

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 SANCTIONS**

July 2, 2019

## DECISION OF THE HEARING TRIBUNAL ON SANCTION

### I. INTRODUCTION

[1] In a decision dated March 15, 2019, the Hearing Tribunal made findings of unprofessional conduct against Si Huu Nguyen on the five Allegations referred to hearing (the “Decision on Merits”). The Complaints Director and Mr. Nguyen mutually agreed to provide written submissions to the Hearing Tribunal for its deliberation and consideration on the orders to be made under section 82 of the *Health Professions Act* (“HPA”). On June 3, 2019, the Hearing Tribunal held a meeting to consider the matter of sanctions in relation to the conduct of Mr. Nguyen.

[2] 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:

Fred Kozak, independent legal counsel to the Hearing Tribunal

[3] In the Hearing Tribunal’s written Decision on Merits dated March 15, 2019, the Hearing Tribunal found that the following Allegations had been factually proven and constituted unprofessional conduct:

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.

[4] Mr. Nguyen's 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.

## II. SUBMISSIONS ON PENALTY

[5] The Hearing Tribunal received the following written submissions from the parties on sanction:

- 1) Complaints Director's Written Submissions on Sanction dated April 18, 2019;
- 2) Mr. Nguyen's Written Submissions on Sanction dated May 2, 2019;
- 3) The Complaints Director's Reply Submissions on Sanction dated May 8, 2019.

### Submissions on behalf of the Complaints Director

[6] David Jardine, legal counsel, made submissions on behalf of the Complaints Director. In his submission, Mr. Jardine identified that discipline proceedings are an important part of a self-regulating profession such as pharmacy. They serve to regulate the members of the profession through a process where complaints can be made against a member of the profession and dealt with by a Hearing Tribunal comprised of registered pharmacists and a public member. These proceedings have a number of important purposes which include protection of the public, maintaining the integrity of the profession, fairness to the member, and deterrence (both general and specific).

[7] Mr. Jardine made submissions regarding the factors referred to by the Court in *Jaswal v. Newfoundland Medical Board* when considering appropriate sanctions. Mr. Jardine submitted that the conduct in issue was very serious. He argued that Mr. Nguyen engaged in a pattern of unprofessional conduct that repeatedly breached the ethical and professional duties of a pharmacist over an extended period of time. He said that this conduct goes to the heart of the professional and ethical obligations of a pharmacist and that Mr. Nguyen's failure to cooperate with the audit process strikes at the very core of the integrity of the profession and the integrity of Mr. Nguyen as a member of the profession. Mr. Jardine cited that Mr. Nguyen was an experienced pharmacist whose conduct cannot be mitigated on the basis of lack of experience. He noted that there have been no previous findings of unprofessional conduct against Mr. Nguyen. Mr. Jardine argued that Mr. Nguyen's admission to the allegations "should not

necessarily weigh in Mr. Nguyen's favor as after providing his oral admission to his conduct on the day of the hearing he then provided 'shifting explanations' for his conduct, which the Hearing Tribunal (at paragraph 95 of its decision) found made 'no sense' and were 'not credible'."

[8] Mr. Jardine also noted that as far as the Complaints Director is aware, Mr. Nguyen failed to repay the money he owes to ESC. Mr. Jardine said that there is no evidence that Mr. Nguyen has suffered any penalties, financial or otherwise, as a result of the allegations made against him and that he received in excess of \$100,000 from ESC for claims that could not be substantiated. Although there was no evidence of an offended patient, he argued that in the Hearing Tribunal's March 15, 2019 decision it was stated that "it is not in the best interests of patient care to upload records in Netcare that were not provided to patients and for which there were no invoices to support them being filled."

[9] Mr. Jardine submitted that it is vital that Mr. Nguyen be aware that his conduct is not condoned by the College. He said it is also vital that the sanctions serve as a mechanism for general deterrence to other members of the profession as others have to 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 the pharmacists, and that those pharmacists are dispensing what they are submitting. Mr. Jardine further stated that the public and insurers must be able to see that the College takes this type of conduct very seriously and that such conduct will not be tolerated and that steps have been taken to sanction the conduct to deter future occurrences. Mr. Jardine said that the conduct in this case is clearly far beyond the range of permitted conduct and the proven allegations demonstrate an unwillingness to comply with the fundamental duties of a pharmacist and licensee. He said that "Mr. Nguyen's conduct included a repeated pattern of dishonest interactions with an insurer that ultimately culminated in a failure to cooperate with the insurer."

[10] Mr. Jardine provided the Hearing Tribunal with a copy of a Hearing Tribunal's decisions in a previous matter involving Ms. Shereen Elbayomy. Ms. Elbayomy was found guilty of allegations that she submitted approximately \$300,000 worth of claims by the pharmacy to Alberta Blue Cross without being able to provide the required supporting invoices and that she failed to cooperate with the investigation. The Hearing Tribunal imposed a number of orders on Ms.

Elbayomy, including cancellation of her registration with the College, issuance of the maximum fines of \$10,000 for each of the five proven allegations, and orders for payment of the costs of the investigation and hearing. Ms. Elbayomy was also prohibited from serving as a licensee, proprietor or pharmacy owner for a 10-year period. Mr. Jardine said that this case had an added element of a failure to cooperate with the discipline process that led to the Complaints Director to request the cancellation of her registration but that her case otherwise mirrored the seriousness of the type of conduct engaged in by Mr. Nguyen.

[11] The Complaints Director requested the Hearing Tribunal impose the following orders under section 82 of the HPA:

- 1) Mr. Nguyen's practice permit is suspended for 24 months, starting on the date of receipt of the Hearing Tribunal's written decision on sanctions;
- 2) Mr. Nguyen shall receive a reprimand, which the Hearing Tribunal's written decision will serve as;
- 3) Mr. Nguyen shall pay a fine of \$10,000 for each of Allegations, 1,2,3,4 and a fine of \$2,500 for Allegation 5, for total fines of \$42,500, payable within 180 days of the date of the Hearing Tribunal's written decision on sanctions on a payment schedule acceptable to the Hearings Director;
- 4) Mr. Nguyen shall not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy in the next 10 years, starting on the date of receipt of the Hearing Tribunal's written decision on sanctions;
- 5) Mr. Nguyen shall provide a copy of the Hearing Tribunals' written decision in this matter to any pharmacy employer or licensee for a period of five years after he reinstates on the clinical pharmacy registrar following his suspension; and
- 6) Mr. Nguyen shall pay the costs of the investigation and hearing of this matter within 180 days from the date of receipt of the Hearing Tribunal's written submissions on sanctions on a payment schedule acceptable to the Hearings Director.

[12] The Complaints Director also submitted that the Hearing Tribunal should consider sending a copy of its written decision in this matter to the Minister of Justice and the Solicitor General.

#### **Submissions on behalf of Mr. Nguyen**

[13] Sid Kobewka, legal counsel, made written submissions on behalf of Mr. Nguyen. Mr. Kobewka addressed the relevant factors in assessing sanctions as per the case of *Jaswal v. Newfoundland Medical Board*. Mr. Kobewka agreed that the allegations are serious since they touch on the obligations of a pharmacist and that the public and insurers rely on high ethical

standards for pharmacists. He stated that “the member submits that the member’s failure to provide timely replies to ESC should be considered in the context of the conclusion that events and practices described by the member might have delayed his full response.” He stated that Mr. Nguyen had reason to dispute ESC’s claim that they were owed \$110,372.62 as “ESC was claiming more than they were entitled to and this was a factor leading to a breakdown in communication between Mr. Nguyen and ESC.” He argued that this does not excuse Mr. Nguyen’s failure to respond but it is a factor that should be considered when evaluating the nature and gravity of Mr. Nguyen’s breach of professional duty.

[14] Mr. Kobewka acknowledged Mr. Nguyen’s experience as a pharmacist. He said that in the hearing, Mr. Nguyen showed a lack of understanding about what information from his dispensing software was conveyed to ESC and Netcare.

[15] Mr. Kobewka said that Mr. Nguyen admitted the allegations at the start of the hearing and repeated his admission at the end of the hearing and offered an apology. He said that Mr. Nguyen’s explanations were not aimed at retracting the admissions but instead were directed towards their nature and gravity.

[16] Mr. Kobewka further advised that Mr. Nguyen has paid ESC \$50,000 and this should be considered a factor in establishing Mr. Nguyen’s acknowledgment of what has occurred. Mr. Kobewka said that there is no evidence that any patient was harmed and that Mr. Nguyen also had no prior complaints or convictions.

[17] Mr. Kobewka agreed that there is a need for Mr. Nguyen, the profession, insurers, and the public to know that this unprofessional conduct is unacceptable and the College is seen as imposing an appropriate sanction to address the severity of the offence. Mr. Kobewka stated that the proven allegations are serious but “that their level of severity is not on the highest end of severity which would be the case if patients were harmed, medication was dispensed that was not prescribed, patients were deceived, documents were falsified, there were repeated offences or reprimands, or the amount owing to the insurer was a larger amount.”

[18] Mr. Kobewka submitted that the decision referred to by the Complaints Director concerning Ms. Elbayomy is distinguishable, and Ms. Elbayomy’s conduct was far more serious

and that the sanctions for Mr. Nguyen should not mirror the sanction in the Elbayomy case. Mr. Kobewka argued that Ms. Elbayomy submitted \$300,000 worth of claims but that “Mr. Nguyen’s case concluded that the amount was \$67,000.” He further said that Ms. Elbayomy created falsified records whereas Mr. Nguyen’s falsification of records was his failure to provide subsequent records within a reasonable time to correct the fact that medication was not provided to clients.” Ms. Elbayomy dispensed drugs when she was not authorized to do so and in quantities in excess of the prescriptions, which is not true in the case of Mr. Nguyen. Ms. Elbayomy dispensed prescriptions prior to the date permitted in the prescription whereby Mr. Nguyen followed the prescriptions and dispensed only authorized prescriptions. Ms. Elbayomy also failed to create or retain original prescriptions while Mr. Nguyen both created and retained the original prescriptions. Mr. Kobewka said that while Ms. Elbayomy failed to cooperate with the investigation, Mr. Nguyen fully cooperated. As well, Ms. Elbayomy did not admit the allegations while Mr. Nguyen admitted the allegations. Mr. Kobewka also said that Ms. Elbayomy received a substantial financial gain while Mr. Nguyen paid back the insurer and did not receive a large financial gain like Ms. Elbayomy, perhaps only \$17,000 according to Mr. Nguyen’s calculations.

[19] Mr. Kobewka introduced Hearing Tribunal decisions in the case of Tuyen Huynh and Calgary Medical Pharmacy and Loi Nguyen and Saigon pharmacy. He said that these were cases from 2010 where the members were found to have insufficient quantities of medication to match the amount billed and this occurred over a period of 1.5 years. Additionally, he noted that the members were found to have failed to cooperate with the insurer by failing to provide documents. They were ordered to pay a fine of \$2,000 for one member and \$3,500 for the other member for a total of 4 allegations each. He also said they were ordered to pay 50% of the hearing costs and restricted as acting as licensed pharmacists for 4 months for one member and 2 years for the other member.

[20] Mr. Kobewka also provided other information to consider, including information about Mr. Nguyen’s family, education, and experience. He stated that “during his operation of V-Can Pharmacy, Mr. Nguyen had a number of insurers conduct audits of his pharmacy including Blue Cross, Social Services, Indian Affairs, Greenshield, Assure, Claim Service and Veteran Affairs and

these audits were all completed to the satisfaction of the insurers.” He also stated the finding of the Hearing Tribunal will have a significant effect on Mr. Nguyen’s reputation and his ability to remain as a pharmacist. If he is not able to work as a pharmacist, he will have very limited opportunity to earn a livelihood.

[21] Mr. Kobewka’s proposed the following orders:

- 1) Mr. Nguyen’s practice permit be suspended for 12 months commencing January 1, 2019;
- 2) Mr. Nguyen receive a reprimand and that this be published along with the decision of the Hearing Tribunal;
- 3) Mr. Nguyen pay a total fine of \$10,000 for Allegations 1, 2, 3, 4, and 5;
- 4) Mr. Nguyen shall not serve as a pharmacy licensee, proprietor or own all or part of a pharmacy for two years starting on January 1, 2019;
- 5) If Mr. Nguyen applies to become a pharmacy licensee, then he shall first satisfy the College that he has established sufficient records to comply with his obligations to insurers and that he will submit to and pay the expenses for a yearly audit to be conducted by the College for a period of three years after obtaining the pharmacy license;
- 6) Mr. Nguyen will provide a copy of the Hearing Tribunal’s written decisions in this matter to any pharmacy employer or licensee for a period of five years from January 1, 2019; and
- 7) Mr. Nguyen will pay 1/3 of the cost of the investigation within 24 months of the Hearing Tribunal’s decision on sanctions.

#### **Reply on Behalf of Complaints Director**

[22] Mr. Jardine provided a reply on behalf of the Complaints Director to Mr. Kobewka’s submission. Mr. Jardine said that the Hearing Tribunal found that the invoices supplied by Mr. Nguyen accounted for \$67,000 worth of drugs billed to ESC. However, as Mr. Nguyen billed \$172,000 to ESC, the Hearing Tribunal found that over \$100,000 of drug costs billed remained unaccounted for. Mr. Jardine advised that Mr. Nguyen’s payment to ESC of \$50,000 should be treated as only a partially mitigating factor as, according to his own accounting, he still owes ESC \$17,000 and according to the Hearing Tribunal’s findings he still owes over \$50,000. Additionally, ESC has not accepted that this matter is closed or that it has been fully reimbursed.

[23] Mr. Jardine responded that he was not sure what the College was supposed to do to ensure Mr. Nguyen was trained on his own software and there was no excuse for his failure to maintain accurate pharmacy records which are a fundamental aspect of pharmacy practice.

[24] Mr. Jardine provided information replying to Mr. Kobewka's statement that "a number of audits of his pharmacy were completed to the satisfaction of insurers" was misleading. Mr. Jardine submitted information that Mr. Nguyen previously owned two different pharmacies that had been the subject of complaints by Alberta Blue Cross following unsuccessful audits. Due to administrative delays the complaints were eventually dismissed. Mr. Jardine also advised that it is the Complaints Director's understanding that V-Can pharmacy did not secure a contract with Alberta Blue Cross which is very unusual for pharmacies in Alberta.

[25] Mr. Jardine agreed that the severity of unprofessional conduct in the Elbayomy case can be distinguished from Mr. Nguyen's. Mr. Jardine said that Mr. Nguyen created false dispensing records such that it is unclear whether all the drugs were dispensed and which patient was dispensed what drug. Like Ms. Elbayomy, Mr. Nguyen received payments of over \$100,000 based on records he provided that were not accurate and were not supported by drug invoices. Mr. Jardine argues that while their conduct is factually different, they are similarly unacceptable. Neither Mr. Nguyen, nor Ms. Elbayomy, dispensed drugs in accordance with their patients' prescriptions and they received payment for drugs that were not actually dispensed to the patients. Mr. Jardine further submitted that Mr. Nguyen consistently provided different explanations for his conduct throughout the discipline proceedings and that the Hearing Tribunal found that Mr. Nguyen's explanations were not credible. These points diminish any suggestion that Mr. Nguyen cooperated with the investigation and the hearing. Mr. Jardine also said that the Hearing Tribunal found that over \$100,000 of drugs were unaccounted for which means that, even now, substantial monies are owed to the insurer that Mr. Nguyen still refuses to pay.

[26] In regards to the Huynh case, Mr. Jardine submitted that the case is from 2010 and that the public and the profession's tolerance for such conduct has changed. Also, not all allegations were proven in the Huynh case which affected the decision on costs, as costs are generally not payable for allegations that are not proven.

### III. DECISION AND REASONS FOR DECISION

[27] The Hearing Tribunal carefully considered the submission of the parties. The Hearing Tribunal makes the following orders pursuant to s. 82 of the HPA:

1. Mr. Nguyen's practice permit shall be suspended for a period of twelve (12) months, starting on the date of receipt by Mr. Nguyen of the Hearing Tribunal's written decision on sanctions.
2. Mr. Nguyen shall receive a reprimand and the Hearing Tribunal's written decision on sanctions shall serve as the reprimand.
3. Mr. Nguyen shall pay a fine of \$10,000 for Allegations 1 and 2 combined, \$10,000 for Allegation 3, and \$10,000 for Allegation 4, for total fines of \$30,000. Fines will be payable within twenty four (24) months of the date of the Hearing Tribunal's written decision on sanctions on a payment schedule acceptable to the Hearings Director.
4. Mr. Nguyen shall not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy in the next five (5) years, starting on the date of receipt by Mr. Nguyen of the Hearing Tribunal's written decision on sanctions.
5. Mr. Nguyen shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter within a period of twenty four (24) months from receipt by Mr. Nguyen of the Hearing Tribunal's written decision on sanctions and the statement of costs from the Alberta College of Pharmacists. Payment will be on a schedule acceptable to the Hearings Director.
6. Mr. Nguyen shall provide a copy of the Hearing Tribunal's written decisions in this matter to any pharmacy employer or licensee for a period of five years following his reinstatement on the clinical pharmacy register.
7. Mr. Nguyen shall register for and successfully complete the Alberta College of Pharmacy's Ethics and Jurisprudence Exam, at his own expense, prior to being reissued a pharmacy practice permit with the Alberta College of Pharmacy.

[28] The Hearing Tribunal specifically considered the submissions of the parties with respect to the factors referred to in *Jaswal*. The Hearing Tribunal finds that the proven allegations are very serious issues. Trust was clearly breached with the insurer which has the potential to have implications across the profession and into the public purview. The Hearing Tribunal finds that

Mr. Nguyen does not understand the regulations and rules under which he practices as a clinical pharmacist or licensee.

[29] Appropriate recording keeping goes to the heart of the integrity of the profession. There must be confidence that the information submitted to insurers is truthful and accurate. The conduct in question harms the integrity of the profession. The Hearing Tribunal finds that, although the “owe” system in place at V-Can Pharmacy was not completely made up, the lack of appropriate oversight and follow up with “owes” gets at the heart of what a pharmacist is expected to do for patients. Mr. Nguyen found a grey area in pharmacy practice and exploited it for his own financial gain. In this case, both specific and general deterrence of this type of behavior are major factors that are relevant to sanction.

[30] Mr. Nguyen is a very experienced pharmacist who has operated, bought, and sold pharmacies in the past. The Hearing Tribunal agrees that experience is not a mitigating factor in this case. The Hearing Tribunal notes that Mr. Nguyen has no previous findings of unprofessional conduct. The Hearing Tribunal also considered that this is not an isolated one-time incident, with the conduct in question taking place repeatedly over a known period of two years.

[31] The Hearing Tribunal accepts Mr. Jardine’s argument that Mr. Nguyen’s admission to the allegations “should not necessarily weigh in Mr. Nguyen’s favor as after providing his oral admission to his conduct on the day of the hearing he then provided ‘shifting explanations’ for his conduct, which the Hearing Tribunal at paragraph 95 of its Decision on Merits found made ‘no sense’ and were ‘not credible’.” The Hearing Tribunal does not accept Mr. Kobewka’s argument that the lengthy discussions and alternate reasons around amounts owed to ESC during the hearing were “not aimed at retracting the admissions but instead were directed towards their nature and gravity.” This was also a factor in the Hearing Tribunal’s decision on costs.

[32] The Hearing Tribunal also accepts Mr. Jardine’s argument that Mr. Nguyen’s \$50,000 payment to ESC should be treated only as a partially mitigating factor because there are still significant monies owed to ESC and ESC does not consider the matter resolved. The Hearing Tribunal also notes that the \$50,000 was paid to ESC on April 24, 2019, after the March 15, 2019 Hearing Tribunal’s Decision on Merits was released.

[33] The Hearing Tribunal, in the Complaints Director's response to Mr. Kobewka's submission, heard information about previous complaints regarding Mr. Nguyen's billing practices. The Hearing Tribunal accepts Mr. Jardine's argument that Mr. Kobewka's statement that previous audits "were completed to the satisfaction of insurers" is not accurate. However, the Hearing Tribunal did not place significant weight on this. This was a previous complaint that did not go to hearing because of administrative delays. The Hearing Tribunal finds that this information should not have an impact on the outcome of the decision on sanctions.

[34] Both parties made submissions with respect to Hearing Tribunal's decisions in the case of Ms. Elbayomy. Both cases illustrate serious unprofessional conduct that will attract serious consequences. The Hearing Tribunal found these cases to have similarities but there were differences between the two. The Hearing Tribunal partially accepts Mr. Kobewka's argument that Mr. Nguyen cooperated with the College's investigation while Ms. Elbayomy failed to participate in any fashion. Mr. Nguyen did admit the allegations at the Hearing Tribunal while Ms. Elbayomy failed to respond to ACP or participate in the hearing. The Hearing Tribunal finds that, although Mr. Nguyen admitted to the allegations, there were many shifting explanations to dispute the monies owed which the Hearing Tribunal did not find credible. Both Mr. Nguyen and Ms. Elbayomy failed to fully cooperate with the third-party insurance audits. The Hearing Tribunal also finds that both cases involved significant sums owed to the insurance companies and that the cases should not be differentiated based upon the sums that were misappropriated. The common theme between the two cases is the expectation of cooperation and ethical behavior in responses to audits by third party payers, which was significantly lacking in the case of Mr. Nguyen and completely lacking in the case of Ms. Elbayomy. Overall, the Hearing Tribunal finds that the case of Mr. Nguyen was very serious. However, the Hearing Tribunal finds the case of Ms. Elbayomy was extremely serious as there was no cooperation by the member (the member could not be located) and the member did not participate in the Hearing Tribunal process in any way.

[35] Mr. Kobewka introduced the cases Tuyen Huynh and Calgary Medical Pharmacy and Loi Nguyen and Saigon pharmacy in his submissions to the Hearing Tribunal. The Hearing Tribunal considered these cases but prefer Mr. Jardine's arguments that the cases were from 2010 and

that the public and the profession's tolerance for such conduct has changed. The Hearing Tribunal also accepts Mr. Jardine's distinction regarding costs in the cases cited by Mr. Kobewka, as not all allegations were proven, which affected the decision on costs.

[36] The Hearing Tribunal finds that a reprimand is appropriate in this case and this decision will serve as the reprimand. In addition, given the seriousness of the conduct and the pattern of repeated conduct over a lengthy period of time, a significant suspension is warranted. A twelve (12) month suspension is appropriate in this case.

[37] With respect to the fines, the Hearing Tribunal accepts Mr. Kobewka's argument that "Allegations 1 and 2 although separate allegations are statements of the various incidents of the same conduct" and "these two allegations should be considered as one." The Hearing Tribunal finds that Allegations 3 and 4 are very serious and as such a fine of \$10,000 for each allegation is appropriate. With respect to Allegation 5, the Hearing Tribunal finds that this allegation, although proven, was minor and did not require a fine as a deterrent. The fact that the records were stored off site is technically correct. They were stored in the basement of V-Can pharmacy, which is not unreasonable, but the appropriate permissions were not granted by the College. Although the allegation was proven, the Hearing Tribunal felt that issuing a fine for this was not necessary when looking at the overall sanctioning it has applied to Mr. Nguyen. \$30,000 in fines is a substantial amount. When considered with the suspension of twelve months, the full costs of the hearing and investigation, and Mr. Nguyen not being able to be an owner/proprietor/licensee for five years, the Hearing Tribunal finds the overall financial impact of the fines was appropriate and addressed the seriousness of the conduct, the principles of deterrence and penalty.

[38] On behalf of the Complaints Director, Mr. Jardine submitted that Mr. Nguyen shall not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy in the next 10 years, starting on the date of receipt of the Hearing Tribunal's written decision on sanctions. Mr. Kobewka asked for a 2-year prohibition in this regard, starting from January 1, 2019. The Hearing Tribunal notes that in the case of Ms. Elbayomy there was a 10-year prohibition that was ordered, however the Complaints Director had asked for 5 years in that case. Although the Hearing Tribunal felt that Mr. Nguyen's case was very serious, there were several additional aggravating

factors that made Ms. Elbayomy's case more serious as previously noted. The Hearing Tribunal finds that a 5-year prohibition from the date of receipt of the decision balances the need to satisfy specific and general deterrence with fairness to the member in this case.

[39] The Hearing Tribunal finds that Mr. Nguyen requires training in regards to the laws and ethics involved in pharmacy practice and has ordered him to register for and successfully complete the Ethics and Jurisprudence examination. The proven allegations are very serious in nature and speak to the heart of pharmacy practice and the high degree of ethics required to maintain public and stakeholder confidence. Additional training and assessment in this regard would be a benefit to Mr. Nguyen as well the profession and its stakeholders by providing Mr. Nguyen the opportunity to gain knowledge in areas he has demonstrated deficiency in through the proven allegations against him.

[40] Mr. Kobewka has submitted, as part of the sanctions, Mr. Nguyen should first satisfy the College that he has established sufficient records to comply with his obligations to insurers and that he will submit to and pay the expenses for a yearly audit to be conducted by the College for a period of three years after obtaining a pharmacy license. The Hearing Tribunal finds that putting further burden on the College through audits to ensure that Mr. Nguyen complies with his obligations to insurers is not appropriate. It is expected that once Mr. Nguyen returns to practice, he will be in compliance with both the letter and spirit of all laws, regulations and standards pertaining to pharmacy practice, as all other regulated members are.

[41] The Hearing Tribunal considered the costs to be awarded in this case. The Hearing Tribunal finds that this is an appropriate case to order full costs of the investigation and hearing, to be payable within twenty-four months. The Complaints Director had no choice but to advance this case to a hearing. The Complaints Director called evidence and a witness (from ESC) that were necessary for the case as there was no admission to the allegations prior to the start of the hearing. Additionally, the length of the hearing was directly due to the time required for Mr. Nguyen to provide shifting explanations for the behavior that the Hearing Tribunal did not find credible. The burden of costs should not be placed on the membership of the College as it is Mr. Nguyen's proven unprofessional conduct that is the reason for the hearing and the costs of such.

[42] The Hearing Tribunal has ordered Mr. Nguyen to have twenty-four (24) months to pay the fines and costs of the Hearing Tribunal. Due to the large sums the Hearing Tribunal felt that this was an appropriate timeframe for Mr. Nguyen to be able to repay the amounts as he will be unable to work as a pharmacist for twelve months. The Hearing Tribunal was concerned that not providing Mr. Nguyen enough time to pay in the context of the twelve-month suspension may be perceived as essentially striking Mr. Nguyen from the register beyond his suspension.

[43] The Hearing Tribunal feels that the orders properly reflect the seriousness of the conduct. The orders are appropriate in that they help to ensure the public is protected from future misconduct of a similar nature by applying the principles of specific and general deterrence and that the integrity of the profession is maintained in the eyes of the public and the profession. Further, the orders are consistent with prior decisions of the Hearing Tribunal.

#### **IV. ORDERS**

[44] The Hearing Tribunal makes the following orders pursuant to s. 82 of the HPA:

1. Mr. Nguyen's practice permit shall be suspended for a period of twelve (12) months, starting on the date of receipt by Mr. Nguyen of the Hearing Tribunal's written decision on sanctions.
2. Mr. Nguyen shall receive a reprimand and the Hearing Tribunal's written decision on sanctions shall serve as the reprimand.
3. Mr. Nguyen shall pay a fine of \$10,000 for Allegations 1 and 2 combined, \$10,000 for Allegation 3, and \$10,000 for Allegation 4, for total fines of \$30,000. Fines will be payable within twenty-four (24) months of the date of the Hearing Tribunal's written decision on sanctions on a payment schedule acceptable to the Hearings Director.
4. Mr. Nguyen shall not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy in the next five (5) years, starting on the date of receipt by Mr. Nguyen of the Hearing Tribunal's written decision on sanctions.
5. Mr. Nguyen shall be responsible for payment of all costs, expenses and fees related to the investigation and hearing of this matter within a period of twenty-four (24) months from receipt by Mr. Nguyen of the Hearing Tribunal's written decision on sanctions and the statement of costs from the Alberta College of Pharmacists. Payment will be on a schedule acceptable to the Hearings Director.

6. Mr. Nguyen shall provide a copy of the Hearing Tribunal's written decisions in this matter to any pharmacy employer or licensee for a period of five years following his reinstatement on the clinical pharmacy register.
7. Mr. Nguyen shall register for and successfully complete the Alberta College of Pharmacy's Ethics and Jurisprudence Exam, at his own expense, prior to being reissued a pharmacy practice permit with the Alberta College of Pharmacy.

[45] The Hearing Tribunal also directs the Hearings Director to provide a written copy of its Decision on Merits dated March 15, 2019 and a copy of this decision on sanction to the Minister of Justice and Solicitor General.

Signed on behalf of the Hearing Tribunal this 2<sup>nd</sup> day of July, 2019.

*[Kelly Olstad]*

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KELLY OLSTAD, CHAIR