeting, Mr. Krempien talked about the various records, including the

records Mr. Nguyen was not able to provide for the audit. Mr. Krempien testified that Mr. Nguyen told him that for the 63 prescriptions claims, many of those records would have been lost in the flood. In Mr. Krempien's memo he states, "SN indicated that many of these invoices (medication receipts), other pharmacy invoices (medication receipts), and tax records for the pharmacy were lost in the July 15, 2016 sewer back up." He also wrote that "SN indicated that no patient records (such as prescriptions or transaction records ("hard copies")) were lost in the sewer back up."

[28] Additionally, Mr. Krempien said that Mr. Nguyen advised that he did not think it was right that the audit was expanded to include two full years for seven different drugs, and that he did not provide that documentation because he did not want to legitimize the expansion of the audit. Mr. Krempien understood this to mean that Mr. Nguyen made the decision not to participate at all in the expanded portion of the audit. Mr. Krempien also testified that he advised Mr. Nguyen that, even if the invoices were destroyed, he could have requested copies of the invoices from his wholesaler, Kohl and Frisch. He said that Mr. Nguyen did not provide any meaningful response to address why he had not inquired of Kohl and Frisch regarding the invoices.

[29] Mr. Krempien testified that in his meeting with Mr. Nguyen, he advised him that the basement was not part of the licensed pharmacy and that storing records in the basement would require authorization from the Alberta College of Pharmacy as it constituted off site storage. Mr. Nguyen advised Mr. Krempien that he was not aware of this requirement. Mr. Krempien subsequently conducted a search on materials circulated by the Alberta College of Pharmacy advising and reminding registrants and licensees of the requirement to seek and receive authorization from the Alberta College of Pharmacy prior to storing any pharmacy records outside of the licensed pharmacy area (Exhibit 3, Tab 9). This included such sources as ACP's electronic news "The Link", as well as "ACP News".

[30] On May 23, 2017, Mr. Krempien contacted Mr. Nguyen's wholesaler, Kohl and Frisch, and asked them to provide totals of the seven drugs that Mr. Nguyen bought from them during the two-year audit period (Exhibit 3, Tab 12). He also contacted ESC on May 24, 2017 via email and requested the claimed drug costs (not including dispensing fees or other inventory allowances) by V-Can for the audit period of January 11, 2014 to January 10, 2016 (Exhibit 3, Tab 13).

[31] On May 25, 2018 Kohl and Frisch responded to Mr. Krempien's request via email and provided a sales report for the audit period for the seven drugs (Exhibit 3, Tab 14). Mr. Krempien testified that for each of the seven drugs during the audited period of January 14, 2014 to January 10, 2016 he compared the total cost of the drugs claimed by the pharmacy to ESC, and the total cost of the drugs purchased by the pharmacy from Kohl and Frisch. He also cross-checked his calculations and ESC's final calculations against the documentation and spreadsheets contained in ESC's Audit Records.

[32] Mr. Krempien concluded that for the relevant period, for the seven identified drugs, the drug cost claimed by the pharmacy was a total of \$172,000. The invoices provided by Kohl and Frisch amounted \$67,000, leaving a discrepancy or a difference of approximately \$104,000.

[33] Mr. Krempien testified that he received a list of invoices and copies of these invoices from Mr. Nguyen's lawyer after his investigation was completed and after the decision was made to refer the matter to a Hearing Tribunal (Exhibit 4). Mr. Nguyen's documents included his own calculations of the drug claims, and the totals provided by Kohl and Frisch. Mr. Krempien testified that the totals were essentially the same, often within a few hundred dollars. He advised that the differences could be attributed to Mr. Nguyen buying from a different wholesaler on one or two occasions which would be unknown to Kohl & Frisch. Mr. Krempien also testified that he gave credit for any invoice that could be provided to the ESC claims, even though the purchased stock could have been used for patients paying cash or using other third-party insurers such as Alberta Blue Cross. This was the same approach that was used by ESC.

[34] Mr. Krempien testified that, as a result of this information, he identified several concerns. He said that, "if the pharmacy doesn't have the invoices or other documentation to show that they actually had that stock available to provide to the patient, I am concerned not only that potentially it shows a lack of integrity that the pharmacy has not met their obligations with the insurance provider, with ESC, but from a College perspective they have created records that are, in essence, false, indicating that a patient has received a certain medication on a certain date when that clearly can't be the case, in my opinion, because there is no documentation to show that the pharmacy had the drug in place to support, if not all, at least some of the product that was supposedly dispensed." He went on to state that he was concerned not only about the

financial implications arising from this circumstance, but that he was also concerned about the potential for patient harm that could arise if the patient's pharmacy file included false, inaccurate, or incomplete information about their prescription drugs. Mr. Krempien also expressed concern about Mr. Nguyen's consistent refusal to cooperate with ESC's investigation, failure to provide documentation in relation to the expanded claim, and his unauthorized storage of pharmacy records outside of the licensed premises.

[35] Mr. Jardine questioned Mr. Krempien about the practice of 'owes' in pharmacies. Mr. Krempien said that at times, pharmacies will not have the total amount of medication in stock to fill a prescription. The full amount of the prescription will be billed to the insurer and the patient, the patient will be provided what stock the pharmacy has available at the time, the stock will be ordered, and then the patient will pick up the balance owing within a certain time period. He explained that pharmacies should have a system in place whereby after one week, or certainly after two weeks, the pharmacy ought to review and assess any 'owed' medication that has not been picked up or will not be picked up by the patient, and reverse the claim to correct the dispensing record so it accurately reflects what the patient received from the pharmacy. He advised that it is the College's perspective that in the absence of such a system, it may potentially put other health care providers at risk if they do not have accurate information in Netcare about what the patient received and had the ability to use. If the patient did not receive the medication but that medication was listed as having been dispensed to the patient, other healthcare workers will have inaccurate information on which to base their decisions.

[36] On cross-examination, Mr. Kobewka asked Mr. Krempien if anyone followed up on Mr. Nguyen's response (indicating that he did not accept the audit) to find out why, or what they could do about it. Mr. Krempien's response was that he understood Mr. Nguyen's position to be that ESC did not have the authority to expand the audit and he did not want to legitimize it by providing a response. Therefore, Mr. Krempien did not expect a response.

[37] Mr. Kobewka asked Mr. Krempien about the number of invoices that were provided on August 5, 2017 by Mr. Nguyen to ESC to which Mr. Krempien responded, "I think there was a fair number of invoices provided."

[38] Mr. Kobewka questioned Mr. Krempien about the audit chronology provided by ESC (Exhibit 3, Tab 7) and in particular whether the two calls from ESC to Mr. Nguyen on June 24 and June 28 were the basis of ESC's report that ESC had attempted to contact Mr. Nguyen "many times." Mr. Krempien responded that he thought so.

[39] Mr. Kobewka also asked Mr. Krempien about the total of \$142,376.53 when he said the amount was around \$172,000 when questioned in chief. Mr. Krempien explained that the lower sum did not include the patient paid amounts of \$24,276.17 and the previous paid amounts of \$2,950.39. Mr. Kobewka asked Mr. Krempien if he reviewed any invoices paid to Kohl & Frisch prior to January 11, 2014 or after January 11, 2016 to which he responded that he had not.

[40] Mr. Kobewka then asked Mr. Krempien about the practice of "owes" and where the suggested one-week timeframe to review owed prescriptions that had not yet been picked up by patients originates. Mr. Krempien stated that it is a contractual obligation that the pharmacies have with the insurance providers. When questioned about how the College conveys expectations to its members that they are required to update the patient care records if patient medication is not picked up, Mr. Krempien advised that a particular timeframe is not explicitly stated within the Standards of Practice, but he later made clear that practices relating to "owed" prescriptions would fall under Standards of Practice Part 18, requiring a pharmacist to maintain accurate records. He then stated that the general rule of thumb at the pharmacy level is that "owed" prescriptions should be reviewed after 7 days, which is consistent with at least some insurance contracts, including ESC.

[41] Mr. Krempien also testified that practice consultants will review pharmacy "owes" when they are on site. If there are a large number of owed prescriptions that have not been picked up by patients, the practice consultant will educate the pharmacists and licensee about proper "owed" prescription practices.

[42] Mr. Kobewka asked Mr. Krempien whether there is a requirement for the pharmacies to submit stock on hand amounts of the medication when they are submitting the claim to insurance providers, and if there was a requirement to demonstrate stock on hand prior to the

claim being authorized. Mr. Krempien said that he did not believe that, “they require or receive this information.”

[43] Mr. Jardine objected to Mr. Kobewka’s questions about the contract between ESC and Mr. Nguyen which required Mr. Nguyen to review “owed” prescriptions after 7 days. The Hearing Tribunal adjourned to consider the objection, however, Mr. Kobewka advised that he was satisfied that a 7-day review was required under the contract based upon information provided by Mr. Jardine during the adjournment. Mr. Kobewka also sought to question Mr. Krempien about his understanding of V-Can’s software system, and in particular, whether he knew if it transmitted information to ESC concerning the pharmacy’s inventory of a claimed drug. Mr. Jardine objected to these questions, noting the admissions of Mr. Nguyen, and that Mr. Nguyen would have the opportunity to give information on his understanding.

[44] The Hearing Tribunal then questioned Mr. Krempien. The Hearing Tribunal asked Mr. Krempien if he had discovered any specific falsified records or if this was inferred based upon the lack of invoices to support the patient billings. Mr. Krempien confirmed that it was inferred based upon the lack of invoices to support patient billings, and the fact that in some cases V-Can did not hold sufficient inventory of the particular drug to fill the prescription. The Hearing Tribunal asked if Mr. Krempien had any knowledge that claims were being made on behalf of fictitious patients. Mr. Krempien confirmed that the claims were all made on behalf of actual patients with actual ESC ID numbers. The Hearing Tribunal asked Mr. Krempien if there was an investigation into the Allegation that Mr. Nguyen was providing sugar, rice, salt, and milk to individuals in exchange for their ESC numbers. Mr. Krempien answered that although he did not investigate this, it may have been one of the factors that led ESC to increase the audit size. Mr. Jardine clarified that there was no evidence to substantiate any exchange of sugar, rice, salt and milk and there was nothing included in the Allegations in regard to this.

[45] Mr. Nguyen gave evidence on his own behalf. Mr. Kobewka asked Mr. Nguyen if he had changed any of his procedures in the pharmacy as a result of the ACP Audit, to which Mr. Nguyen responded that he had. He also asked if the College had followed up to ask him about whether he had instituted any procedure changes after June 1, 2016 and he responded that June 1, 2016 was the last communication with the College regarding the Audit.

[46] Mr. Nguyen gave evidence about his background. He was born in Vietnam and moved to Canada in 1982. He started studying English in high school, attended Concordia College and then attended the University of Alberta to study pharmacy. Mr. Nguyen had no English language training or courses other than his education in Canada. Most of Mr. Nguyen's patients at V-Can Pharmacy speak Vietnamese, with a minor percentage speaking Cambodian.

[47] Mr. Nguyen also gave evidence about the circumstances of the flood. He confirmed that he had a flood on July 15, 2016, and that there was very serious damage. Damaged in the flood were Christmas ornaments, clothes, tax documents and some invoices. Mr. Nguyen understood, based on his commercial lease agreement (Exhibit 5, Tab 3) that the basement was being used as V-Can Pharmacy. He had no communication with the College to notify them that he was using the basement as part of the pharmacy.

[48] With respect to the invoices required for the ESC Audit, Mr. Nguyen testified that his accountant could not find all of the invoices and that the date when he last received documents from his accountant was around August 3, 2016 (Exhibit 5, Tab 5). He advised that he had contacted Kohl and Frisch to provide the missing invoices, and he received the balance of these invoices from them on December 11, 2017 (Exhibit 5, Tab 6).

[49] Mr. Nguyen also testified that the statement of claim against V-Can Pharmacy (Exhibit 5, Tab 9) was served on November 27, 2017 and that they were requesting approximately \$110,000. He filed a Statement of Defense on his own behalf (Exhibit 5, Tab 7) Appended to his defense was a computer screen shot from the first claim of the 63 claims that were the subject of the ESC Audit. Mr. Nguyen testified that this screen shot is from the Kroll software system he uses to submit electronic claims to ESC and that it shows a negative inventory balance, or on hand amount, of negative 120. The screenshot also displays a warning that states "Not enough inventory for Rx." Mr. Nguyen's evidence is that he understood that ESC received the negative inventory notification as part of the information that ESC and Netcare received when the medication is dispensed. Mr. Kobewka asked him what part of this information was sent to Netcare and ESC. Mr. Nguyen responded, "I don't know. I just sent all of the information I got, all of the information I dispensed to the software."

[50] Mr. Kobewka asked Mr. Nguyen about his practice when he does not have the inventory to cover the prescriptions. Mr. Nguyen testified that he received payment from ESC, the copy from the patient, and on one label he will hand write what V-Can owes the patient. He provides that copy to the patient. The patient will then return to the pharmacy with the piece of paper stating the owed amount and collect the amount owing when the pharmacy has the required inventory. He also said that after the patient provides him the copy with the amount owed written on it, and he provides the patient with the balance of the medication owed, he puts the copy in the trash.

[51] Mr. Nguyen stated that for several of the claims, the screen shots demonstrate that there was a negative inventory balance at the time the claim was put through to ESC, indicating that V-Can owed the balance of the prescription to the patient.

[52] Mr. Nguyen's evidence included several letters that were brought to him by patients and the corresponding screen shots of those prescriptions (Exhibit 5, Tab 11). Mr. Nguyen testified that ESC wrote to his patients asking if they had received the prescription items that were billed for. The patients signed the letters from ESC indicating that they had received the items.

[53] Before commencing his cross-examination, Mr. Jardine asked Mr. Kobewka to confirm that they had discussions with [REDACTED] from ESC and that inventory amounts in the pharmacy were not part of the information that was received by ESC. Mr. Kobewka acknowledged that this was their understanding. Mr. Nguyen testified that he does not maintain a large stock of drugs at his pharmacy and that he can obtain stock by the next day. In relation to one of the screenshots located at Exhibit 5, Tab 8, for prescription #2, Mr. Nguyen was asked to confirm whether he had inventory for that drug, (which was claimed on January 17, 2014) at the beginning of the audit period. He responded that there was no inventory.

[54] Mr. Nguyen also testified that he had been doing the owe system for most of his years in practice. When asked how long he would allow patients to come back and pick up the balance of the inventory owing for the prescription, Mr. Nguyen responded that, "I just tell the customer three years and a half, so 42 months." Mr. Nguyen testified that he had no additional record keeping with respect to owed amounts apart from providing the patient the slip of paper with

the owed amount of the medication written on it. Mr. Jardine then asked Mr. Nguyen about the pharmacy assessment that had been conducted by Monty Stanowich, and in particular, whether he ever discussed with any of the pharmacy assessors the manner in which he filled these prescriptions. He indicated that he had not. Mr. Nguyen was also asked whether he mentioned his usual “owed” practice to Mr. Krempien, or if he suggested to Mr. Krempien that he had stock on hand prior to the start of the audit periods. Mr. Nguyen said that he did not.

[55] Mr. Jardine asked Mr. Nguyen why he thought it mattered if the insurance company knew that he did not have the inventory when he put the prescription claim through. Mr. Nguyen responded that in his view, he had consent from the patient, and his practice was to fill the prescription when the patient asked for it. Mr. Nguyen could not identify any insurance providers that require him to prove that he has stock before the insurance company will pay for the claim. Mr. Nguyen also testified that he never had any discussions with ESC about the system where he would charge up front and then hold the balance owing for up to three years.

[56] Mr. Nguyen was asked if he had an explanation for why his invoices did not amount to approximately \$100,000 which was the costs charged to ESC. Mr. Nguyen responded that, “when they just say on the paper that I claim 300 grams of Taro-Mometasone, that is not correct, because Taro-Mometasone I use only 45 percent in the compounding of the prescription, when – every time we dispense the medication, and the compound maybe 10 percent Glycerine with Taro-Mometasone and Taro base. So that means 10 percent.”

[57] Mr. Nguyen continued his response, saying “Glycerine, 45 percent Taro-Mometasone, and 45 percent Taro base. But because Taro base, they don't have DIN number, and Glycerine, they don't have DIN number, only the DIN number of Taro-Mometasone, so on the record they just say you submit 300 milligram of Taro - Mometasone. They total up the compound.” Mr. Jardine confirmed with Mr. Nguyen that he had never shared this explanation with ESC or Mr. Krempien. According to Mr. Jardine, Mr. Nguyen’s explanation addressed only compounded drugs, and ESC had no issues with any compounded drugs. When asked what his explanation was for the non-compounded drug claims that didn’t match the invoice amounts, Mr. Nguyen reverted back to his earlier explanation about his “owed” practice. According to Mr. Nguyen, he would have an invoice to support the paid claim “later on” when he had the drugs in inventory,

and the patient picked up the remainder of the owed prescription. Mr. Nguyen indicated that if he determines that he owes ESC, he will adjust the prescription and pay back the amount owing to ESC. Mr. Jardine then asked Mr. Nguyen if he could show him a case where he paid anything back to ESC. Mr. Nguyen explained that when he knows patients have passed away, he can cancel the prescription to ESC. Mr. Jardine asked if he had any records to support he had done that. Mr. Nguyen responded that he did not have records to support the amount claimed.

[58] The Hearing Tribunal asked Mr. Nguyen if, in a case where a patient did not pick up the full amount and there was an amount owing, if he ever reversed the claim and billed the amount he actually had dispensed after a certain period of time. Mr. Nguyen responded that he would do that but that he could not provide any evidence that he had ever done that for any patients. The Hearing Tribunal further asked Mr. Nguyen if there was anything else with his procedures he felt that they needed to know and if he was satisfied with what he told them. Mr. Nguyen responded that he was satisfied and apologized to ESC for his lack of response because he knows that he can do better.

[59] Mr. Nguyen was then re-examined by Mr. Kobewka. Mr. Nguyen testified that his pharmacy did not sell anything other than prescriptions and he had no knowledge of the selling of sugar, rice, salt or milk. He also noted there were ten other pharmacies in the area of his pharmacy. He further testified that one of the benefits of the owe system was that the customer would only pay a dispensing fee once, not twice. A further benefit of the owe system was that customers were able to come back at a later date and obtain stock with better expiry dating. He also testified that if patients had lost their job and their benefits, they would be able to return at a later time and receive the owed part of the medication, otherwise they may not be able to afford the medication. Mr. Kobewka then asked Mr. Nguyen what was the difference between the amount he billed to ESC and the invoices he had. Mr. Nguyen replied that he had invoices to support 60% of the claims, and that he owes ESC only 40% of claims (Exhibit 6). Mr. Kobewka identified that this was Mr. Nguyen's explanation why he disagreed with the conclusion of ESC and what the shortage was in inventory in comparison to the amount billed during the audit period. Mr. Nguyen explained his own financial calculations as to the amount he feels he owes ESC. He testified that, through his calculations, he will pay them back \$45,293.24. He said, as

part of his calculations, he should not return the professional fee to ESC because, in his view, the pharmacy has done work to dispense part of the prescription so that amount properly belongs to the professional. Mr. Nguyen testified that he charged ESC for \$73,608.01 more than what he actually purchased.

[60] Mr. Jardine did not wish to cross-examine Mr. Nguyen on his calculations. The Hearing Tribunal asked Mr. Nguyen what his patients, who have ESC as an insurance provider, have been doing since he discontinued submitting claims to ESC on or about February 27, 2017. Mr. Nguyen advised that these patients now pay the full price for their prescriptions at the pharmacy and then submit their receipts to ESC for payment from ESC. The Hearing Tribunal then asked Mr. Nguyen about the owe system in his pharmacy where he testified that patients can return to the pharmacy up to three and a half years later for owed amounts of prescriptions because he can destroy the prescriptions after 42 months. After the cross examination of Mr. Nguyen by the Hearing Tribunal, Mr. Jardine advised he had no further questions for Mr. Nguyen.

#### **V. SUBMISSIONS OF THE PARTIES**

[61] Mr. Jardine made submissions on behalf of the Complaints Director. He stated that it is the duty of the Complaints Director to prove the Allegations in the Notice of Hearing on a balance of probabilities which is distinguished from the criminal test of beyond a reasonable doubt. Mr. Jardine advised that Mr. Nguyen had admitted to the Allegations and admitted to unprofessional conduct on the record. He said that he had called Mr. Krempien as a witness to give oral and documentary evidence so that the Hearing Tribunal could consider the veracity of the evidence and whether it was more probable than not that the Allegations are proven.

[62] Mr. Jardine submitted that the Allegations are supported by the evidence from Mr. Krempien and the ESC Audit Report. Mr. Jardine argued that while Mr. Nguyen had provided a series of calculations to demonstrate what he believed he owed to ESC, the total amount billed to ESC for drugs was approximately \$170,000 and that Mr. Nguyen's calculations amounted to roughly \$70,000 billed to ESC. Although some of Mr. Nguyen's calculations were different, in each case Mr. Nguyen's calculations were unjustifiable.

[63] Mr. Jardine asked the Hearing Tribunal to consider this case and comment on Mr. Nguyen's credibility. Mr. Jardine submitted that Mr. Nguyen had been aware of the Allegations and the calculations prepared by ESC and the College for months, and despite repeated requests to explain the deficient invoices, Mr. Nguyen only provided his own calculations during the hearing. Mr. Jardine asked the Hearing Tribunal to consider this information in terms of the credibility of what was being presented and said that there were only invoices to support \$67,000 worth of drugs being purchased.

[64] Mr. Jardine argued that Mr. Nguyen's reasons have shifted over time, which speaks to a number of the Allegations, and to his credibility. Mr. Jardine said that the first answer was the invoices were with the accountant. The second was that the flood probably destroyed some of them. According to Mr. Jardine, neither of these reasons addressed the fact that he could have obtained the invoices from the supplier, but there was no evidence that Mr. Nguyen had done that. Mr. Jardine further argued that there is no evidence that any invoices are missing because the invoices that Mr. Nguyen supplied through his lawyer and the invoices that Mr. Krempien obtained from Kohl & Frisch were within \$1,000 of each other. Next, Mr. Nguyen's explanation was that he practiced an owe system in the pharmacy for which there are no records or documentation produced.

[65] Mr. Nguyen also suggested that the information brought forward did not account for what the pharmacy had in inventory before the audit period or had acquired immediately after the audit period. Mr. Jardine argued that the audit period was for an extremely long period of time involving over 900 claims and that the very first prescription that Mr. Nguyen showed a screen shot of, right at the start of the audit period, demonstrated no inventory on hand. Mr. Jardine also reminded the Hearing Tribunal that Mr. Nguyen testified that he would keep enough stock in the store for about 20 prescriptions and that he did not need much more because he could get it the next day. Mr. Jardine urged the Hearing Tribunal not to accept Mr. Nguyen's suggestion that ESC did not account for inventory levels before and after the audit.

[66] With respect to the owe system, Mr. Jardine argued that Mr. Nguyen did not say that he was only doing the owe system during the audit period. Mr. Nguyen was likely doing this owe system (for which there was no evidence) for years and it would be very difficult to prove what

was owing and not owing and which parts covered the audit period and which did not, making the explanation of larger amounts of inventory before or after the audit period unlikely. Finally, Mr. Jardine highlighted that Mr. Nguyen's final explanation was that he disputed the calculations done by ESC.

[67] Mr. Jardine reviewed the Notice of Hearing. He advised that Allegation #1 was admitted and that the evidence establishes that Mr. Nguyen failed to produce invoices for 775 claims (out of a total of 908 claims), to ESC during the audit period. He said that ESC had applied credits for \$67,000 worth of invoices that he did produce and that this was an extremely favorable amount because it assumes that all drugs purchased were for ESC clients. Although Mr. Nguyen offered alternative calculations about the exact dollar amount, he has admitted that it was a substantial amount. Mr. Nguyen was contractually obligated to cooperate with ESC, yet he never produced invoices to support the amount claimed and, in fact, admitted that he cannot.

[68] Mr. Jardine argued that the evidence supporting Allegation #2(a) conclusively established that Mr. Nguyen submitted invoices supporting only 17 of the 63 claims that were being reviewed on February 10, 2016 during the initial audit period. There were invoices submitted many months later for which he was given credit, but the lack of invoices for the first 63 claims is what ultimately contributed to the expanded desk audit. Accordingly, Mr. Jardine argued that Allegations #2(b) were proven.

[69] Mr. Jardine further submitted that Mr. Nguyen was a 26-year pharmacist and that "we can't trust any of his records, and he can't trust any of his records." He said that Mr. Nguyen only provided evidence to ESC for some of the first 63 claims because he thought ESC was only entitled to ask him about those 63 claims, and he didn't think it was right that ESC had expanded the audit. As a result, Mr. Nguyen did not provide ESC anything further. Mr. Jardine suggested that the alternative explanation is that he does not have any invoices to support the claims in the expanded audit, which is why he did not provide any. Mr. Jardine stated that Mr. Nguyen admitted to this and the documentation showed this to be proven.

[70] Regarding Allegation #2(c) that he failed to comply with ESC's requests of February 13, 2017 and February 16, 2017 that Mr. Nguyen contact ESC and #2(d) that Mr. Nguyen failed to

submit the documentation ESC requested from him on February 27, 2017; Mr. Jardine argued that the records prove these Allegations as the last admitted contact with ESC by Mr. Nguyen was February 10, 2017.

[71] With respect to Allegation #2(e) that Mr. Nguyen did not communicate in any fashion with ESC after February 10, 2017; Mr. Jardine said that Mr. Nguyen simply went silent and that this had been proven on the record.

[72] In regards to Allegation #2(f) that he failed to pay the recovery amount of \$110,372.62 determined by the ESC Audit, Mr. Jardine stated that he was not concerned about the exact amount as this issue is currently a civil dispute before the courts. He argued that it is a significant amount of money and that it has been owing to ESC since at least 2016 and that it has clearly been proven by the evidence submitted.

[73] Allegation #3 states that Mr. Nguyen submitted at least \$100,000 worth of claims for the seven audited drugs to ESC between January 11, 2014 and January 10, 2016 for which drugs were not provided to patients and for which V-Can did not have sufficient stock to account for the claims allegedly provided to patients. Mr. Jardine argued that the claims demonstrate that \$172,000 was billed to ESC, but the invoices show only \$67,000 worth of drugs were dispensed. The difference of \$100,000 is roughly the discrepancy between those amounts. Mr. Jardine addressed Mr. Nguyen's examples of six of his patients who said they received the full amount of medication from him. Mr. Jardine explained that in this case, the insurance company requires invoices to be provided to demonstrate he purchased the drugs he claimed because the invoices come from an independent third party. He said that the Hearing Tribunal should not put weight into the six people stating they received the medication. Mr. Jardine stated that Allegation #3 was admitted to by Mr. Nguyen and had been proven.

[74] Allegation #4 alleges that Mr. Nguyen created false dispensing records and indicated that one or more of the seven audited drugs were dispensed and provided to a patient when they were not provided to the patient. Mr. Jardine again submitted that this Allegation was proven and admitted to by Mr. Nguyen. The records show that the full prescriptions were dispensed by

Mr. Nguyen and this information was uploaded to Netcare and that “those records are not accurate and they convey a false impression.”

[75] Mr. Jardine submitted that Allegation #5, that Mr. Nguyen failed to properly create, maintain and store required pharmacy records and stored the pharmacy records of V-Can offsite, was admitted and proven. He said that the records were stored in the basement, which was not authorized by the College, and there was a duty to store them in the dispensary.

[76] The Notice of Hearing also contained several allegations of conduct which Mr. Jardine spoke to. Specifically, that Mr. Nguyen:

- a. Failed to demonstrate the ethical conduct and professional judgment expected and required of an Alberta pharmacist and a licensee.

Mr. Jardine said that Mr. Nguyen is a 26-year pharmacist, not a new licensee. He stated that it is improper for a pharmacist to get paid for drugs that he did not provide and that pharmacists owe an ethical duty to insurers to give them accurate information and not to accept payment that the pharmacist is not entitled to. He said that Mr. Nguyen failed to demonstrate professional judgment because he billed for drugs that he did not have, kept the money from the insurer, and because of his deficient record keeping practices.

- b. Failed to meet the record keeping obligations expected of an Alberta pharmacist and a licensee.

Mr. Jardine advised that Mr. Nguyen had admitted to failing to meet his record keeping obligations and the evidence clearly shows that he did not meet them.

- c. Created an environment in which your patients were at risk of harm based on the false records created.

Mr. Jardine said that the whole purpose of Netcare is to provide an accurate patient drug history and that Mr. Nguyen’s records were clearly not accurate. He said that this subverts the protection that Netcare offers to patients, the health system, and other

professionals. He also said that “inadequate is almost too weak a word” to describe Mr. Nguyen’s record keeping.

- d. Was contrary to accepted pharmacist standards and practice.

Mr. Jardine advised that Mr. Krempien had provided testimony that Mr. Nguyen practiced contrary to the terms of his contract with his insurance provider and that it was contrary to good pharmacist practice. Mr. Jardine noted that a prescription could have been filled by Mr. Nguyen and that 3 years later a balance owing was still sitting for the patient to pick up which is contrary to his insurance contract and accepted standards.

- e. Breached the trust placed in you as a pharmacist and a licensee by the Alberta College of Pharmacy.

Mr. Jardine argued that there is a huge trust that the College, the public, and insurers place on the pharmacy licensee and that “no regulated profession can be standing over the shoulders of their pharmacists all the time.” They trust that pharmacists are complying with the laws and standards of practice. Insurers pay out millions of dollars in insurance claims trusting the integrity of pharmacists and that those pharmacists are dispensing what they say they are dispensing through the computer system.

- f. Harmed the integrity of the profession.

Mr. Jardine stated that pharmacist conduct that shows pharmacists can’t be trusted is unprofessional and does great damage to the profession. Mr. Jardine said that if the public or insurers cannot trust the information that pharmacists are providing, the system cannot continue. He further stated that if the College discovers a problem like this, they have to respond to it. He said that the purpose of the complaints process and the act of self-regulation is protection of the public and protection of the integrity of the profession and this had been clearly breached in this case.

[77] The Notice of Hearing also alleged that Mr. Nguyen's conduct breached several statutes, regulations, and standards governing the practice of pharmacy.

- Standards 1 (sub-sections 1.1 and 1.2) and 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians;

Standard 1 (sub-section 1.1 and 1.2) states that pharmacists must practice in accordance with the law and with the letter and the spirit of the law which Mr. Jardine submitted was not done in this case. Standard 18 speaks to pharmacist record keeping. Mr. Jardine says the evidence shows the records were not accurate, there were simply not enough drugs purchased by the pharmacy to cover the dispensing claims. Further, Mr. Jardine stated that the records were not accurate because Mr. Nguyen said he owed patients' medication on a series of the claims. Mr. Jardine spoke to Standard 18.6 which states that the record must be current. He illustrated that patients picking up balances of prescriptions owing 2 years later is not current. Mr. Jardine then spoke to Standard 18.7 which states that records must be clear, concise and easy to read, and kept in a manner that facilitates sharing, ease of use, and retrieval. He said that if the patient has information on a slip of paper pertaining to owes and nothing is kept in the pharmacy it does not meet these requirements.

- Standards 1 (sub-sections 1.1 and 1.2) and 8 (sub-sections 8.1, 8.2 and 8.5a) of the Standards for the Operation of Licensed Pharmacies;

Mr. Jardine said that as a licensee Mr. Nguyen must also comply with the Standards for the Operations of Licensed Pharmacies. He highlighted that sections 1.1 and 1.2 speak to the pharmacy having to have general compliance with the law, similar to the Standards for Pharmacists. Standard 8 states that a pharmacy licensee has a particular duty pertaining to pharmacy records, that there must be an effective system in place and they must be maintained in the pharmacy unless they have been approved by the College to be stored in another area. Mr. Jardine argued that record keeping is a fundamental act of dispensing and the standards emphasize that.

- Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(ix), 10(1)(a), 10(1)(d)(iv) and 10(1.1) of the *Pharmacy and Drug Act*;

Mr. Jardine argued that allegations against a licensee are allegations of misconduct under the *Pharmacy and Drug Act*. Misconduct is defined as an act or omission that contravenes this Act. Actions that affect the trust the public has in pharmacists are detrimental to the best interests of the public and harms the integrity of the profession. A licensee is obligated to ensure that the licensed pharmacy operates in accordance with the Act. Mr. Jardine said that, with respect to record keeping, there are clear breaches in this case with the creation and maintenance, as well as the care and control, of the records, by the licensee.

- Sections 12(1) and 12(3) of the Pharmacy and Drug Regulation;

Mr. Jardine advised that these sections also deal with record keeping. He stated that records have to be kept in accordance with the Standards and they must be kept in the pharmacy unless there is authorization to keep them elsewhere. Mr. Jardine said that these were breaches that were clearly shown through the evidence.

- Principles 1 (1, 9, 12) and 10 of the ACP Code of Ethics;

Mr. Jardine argued in relation to these Principles that it is not in the best interests of the patient to upload records to Netcare that are not accurate. It is also against the best interests of the patient to submit information that shows the prescriptions have been filled when they have not and there are no invoices to support it. He said that this also has an impact on the patient's relationship with the insurer. There are no invoices to support the claims being made and the patient is part of submitting the claim. This puts the patients' conduct into question. Mr. Nguyen also took personal benefit as he submitted claims that there were no invoices to support which also speaks to his professional judgment. Mr. Jardine also said that Mr. Nguyen has not complied with the letter and spirit of the law, as shown through the evidence. With respect to being honest with his dealings with contractors, suppliers and any others encountered business dealings this would also include insurers. He said it is not honest to get paid for drugs supplied to patients when you cannot demonstrate you have the drugs and you admit

that you did not have the drugs. Mr. Jardine said that pharmacists must be accurate and transparent in the fees that are charged and this also applies to insurance companies as they have to depend on the integrity of the data being submitted to them as they hand out hundreds of thousands of dollars in insurance claims based upon the pharmacist's word.

- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(p)(xii) of the *Health Professions Act*;

Mr. Jardine advised that these statutes deal with Mr. Nguyen as a pharmacist. He stated that Mr. Nguyen has admitted to unprofessional conduct. A finding of unprofessional conduct does not require the individual to have bad intent. Mr. Jardine argued that Mr. Nguyen contravened the *Health Professions Act*, the Code of Ethics, and the Standards of Practice, in addition to the *Pharmacy and Drug Act* and the Regulations to the Act. He also clearly engaged in conduct that harms the integrity of the profession.

#### **Closing Submission by Mr. Kobewka**

[78] Mr. Kobewka provided closing submissions on behalf of Mr. Nguyen. Mr. Kobewka submitted that all of the admissions will stand with two exceptions. The exception noted was pertaining to Allegation 2(f) in the Notice of Hearing which listed a recovery amount of \$110,372.62. Mr. Kobewka submitted the recovery amount should be \$45,293.24 as demonstrated by Mr. Nguyen's calculations in Exhibit 6. The second exception was pertaining to Allegation 3 which stated, "submitted at least \$100,000 worth of claims." Mr. Kobewka advised the figure should be \$73,601.08 as shown by Mr. Nguyen's calculations in Exhibit 6, page 1. He further said that the drug cost used in calculations should be \$142,376.52, not \$176,000. He stated that this number is arrived at by adding the total paid column (\$125,168.28) with the patient paid column (\$24,276.17) and subtracting the professional fee paid (\$8,092.93), arriving at the drug cost paid amount which is \$142,376.52. Mr. Kobewka acknowledged that even if Mr. Nguyen's numbers are different, they are still a substantial amount.

[79] Mr. Kobewka said that Mr. Nguyen acknowledges the concern for records that were not complete and that it is a reasonable expectation to advise Netcare and ESC if the medication was not provided. He advised that the point about proper record keeping causing a concern for

patient care is fully understood by Mr. Nguyen. Mr. Kobewka submitted that Mr. Nguyen did not create a record to Netcare and to ESC that showed the patient did not receive the medication and that he should have done this. Mr. Kobewka asked the panel to consider that the Mr. Nguyen's records were not false or misleading, rather insufficient, as he did not provide further information to ESC and Netcare that the products were not dispensed.

[80] In his argument Mr. Kobewka spoke about Section 70 of the *Health Professions Act* which states that even if there are admissions the panel still has the responsibility to determine if the admission is accepted and whether the conduct is unprofessional.

#### **Final Closing Submissions by Mr. Jardine**

[81] Mr. Jardine spoke to the cost of the drugs. He said that Mr. Krempien had asked ESC to clarify the drug costs and the figures add up to approximately \$170,000 with a listing of the medications and the costs included in Exhibit 3, Tab 13 and 14. He concluded by saying there was agreement by both parties on admissions, agreement that they are unprofessional, and that the evidence establishes these things, even though some of the nuances may be different.

[82] Mr. Kobewka had no further comments for the panel.

#### **VI. FINDINGS**

[83] After considering the evidence that was submitted by agreement, and the submissions of the parties, the Hearing Tribunal determined that it would accept Mr. Nguyen's admissions that the Allegations in the Notice of Hearing had been proven, and his admission that each of the proven Allegations constituted unprofessional conduct.

#### **VII. REASONS**

[84] Mr. Nguyen admitted to all of the Allegations outlined in the Notice of Hearing. Based upon the evidence of Mr. Krempien, Mr. Nguyen, and the evidence tendered by the parties, it is clear to

the Hearing Tribunal that Mr. Nguyen failed to provide supporting invoices for 46 of the 63 claims included in the initial ESC audit, and that he provided no invoices or other documentation in support of the expanded audit.

[85] The Hearing Tribunal has also considered the evidence in relation to Mr. Nguyen's long delay in responding to the requests of ESC, his failure to respond to ESC's requests regarding the expanded audit, and that Mr. Nguyen was not forthright with ESC. The initial audit commenced on February 10, 2016. Mr. Nguyen supplied ESC with invoices to support only 17 of these claims on August 4, 2016, a time period of almost 6 months. On June 14, 2016, Mr. Nguyen was aware that ESC would conduct an expanded audit, however, Mr. Nguyen did not, at any time and despite repeated requests, send any invoices to support the expanded audit. Mr. Nguyen's response to his failure to provide the requested invoices was that he felt the expanded audit was not justified and he did not want to legitimize ESC's request by responding to it. Mr. Nguyen said he did not feel he was obligated to participate in the audit despite having a contractual agreement with the insurance company to do so.

[86] The Hearing Tribunal finds that Mr. Nguyen did not meet his obligations of prompt and forthright communication with the insurance company. The record and evidence of Mr. Krempien and Mr. Nguyen clearly demonstrate that Mr. Nguyen failed to comply with many requests for information and he ultimately stopped communicating with ESC in any fashion after February 10, 2017. The Hearing Tribunal noted that Mr. Nguyen also stopped submitting any claims to ESC on or about February 27, 2017 which was after he received notice from ESC that they would start initiating payment withholds on any future electronic billings. It appears that Mr. Nguyen has discontinued his ordinary practice of direct billing to ESC in order to avoid his repayment obligations to ESC. Mr. Nguyen testified that his patients now pay cash for their prescriptions and have to submit receipts to their insurance company to get reimbursed. The Hearing Tribunal is concerned Mr. Nguyen's patients now pay out of pocket for their prescriptions because he does not want ESC to withhold claim payments from him for amounts owing.

[87] Mr. Nguyen disputes the amount of money he owes ESC, despite Mr. Nguyen's admissions to all of the Allegations. The quantum of Mr. Nguyen's debt to ESC is not a matter for the Hearing Tribunal to decide. The relevant issue to Allegation 1 concerns whether Mr. Nguyen submitted claims for which

he failed to provide invoices for. This Allegation is borne out on the record and is admitted by Mr. Nguyen. Of the invoices that Mr. Nguyen did provide, those invoices supported only \$67,000 worth of drug purchases made during the audit period, which was a favorable amount to Mr. Nguyen as it assumed that all drugs purchased were for ESC clients. Mr. Nguyen billed ESC for approximately \$172,000 worth of claims during the audit period, the difference being over \$100,000.

[88] Mr. Nguyen provided evidence to the Hearing Tribunal that this amount is not the correct amount that he owes ESC. Although not material to the issues in the Allegations, and given that Mr. Nguyen had admitted to the Allegations, the Hearing Tribunal considered Mr. Nguyen's calculations. Based upon his calculations, he may owe \$75,000, which in his view, ought to be reduced to \$45,000. The Hearing Tribunal considered this evidence; however, the material issue is the total value of drugs that were purchased by Mr. Nguyen during the audit period and whether Mr. Nguyen had invoices to support that amount. The record is clear that he does not. Mr. Krempien's and Mr. Nguyen's evidence with respect to the total value of provided invoices differs by \$1,000 on this point, leading the Hearing Tribunal to conclude that \$67,000 is the accurate amount of drugs purchased for which Mr. Nguyen does not have invoices to support. There is disagreement by Mr. Nguyen about whether items such as professional fees should be included in the reimbursement amount to ESC. The Hearing Tribunal prefers Mr. Jardine's arguments, and supports the agreement between the parties, that regardless of the exact amount, it is substantial.

[89] The Hearing Tribunal notes that these calculations were provided after the ESC witness was given permission to leave prior to testifying and therefore was not available to give evidence regarding ESC's perspective on amounts Mr. Nguyen owes, other than what is contained in the record. The calculations were done the night before those amounts were tendered as evidence to the Hearing Tribunal, despite the amount of time since the Notice of Hearing was served.

[90] The Hearing Tribunal also finds, and Mr. Nguyen admits, Allegation 3 that Mr. Nguyen submitted at least \$100,000 worth of claims for the seven audited drugs, for which V-Can did not have sufficient stock to account for the amount allegedly provided to patients. Mr. Nguyen also testified that V-Can only has stock on hand for about 3 days-worth of inventory because he can have drugs delivered within one day. Based upon the totality of the evidence and Mr. Nguyen's admission, the Hearing

Tribunal finds that the V-Can did not hold sufficient stock to account for the amount allegedly provided to patients.

[91] In reference to Allegation 2(f), the Hearing Tribunal finds, and it is admitted, that Mr. Nguyen failed to pay the recovery amount of \$110,372.62 determined by the ESC Audit. This is an amount that was determined to be owed by ESC, not the College. Mr. Nguyen admits, and the Hearing Tribunal finds, that Mr. Nguyen has not paid the recovery amount owing to ESC. The evidence also demonstrates that Mr. Nguyen has failed to pay any monies back to ESC, regardless of what specific amount he may owe to ESC.

[92] The Hearing Tribunal also accepts the admission of Mr. Nguyen and the College's evidence that Mr. Nguyen created false patient dispensing records. Mr. Jardine argued that the records were false because there was not enough drug purchased to meet the amount that was said to have been dispensed, so the records must be false. Mr. Kobewka asked the Hearing Tribunal to consider that the records were not false but were insufficient as he had not submitted additional information to ESC and Netcare that the prescriptions were not dispensed. The Hearing Tribunal prefers Mr. Jardine's argument that the records were false. Even if the Hearing Tribunal had accepted Mr. Nguyen's general suggestion that he had a large amount of owed medication outstanding to patients, Mr. Nguyen would have had a professional obligation not only to inform ESC within a reasonable time that the drug had not ultimately been provided, but also to update the Netcare record to reflect what was actually dispensed and picked up by the patient. Neither of these steps (expected of any pharmacist acting diligently) were taken by Mr. Nguyen. Although the standards of practice do not explicitly define what timeframe is reasonable, the audited records spanned approximately two years. Mr. Nguyen was unable to demonstrate that he had ever corrected a patient record in this manner nor did he have a process in place to alert him to do so; therefore the records are more appropriately described as false, rather than merely insufficient, given that there was no evidence to suggest that Mr. Nguyen had any ability or intention of correcting these records, regardless of how much time has elapsed.

[93] The College submitted that Mr. Nguyen's credibility should be questioned because of shifting reasons for his actions, his failure to communicate with ESC, and his explanation of the matters at issue. At first, Mr. Nguyen said that the invoices were with his accountant. He then said

that the invoices were destroyed in a basement flood. There was a long period of time (6 months) for Mr. Nguyen to provide invoices to ESC, for which he ultimately only provided invoices to support 17 of the original 63 claims being audited, and none for the expanded audit. Reasons for the delay and his inability to provide the records included a death in Mr. Nguyen's family, a car accident, his accountant's holidays, and his basement flood. Mr. Nguyen also provided testimony about his practice in relation to patent "owes", which allowed patients to pick up owed prescription balances for up to 42 months. His reasoning for the lengthy period of time to allow a patient to collect the prescription include that patients without benefits can continue to receive medication past their insurable period, and that prescription drugs are less likely to expire before their use. Mr. Nguyen provided no specific examples of this and no evidence to support his "owe" system, such as documents to support which patients in fact were "owed" drugs, in what quantity, and when that owe would expire.

[94] The Hearing Tribunal heard from Mr. Kobewka that Mr. Nguyen may have had large amounts of inventory either before or after the audit period. Mr. Jardine demonstrated that the day the audit started, Mr. Nguyen had no inventory of the product, given Mr. Nguyen's screen shots evidence of his software system on the day after the audit period commenced. Mr. Nguyen also testified that he only keeps enough inventory on hand for about 20 prescriptions and he could get the stock from the wholesaler the next day, making the argument that he had large amounts of stock after the audit period ended unlikely.

[95] The Hearing Tribunal does not accept Mr. Nguyen's shifting explanations. Simply put, his explanations make no sense and are not credible. The events and practices Mr. Nguyen described might reasonably have delayed his full response to ESC or Mr. Krempien, but they do not address the substance of the Allegations.

[96] The Hearing Tribunal agrees that Mr. Nguyen's conduct constitutes unprofessional conduct as defined in s. 1(1)(pp) of the HPA, and breaches the provisions referred to in the Notice of Hearing. Specifically, Mr. Nguyen's conduct undermined the integrity of the profession, and breached a number of provisions of the Code of Ethics and Standards of Practice that regulated members are required to adhere to.

[97] Accurate record keeping is an obligation of the licensee as stated in the *Pharmacy and Drug Act*. Submitting patient dispense claims to ESC for drugs that he did not purchase created false records and he submitted false information to both ESC and Netcare. As these records were clearly not accurate, Mr. Nguyen failed to meet this obligation. Mr. Nguyen's activities clearly breached s. 10 of the *Pharmacy and Drug Act* which imposes requirements on a licensee to ensure that a licensed pharmacy operates in accordance with the Act. As a result of breaching this Act Mr. Nguyen has engaged in misconduct as defined in the Act. Creating false records harms the integrity of the profession and is detrimental to the best interests of the public. Mr. Nguyen's conduct constitutes clear contraventions of the Act. An insurer must be able to rely on the accuracy and truthfulness of the information that is submitted by a pharmacist. Mr. Nguyen's conduct is not minor or trifling and the Hearing Tribunal finds that Mr. Nguyen's actions were serious enough to constitute unprofessional conduct.

[98] Standard 8 of the Standards for the Operation of Licensed Pharmacies states that, as licensee, Mr. Nguyen must ensure that is an effective system for record keeping and retrieval of records. This is a fundamental aspect of dispensing and pharmacy practice. This was clearly not done by Mr. Nguyen as he could not locate or produce records of invoices related to the ESC audit. Additionally, on the matter of the extensive "owe" system he testified that he operated, he did not ensure that he met Standard 8.5 that the licensee has the equipment and systems necessary for the storage and retrieval of all document required. He testified that he had many patients who may or may not return up to 42 months later to pick up balances of prescriptions owed and was not able to show evidence of a system that tracked this. Additionally, by storing records off site without approval of the College of Pharmacy it is clear that Mr. Nguyen violated Standard 8.2 (b) that records must be maintained at the pharmacy unless there is permission from the Registrar.

[99] Mr. Nguyen's actions also violate ACP's Code of Ethics, Principle 9 which states "do not exploit a patient for personal advantage" along with Principle 1 (12) which states "do not allow my professional judgment to be impaired by personal or commercial benefits such as monetary or financial gain." The Hearing Tribunal agrees with the College's argument and accepts Mr. Nguyen's admission that these principles were not followed. It is not in the best interests of patient care to upload records into Netcare

that were not provided to patients and for which there were no invoices to support them being filled. This was clearly done to the benefit Mr. Nguyen and to the professional detriment of safe patient care.

[100] Principle 10 in the ACP Code of Ethics speaks to honesty and integrity. Point 2 under this principle specifically states that a pharmacist must be honest in their dealings with patients, other pharmacists, and others encountered in the business dealings related to the practice of pharmacy. The aforementioned activities admitted to by Mr. Nguyen clearly contravene Principle 10 of the ACP Code of Ethics.

[101] In conclusion, the Hearing Tribunal finds that the College has proven all the Allegations in the Notice of Hearing, on a balance of probabilities and that Mr. Nguyen is guilty of unprofessional conduct in relation to each of the Allegations.

Signed on behalf of the Hearing Tribunal this 14<sup>th</sup> day of March 2019.

*[Kelly Ostad]*

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KELLY OSTAD, CHAIR