

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

SHIVANGI PATEL

Registration number: 15498

DECISION OF THE HEARING TRIBUNAL

May 11, 2020

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Alberta pharmacist Ms. Shivangi Patel, (registration number 15498).

The following members of the Hearing Tribunal were in attendance:

Sarah Gutenberg, pharmacist and Chair
Teryn Wasileyko, pharmacist
Hugo Leung, pharmacist
Dave Rolfe, public member.

The hearing took place on January 21, 2020 at the Alberta College of Pharmacy, 2nd floor Conference Centre, 8215- 112 Street, Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were:

Ms. Ayla Akgungor, independent legal counsel to the Hearing Tribunal
Ms. Annabritt Chisholm, counsel for the Complaints Director
Ms. Aman Athwal, counsel for the Complaints Director
Mr. James Krempien, Complaints Director, Alberta College of Pharmacy.
Ms. Shivangi Patel, the investigated member
Mr. Billal Saleem, counsel for Ms. Patel

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing. There were no applications for the hearing or part of the hearing to be held in private.

II. ALLEGATIONS

The following allegations were made against Ms. Patel:

IT IS ALLEGED THAT, on the evening of May 25, 2019, while you were a registered Alberta pharmacist practicing at Shoppers Drug Mart #2374 (the “Pharmacy”), you:

1. Knowingly dispensed 35 mg of crushed Apo-Prednisone to Patient Y in substitute for his prescription for 16 mg of Suboxone (the “unauthorized drug substitution”);
2. Failed to take appropriate steps to care for Patient Y, the particulars of which include when you

- a. failed to notify anyone whose care for Patient Y may have been affected by the unauthorized drug substitution, including the licensee of the Pharmacy, other staff at the Pharmacy or Patient Y's physicians;
 - b. failed to notify Patient Y about the unauthorized drug substitution; and
 - c. failed to initiate a drug error report for the unauthorized drug substitution.
3. Failed to admit to the unauthorized drug substitution, the particulars of which include when you were first questioned by:
- a. Patient Y; and
 - b. Mr. T.
4. Failed to accept responsibility for your actions when, in regards to the unauthorized drug substitution, you asked the licensee not to contact the Alberta College of Pharmacy and to convince Patient Y not to contact the Alberta College of Pharmacy.

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist;
- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession;
- d. Created the potential for patient harm; and
- e. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist.

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

- Standards 1 (including sub-sections 1.1, 1.2 and 1.9) and 2 (including sub-section 2.1(e)) of the Standards of Practice for Pharmacists and Pharmacy Technicians; and
- Principles 1 (including sub-sections 1(1), 1(2), 1(7) and 1(8)) and 10 (including sub-sections 10(1), 10(2) and 10(8)) of the ACP Code of Ethics;

and that your conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to the provisions of sections 1(1)(pp)(i), 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*.

III. EVIDENCE

Exhibits

The following documents were entered as evidence before the Hearing Tribunal:

- Exhibit 1 Notice of Hearing;
- Exhibit 2 Record of Decision referring the complaint to hearing, dated August 6, 2019;
- Exhibit 3 Admission of Unprofessional Conduct; and
- Exhibit 4 Investigation Records dated June 26, 2019. These records itemized the full investigation by the Complaints Director, Mr. Krempien and formed the basis of the allegations against Ms. Patel. These records were made available to all parties in advance of the hearing. Ms. Patel and her counsel received the full contents of this Exhibit.

Evidence of Mr. James Krempien

Ms. Chisholm, counsel for the Complaints Director, called one witness, Mr. James Krempien, Complaints Director for the Alberta College of Pharmacy.

Mr. Krempien testified that he graduated from the University of Alberta Faculty of Pharmacy in 1991 and registered as a pharmacist with the Alberta Pharmaceutical Association that same year. Mr. Krempien worked as a pharmacist with the Canadian Armed Forces until 1999. He practiced as a staff pharmacist and licensee in Calgary and Edmonton until 2008 at which point, he took on the position as the Complaints Director with the Alberta College of Pharmacy. In this role he described his primary responsibility as resolving complaints and concerns regarding the practice of pharmacists, pharmacy technicians and the operation of licensed pharmacies in Alberta.

Mr. Krempien identified and described Exhibit 2, which is the Record of Decision referring the complaint to a hearing.

Mr. Krempien described Ms. Patel's current registration status with the College as currently licensed on the clinical register without conditions. She has been registered with the College since April 2, 2019. Prior to that date she was on the intern pharmacist register.

Mr. Krempien reviewed the investigation records. Mr. Krempien explained that he had received an initial complaint from Ms. [REDACTED], pharmacist owner of Shoppers Drug Mart #2374 (the "Complainant"). The concern set out in the complaint was that on the evening of Saturday, May 25, 2019, just before close at midnight, Patient Y came into the pharmacy to

receive his daily witnessed ingestion of Suboxone. Instead of being provided with Suboxone, Patient Y was given an unauthorized drug substitution of Prednisone. Patient Y came into the pharmacy at approximately 11:50 to 11:55 pm.

Included with the complaint were witness statements from pharmacy employees as well as video evidence of the events that occurred on May 25, 2019.

Prior to Patient Y's attendance at the pharmacy it was reported that Ms. Patel had already closed and locked the safe in which the Suboxone was stored. When Patient Y came to the Pharmacy and requested his daily witnessed ingestion of Suboxone, Ms. Patel attempted to open the safe with the dial and the key but the safe would not open.

Ms. Patel had a discussion with Patient Y, and subsequent to this discussion Ms. Patel took a medication from the general stock area of the Pharmacy, from the stock bottle, into the back room of the Pharmacy where the narcotic safe is kept. She withdrew some tablets, crushed the tablets and presented the crushed powder to Patient Y for his ingestion.

There was a conversation between Ms. Patel and Patient Y. Then Ms. Patel went back into the back room of the pharmacy, selected more tablets, crushed these tablets and took the total powder out front to the dispensary counter and Patient Y was then administered the dose of the crushed powder.

Patient Y was reported to have made some comments that the powder was not correct, and an error may have occurred. It was reported that Ms. Patel denied that a mistake had been made.

Patient Y then left the pharmacy premises and returned after a minute or two after the premises had been closed. He asked to speak to someone about a suspected drug error. He initially spoke to the front store staff and security guard. Ms. Patel was then called to the front of the store. She spoke to Patient Y. It was reported that she assured him that no mistake had been made. Patient Y then left the premises.

The medication that Ms. Patel had crushed and administered to Patient Y was found to be 35 milligrams of Apo-Prednisone instead of the prescribed 16 milligrams of Suboxone.

Ms. [REDACTED] initially reported that her front store staff told her that there was a ruckus or commotion at the close at midnight on May 25, 2019. Ms. [REDACTED] then asked her acting associate pharmacy manager Mr. [REDACTED], to investigate if there was a suspected drug error or not.

Mr. [REDACTED], conducted an internal investigation, including speaking to Ms. Patel. Ms. Patel indicated to him that it was her understanding that no error had been made. This information was reported back to Ms [REDACTED].

During his investigation Mr. [REDACTED] spoke with Patient Y, who reported feeling that an error had been made and reporting adverse effects from the dose that he taken the evening of May 25, 2019.

Mr. [REDACTED] reviewed the video camera tape for the Pharmacy. The videotape observations were conclusive in revealing that Ms. Patel made an unauthorized drug substitution of Apo-Prednisone in place of the Suboxone.

In the complaint Ms. [REDACTED] filed, she states that she had a phone conversation with Ms. Patel on about May 29, 2019. She indicated that there was videotape evidence, and wanted to have a discussion with Ms. Patel about which medication was actually crushed and administered to Patient Y. It was at that point that Ms. Patel admitted to providing Patient Y with 35 milligrams of Apo-Prednisone.

Mr. Krempien's investigation records included a copy of the fax sent to Patient's Y physicians, both his general practitioner physician and his opioid dependency program physician to advise them that an unauthorized drug substitution had occurred and the steps the pharmacy was now taking to correct the situation.

There is a statement from Mr. [REDACTED] included with the complaint regarding a specific conversation he had with Ms. Patel about the reported drug error. Mr. [REDACTED] reports that Ms. Patel denied that she had made an error.

Mr. [REDACTED] also spoke to Patient Y who reported that he suspected that an error had been made on the evening of May 25, 2019. Mr. [REDACTED] reported that Patient Y had told Mr. [REDACTED] then he had felt adverse effects, including, numbness, headache, and anxiety the next day.

A copy of a statement made by a staff pharmacist at the pharmacy is also included with the complaint. She described her interaction with Patient Y that occurred when he returned to the Pharmacy on Monday May 27, 2019. Patient Y recounted to the staff pharmacist his interaction with Ms. Patel on the evening of May 25, 2019. The information provided to the staff pharmacist is consistent with the information given by Mr. [REDACTED].

A witness statement by the Shoppers Drug Mart security guard who was present on the premises was also included with the complaint. A witness statement by a front store staff member, was also included with the complaint, and described the occurrence just after midnight on May 25, 2019 and the early morning of May 26, 2019.

Also included is a statement from a second front store staff member who reported the altercation within the Pharmacy upon close of May 25, 2019 to Ms. [REDACTED]. A third front store staff member described his observations and indicated that Patient Y had been locked out of the premises, because it was after midnight. Patient Y reported to him that he had received the wrong medication and that when he spoke with Patient Y he also paged Ms. Patel to come to the front of the store to speak directly with Patient Y.

Patient Y questioned what he was administered at the Pharmacy and described the adverse effects he was experiencing subsequent to taking the dose. This third front store staff member recalled Ms. Patel suggesting that she provided the patient with the correct dose of Suboxone.

The Hearing Tribunal then watched the video surveillance from the pharmacy. The video showed the pick-up counter, the dispensary, the drop off and the workspace within the pharmacy.

The section of the video recording shown to the Hearing Tribunal started on May 25, 2019 at 23:52. The video showed Ms. Patel attempting to open the safe with a key and trying to spin the dials to access the safe. The video then shows Ms. Patel leaving the room. Ms. Patel then comes back into the room and attempts to open the safe.

The video shows another patient waiting in front of the counter. Ms. Patel goes into the aisle where the bulk medication is stored, retrieves a bottle and takes this bottle into the back area where the safe is stored. Ms. Patel withdraws two tablets of Apo-Prednisone 5mg and crushes them. She then returns to the counter and shows the crushed powder to Patient Y. Ms. Patel then returns to the back room and she withdraws five more tablets of Apo-Prednisone 5 mg and crushes them. Patient Y is then administered the dose. Ms. Patel then collects the stock bottle of Prednisone.

The Hearing Tribunal then watched a video recording of the front of the store. The video shows the time to be May 26, 2019 at 12:04 am. The video shows Patient Y coming and expressing his concern that an error may have been made.

Mr. Krempien contacted Ms. Patel on June 5, 2019. Mr. Krempien notified her about his receipt of the complaint. Mr. Krempien discussed Ms. Patel's role as the investigated member in terms of participating in the investigation process.

Mr. Krempien and Ms. Patel met together on June 12, 2019. Ms. Patel talked about how she didn't have any "bad intentions" associated with providing Patient Y with the unauthorized drug substitution, and that she had acknowledged this type of conduct was wrong and she undertook never to repeat it again.

Ms. Patel provided Mr. Krempien her background in terms of immigrating to Canada. She described her perspective about what happened in the pharmacy on May 25 and early in the morning of May 26.

Ms. Patel stated that she locked the safe in the Pharmacy prior to Patient Y coming in for his witnessed ingestion of Suboxone. She was then unable to open the safe. Ms. Patel admits to providing Patient Y with the unauthorized drug substitution. She acknowledged that it was a bad decision on her part but indicated that she felt panicked by the situation as Patient Y was insistent on getting his Suboxone.

Ms. Patel explained that Ms. [REDACTED] was only coming into the Pharmacy sporadically and so Mr. [REDACTED] was the acting associate pharmacy manager. Ms. Patel indicated that Ms. [REDACTED] was caring for her ill husband and Ms. Patel did not want to bother Ms. [REDACTED] at the time of the incident.

Ms. Patel and Mr. Krempien subsequently met again on June 25, 2019 to go over the events that occurred on May 25. Ms. Patel admitted providing Patient Y with a 35-milligram dose of Apo-Prednisone instead of 16 milligrams dose of Suboxone. Ms. Patel admitted to lying to the security officer, Patient Y and Mr. [REDACTED] when she was questioned on separate occasions about providing Patient Y with the Suboxone dose.

Mr. Krempien explained that Suboxone is a medication used for opioid dependency treatment. It provides the body with a form of narcotic that does not impair the ability to get on with life. The consequences of missing a dose of Suboxone would be patient specific. When someone who had been on a dose of Suboxone for an extended period of time misses a dose, the body would start to go into withdrawal. Mr. Krempien's understanding is that Patient Y did not receive another dose of Suboxone until May 27.

Mr. Krempien explained that Apo-Prednisone is not a replacement for Suboxone. Prednisone is a corticosteroid that is most often used for conditions such as swelling or immune responses. Sometimes it is used to treat nausea. Both medications are similar in color, and when crushed they are similar in appearance.

Mr. Krempien explained what a pharmacist should do if they provide the wrong dose or the wrong medication to a patient. Once the pharmacist is made aware that it is a drug error or incident, they are required to immediately take steps to minimize any risk or harm to the patient. Those steps would normally include retrieving any unused amount of the medication that had been dispensed. It would include reporting the incident to not only the patient but other members of the patient's healthcare team so that any other additional steps could be taken to safeguard the patient from any potential harm or further harm. In addition, they would be required to complete a drug error report.

From his investigation, Mr. Krempien stated that Ms. Patel did not initiate any of these steps.

Mr. Krempien stated that in his twelve years as a complaints director it is not uncommon for a pharmacist to make what is termed as a drug error. What is normally meant by that is that an inadvertent mistake had been made by a pharmacist in which potentially, for example, one drug is dispensed in place of another.

Mr. Krempien stated that this case is different because Ms. Patel was aware and consciously made the decision to substitute the Apo-Prednisone for Suboxone. There is an element of knowing intention that is significantly different than the other matters that Mr. Krempien has dealt with in the past.

It is on that basis and the events subsequent to that unauthorized substitution, in terms of not reporting and not taking steps to then care for the patient, that Mr. Krempien felt the situation needed to be explored by a Hearing Tribunal.

Mr. Krempien was asked why Ms. Patel chose Apo-Prednisone in particular. Mr. Krempien assumed that it was because they were both close in shape and color. There was no discussion that Apo-Prednisone might mask the effects of withdrawal from not having Suboxone. It is Mr. Krempien's understanding that after the safe was closed and after Ms. Patel had made attempts to open the safe, she felt pressure from Patient Y to provide him with the dose. Ms. Patel felt that Patient Y's behaviour was aggressive and verbally hostile towards her and so she felt she had to take some form of action that would satisfy Patient Y and have him leave the store.

Mr. Billal Saleem then asked Mr. Krempien in cross examination if there was any evidence that there was any long-lasting harm to Patient Y. Mr. Krempien stated that there was no evidence of lasting harm.

Mr. Billal Saleem then asked Mr. Krempien about when Ms. Patel became licensed. Ms. Patel became licensed as a pharmacist in Alberta on April 2, 2019. Ms. Patel worked one or two shifts in April, was off for May and then worked five or six shifts just prior to May 25. Mr. Krempien stated that he did not have any conversation with Ms. Patel as to why she had chosen to substitute Apo-Prednisone in particular for the Suboxone.

The Hearing Tribunal had questions about the operating procedure for training a pharmacist on Methadone/Suboxone, if there had been any previous complaints for this pharmacy, or if there are any records from the practice consultants about whether the procedures in the store were normal. Mr. Krempien stated that these were not part of his investigation.

The Hearing Tribunal questioned if withdrawal symptoms could have occurred for Patient Y when he did not get the dose of Suboxone that he required. He was asked about the choice of Apo-prednisone being a benign choice or was there a potential to cause harm to this patient. Mr. Krempien responded that it is not a benign medication. It is a prescription drug that has the ability to cause adverse effects to someone taking it. There was no follow up with Patient Y by Mr. Krempien in terms of establishing if there were any long-term effects.

In response to a question by the Hearing Tribunal, Mr. Krempien explained that the safe required both dials and a key. Normally during the operation of the dispensary, the dials would be set to open, but a key would still be required to access the safe. This would allow for opening the safe a little bit quicker than having to dial a combination as a first step then using the key. It is Mr. Krempien's understanding that prior to Patient Y's attendance to the Pharmacy on that evening, Ms. Patel had closed the safe, spinning the dials and so locking the safe. Ms. Patel retained her key and she would require the dial combination as well as the key to access the pharmacy narcotic safe.

Evidence of Ms. Shivangi Patel

In her direct evidence, Ms. Patel described her experience as a pharmacist in India compared to Canada. She stated that "there things are completely different." She stated that "here we

try to calm the patient,” but in India we say we need some time for this and there “we always had a pharmacist right beside us.” Ms. Patel also indicated that the practices in Canada and India are very different when it comes to the rules and regulations for narcotics. In India, there are no restrictions on narcotics.

In cross-examination, Ms. Chisholm, counsel for the complaints director asked Ms. Patel if she had any experience with Methadone or Suboxone patients during her internship. Ms. Patel stated that she had no personal experience dispensing Suboxone or Methadone herself. Where she worked for her pharmacy internship, she had witnessed the Suboxone given to the patient.

Ms. Patel continued on to say that with respect to the narcotic safe she had not received any explanation at the Pharmacy on how the safe was unlocked.

In the previous four shifts that she had worked, Ms. Patel stated she did not have a patient who had asked for Suboxone so had never had to unlock the narcotics safe.

She said she had received training on how to handle Methadone in those four shifts but she never had the chance to hand any out to a patient.

She stated that this was the first patient for whom she had dispensed Suboxone. In her internship or training she observed the pharmacist handing out Suboxone and Methadone.

When asked if she had taken any additional training about how to deal with medication issues that arise or behavioural issues that arise, like extreme aggression, she stated she had received no additional training.

In this case the patient said he didn't want to wait. Ms. Patel said she did try to help him as quickly as possible. She stated that she told him to give me a few minutes to get help from someone, because she “didn't know”. She explained that the safe was locked, she needed the code for it, and she needed “help from someone,” from the staff. She explained that she needed to call them or page the front to ask for help.

The patient said he didn't want to wait. Ms. Patel stated that she was getting very stressed to the point where she couldn't think.

When questioned if the store manager had left a phone number to contact in case of an emergency, Ms. Patel stated there was a cell number for the pharmacy manager. She also stated that she had a number to call for the front staff if she had trouble opening the safe. She stated that the patient said he needed his medication and he would “call the police.”

When questioned as to whether she would need the code to open the safe. She stated she didn't have the code and she didn't contact anyone.

Ms. Chisholm then asked Ms. Patel when the last time was that she worked in a pharmacy. She then stated that she worked yesterday in a pharmacy. When asked if she had alerted the college that she was still working she replied, “I think my employer need to inform, right?”

IV. ACKNOWLEDGMENT OF UNPROFESSIONAL CONDUCT

The Hearing Tribunal was presented with an Admission of Unprofessional Conduct from Ms. Patel dated January 15, 2020 and witnessed by her counsel, Mr. Saleem. The admission provided is as follows:

Pursuant to Section 70 of the *Health Professions Act*, Shivangi Patel, wishes to provide a written submission of unprofessional conduct under the *Health Professions Act* for consideration by the Hearing Tribunal.

Ms. Patel acknowledges and admits that on the evening of May 25, 2019, while she was a registered Alberta pharmacist practicing at Shoppers Drug Mart #2374 (the “Pharmacy”), she:

1. knowingly, dispensed 35 mg of crushed Apo-Prednisone to Patient Y in substitute for his prescription for 16 mg of Suboxone. (the “unauthorized drug substitution”);
2. failed to take appropriate steps to care for Patient Y, the particulars of which include when she;
 - a) failed to notify anyone whose care for Patient Y may have been affected by the unauthorized drug substitution, including the licensee of the Pharmacy, other staff at the pharmacy of Patient Y’s physicians.
 - b) failed to notify Patient Y about the unauthorized drug substitution; and
 - c) failed to initiate a drug error report for the unauthorized drug substitution.
3. failed to admit to the unauthorized drug substitution, the particulars of which include when she was first questioned by Patient Y; and Mr. T.
4. failed to accept responsibility for her actions when, in regards to the unauthorized drug substitution, she asked the licensee not to contact the Alberta College of Pharmacy and to convince Patient Y not to contact the Alberta College of Pharmacy.

Ms. Patel agrees and acknowledges that her conduct in these matters:

- a. Breached her statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist;
- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession;
- d. Created the potential for patient harm; and
- e. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist.

Ms. Patel further agrees and acknowledges that her conduct, as set out above, constitutes a breach of the following statute, standards of practice and code of ethics governing the practice of pharmacy, specifically

- Standards 1 (including sub-sections 1.1, 1.2 and 1.9) and 2 (including sub-section 2.1(e)) of the Standards of Practice for Pharmacists and Pharmacy Technicians; and
- Principles 1 (including sub-sections 1(1), 1(2), 1(7) and 1(8)) and 10 (including sub-sections 10(1), 10(2) and 10(8)) of the Alberta College of Pharmacy's Code of Ethics.

and that her 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)(i), 1(1)(pp)(ii), and 1(1)(pp)xii) of the *Health Professions Act*.

V. **SUBMISSIONS on ALLEGATIONS**

Submissions of the Complaints Director

In closing submissions, Ms. Chisholm, counsel for the complaints director, noted that the Hearing Tribunal must determine whether or not the allegations in the Notice of Hearing are proven on the balance of probabilities. Secondly, if proven, the Hearing Tribunal must determine whether or not the proven conduct constitutes unprofessional conduct.

The Hearing Tribunal has Ms. Patel's signed admission in which she admits to the factual allegations in the Notice of Hearing, as well as to the facts that these allegations constituted unprofessional conduct.

With respect to the first allegation, on the evening of May 25, Ms. Patel knowingly dispensed 35 milligrams of Apo-Prednisone to Patient Y in substitute for his prescription for 16 milligrams of Suboxone. Ms. Patel has admitted this.

With respect to the second and third allegations, Ms. Patel failed to take appropriate steps to care for Patient Y. Ms. Patel denied any error to the patient, ignored his concerns that the

medication he received felt different and tasted bitter, denied any error in front of a security guard such that the patient's concerns were ignored and was then asked to leave the pharmacy and the store. She failed to consider that any harm would come to the patient and just turned him away. Ms. Patel failed to admit to the unauthorized substitution when later questioned. She failed to prepare a drug error report.

In terms of the fourth allegation, Ms. Patel failed to accept any responsibility for her actions, even asking the pharmacy licensee not to inform the College and also to convince the patient not to contact the College.

Ms. Chisholm further submitted that each of these allegations amount to serious unprofessional conduct that goes to the heart of the pharmacy profession. The allegations breach the statutory and regulatory obligations of a pharmacist, as well as the professional and ethical judgement that is expected of an Alberta pharmacist registered with the College. By providing Patient Y with a drug that was not prescribed for him and that he had not consented to receiving, Ms. Patel created a risk of serious patient harm.

Ms. Chisholm then summarized the Standards of Practice for Pharmacists and Pharmacy Technicians, and their relevance to the serious allegations in this case. With reference to these Standards, Ms. Patel:

- a) did not practice within the law that governs the practice of pharmacy and the profession of pharmacy;
- a) did not practice within the spirit of the law governing the practice of pharmacy and her conduct generates a significant concern that she cannot be trusted;
- b) she did not fill out the necessary drug error report, nor report her conduct of giving the wrong drug to a patient until questioned later and faced with a video;
- c) did not provide due care to the patient, instead avoiding any conflict by substituting an entirely wrong drug;
- d) did not seek any help to open the safe, even picking up a phone but never completing a call;
- e) ignored any safeguards for the well-being of the patient, particularly a patient who was vulnerable;
- f) was not honest with the patient, or with fellow pharmacists and others when initially confronted by the situation; and
- g) contravened the Code of Ethics and Standards of Practice in her conduct that harmed the integrity of the regulated pharmacy profession.

With reference to the *Health Professions Act*, Ms. Chisholm submitted that Ms. Patel lacked judgment in the provision of professional services, contravened the required Code of Ethics and displayed conduct that harmed the integrity of the regulated pharmacy profession.

Submissions of Ms. Patel

Mr. Saleem, counsel for Ms. Patel, in responding to the submissions of the Complaints Director, noted to the Hearing Tribunal that there was no direct evidence of harm to the patient. There was no evidence that the prednisone had any lasting harm to the patient. Also, Mr. Saleem noted, that when told there was a video in existence, and without actually seeing the video, Ms. Patel did then decide on her own to admit to administering the Prednisone. The Hearing Tribunal should consider that Ms. Patel did ultimately admit to the unprofessional conduct.

VI. FINDINGS regarding ALLEGATIONS

The Hearing Tribunal is satisfied that the conduct set out in the allegations is proven and further that the conduct amounts to unprofessional conduct.

With respect to the first allegation, the Hearing Tribunal is satisfied based on Ms. Patel's admission and the evidence captured by the video surveillance that Ms. Patel knowingly dispensed 35 mg of crushed Apo-Prednisone to Patient Y in substitute for his prescription for 16 mg of Suboxone. There is no question that this amounts to serious unprofessional conduct which breaches sections 1(1)(pp)(i), 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act* in addition to Standards 1.1, 1.2 and 2.1(e) of the Standards of Practice for Pharmacists and Pharmacy Technicians and Principles 1(1), 1(2), 1(7), 10(1), 10(2) and 10(8) of Alberta College of Pharmacy Code of Ethics.

Regarding the second and third allegations, the evidence is clear that after the unauthorized drug substitution occurred, rather than immediately admit the unauthorized drug substitution and take steps to care for Patient Y, Ms. Patel insisted that there had been no error and continued to insist there had been no error until approximately 4 days after the incident (May 29, 2019) when Ms. ██████ advised Ms. Patel that they were reviewing the video surveillance to see what had occurred. Further, the evidence is clear that Mr. ██████ contacted Ms. Patel on Monday, May 27, 2019 as part of his investigation and specifically asked her whether a patient was given the wrong dose of Methadone or Suboxone. In response, Ms. Patel indicated that while there had been some confusion, she did provide the right dose to Patient Y. In addition, it was Ms. ██████ who advised Patient Y about the unauthorized drug substitution and it was Mr. ██████ who filed an incident report when both of these steps should have been taken by Ms. Patel.

The conduct set out in allegations 2 and 3 is also serious unprofessional conduct which breaches sections 1(1)(pp)(i), 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act* in addition to Standards 1.1, 1.2, 1.9 and 2.1(e) of the Standards of Practice for Pharmacists and Pharmacy Technicians and Principles 1(1), 1(2), 1(7), 1(8), 10(1), 10(2) and 10(8) of Alberta College of Pharmacy Code of Ethics.

With respect to the fourth allegation, the uncontested evidence is that Ms. Patel asked Ms. [REDACTED] if she could try not to contact the College and if she could try and talk to Patient Y and convince him not to contact the College. This is unprofessional conduct which breaches sections 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act* in addition to Standards 1.1, 1.2, and 1.9 of the Standards of Practice for Pharmacists and Pharmacy Technicians and Principles 10(1), 10(2) and 10(8) of Alberta College of Pharmacists Code of Ethics.

Accordingly, the Hearing Tribunal accepts Ms. Patel's admission of unprofessional conduct and finds that Ms. Patel did engage in unprofessional conduct as set out in the Notice of Hearing.

VII. SUBMISSIONS on SANCTION ORDERS

Upon accepting the admission of unprofessional conduct by Ms. Patel, the Hearing Tribunal then proceeded to review and consider submissions on sanctions. While there was an admission of unprofessional conduct by Ms. Patel and therefore agreement between the parties on unprofessional conduct, the parties were not agreed on the appropriate penalties to be ordered in light of the unprofessional conduct.

Submissions of the Complaints Director

Ms. Athwal, counsel for the Complaints Director, emphasized that the Hearing Tribunal has the power to impose a range of orders as set out in section 82 of the *Health Professions Act*.

The Complaints Director sought 8 orders as a result of his investigation (Exhibit 5):

1. An 18-month suspension;
2. Completion of the Centre for Personalized Education for Professionals (CPEP) Probe course at Ms. Patel's own cost;
3. Prior to being eligible to reinstate as a clinical pharmacist, completion, at her own cost, of components of the Structured Practical Training Program;
4. A one-year period of direct supervision on reinstatement to practice;
5. An order, for a period of 5 years, to provide a copy of the Hearing Tribunal's written decision to the proprietor and licensee of any pharmacy in which she applies to work or works as a pharmacist;
6. An order prohibiting Ms. Patel for being an owner, proprietor or licensee of a pharmacy for a period of 3 years;
7. A fine of \$10,000 payable within 180 days of the date of receipt of the Hearing Tribunal's written reasons for decision; and
8. Full costs of the investigation and hearing payable within 24 months of receipt of the Hearing Tribunal's written reasons for decision.

Ms. Athwal referenced the 13 *Jaswal factors* that should be considered when assessing the appropriateness of the orders for penalty, together with excerpts from James Casey's textbook (chapter 14) on *Sentencing and Sanctions*.

Jaswal factor 1 - the nature and gravity of the proven allegations:

Ms. Athwal stressed that the unprofessional conduct admitted to by Ms. Patel is extremely serious and goes to the heart of the professional and ethical obligations of a pharmacist. The honest dispensing of drugs to a patient, particularly a vulnerable patient, is critical to the safety of the public. The trust that patients have in pharmacists and the services they receive from them is the foundation upon which the profession of pharmacy is based. Ms. Patel, through her actions, posed a significant risk for patient safety, which goes against the fundamental judgement, integrity and honesty that is expected of a pharmacist. This is a significant aggravating factor in considering sanction orders to Ms. Patel.

Jaswal factor 2 - the age and experience of the offending pharmacist:

Ms. Athwal commented that while Ms. Patel was a relatively new pharmacist in Canada, she had over 7 years of experience in India before coming to Canada. She became a registered pharmacist with the College on April 3, 2019 and the events pertaining to this hearing took place on the evening of May 25, 2019. Ms. Patel had completed the college's Structured Practical Training Program (STP) from August 10, 2018 to March 29, 2019. Before starting employment on April 16, 2019 at the pharmacy in question, reference checks had indicated she had experience in Methadone and Suboxone dispensing, where Suboxone is the drug in question at this hearing. With regard to experience, Ms. Athwal stated clearly that a pharmacist should not need any experience to know that knowingly giving the wrong drug to a patient is wrong. This is something a pharmacist should never do, and then to deny it by lying about it further emphasizes that this too is very much an aggravating factor.

Jaswal factor 3 - the previous character of the pharmacist and the presence or absence of prior complaints or convictions:

Ms. Athwal stated that the College was not aware of Ms. Patel having been the subject of any prior complaints.

Jaswal factor 4 - the age and mental condition of the offended patient:

It was known that the patient in question had been a patient at the pharmacy since 2013, was vulnerable, and was in recovery as part of the opioid dependency program. When the patient realized that something was wrong with the drug he had received, he immediately returned to the Pharmacy to raise his concerns with Ms. Patel but he was dismissed and told by Ms. Patel that he had received the correct medication and dose. She did not give him truthful answers. Again, this is a significant aggravating factor.

Jaswal factor 5: the number of times the offence was proven to occurred:

Ms. Athwal pointed out that even though this was one dispensing event, Ms. Patel in fact crushed the substituted prednisone drug twice in order to convince the patient that he was receiving the right medication. Again, this is a serious aggravating factor.

Jaswal factor 6 - the role of the Pharmacist in acknowledging what had occurred:

Ms. Athwal recounted that from the evening of the events in question on May 25, 2019, through to May 29, 2019, Ms. Patel intentionally chose to lie and insist that she had given the correct medication. However, when Ms. Patel was told that there was video evidence of her substituting an incorrect drug for the correct medication, she did then admit to her conduct. From that time, to her credit, Ms. Patel has confirmed that admission throughout the investigation and into the hearing. Ms. Athwal acknowledged that Ms. Patel and her counsel have been fully cooperative and have worked with the College to confirm and sign the Admission of Unprofessional Conduct that is presented to this Hearing Tribunal.

Jaswal factor 7 - whether the offending pharmacist has already suffered other serious financial or other penalties as a result of the allegations having been made.

At the time of this event, Ms. Patel's employment at that pharmacy was terminated. Ms. Patel still holds an active practice permit that is not subject to any conditions.

Jaswal factor 8 - the impact of the incident on the offended patient:

Ms. Athwal pointed out that there was no direct evidence from the patient, nor any statement from him in the investigation. However, at the time of the incident, the patient did express to several people that evening that he was experiencing unusual effects from the medication he had been given. Also, as he was denied the Suboxone, his normal opioid dependency treatment was disrupted. This too is an aggravating factor.

Jaswal factor 9 - the presence or absence of any mitigating circumstances:

Ms. Athwal commented that the Complaints Director is unaware of any mitigating circumstances, other than Ms. Patel being relatively new to the clinical pharmacist register in Alberta.

Jaswal factor 10 - the need to promote specific and general deterrence, and thereby, to protect the public and ensure the safe and proper practice of pharmacy;

Ms. Athwal outlined that the Complaints Director, on behalf of the College, believes that it is very important for other members of the profession to see that the conduct described in this matter will lead to serious consequences. Indeed, the sanctions being sought in this case are significant to ensure that conduct of this nature is not repeated by other Alberta pharmacists.

In terms of specific deterrence, while Ms. Patel has admitted to unprofessional conduct, the College needs to take steps to ensure such conduct by Ms. Patel does not arise in the future.

Ms. Athwal stressed that this is a significant reasoning behind the sanction orders being sought. Ms. Patel will need to re-establish trust to ensure the College that the public and her future patients can trust in the services she will provide. Severe sanctions are necessary to ensure Ms. Patel and the profession understand that her conduct as a pharmacist was grossly unprofessional and will not be tolerated. The complaints director believes the sanctions being sought will deter Ms. Patel and others in the future.

Jaswal factor 11 - the need to maintain the public's confidence in the integrity of the Pharmacy profession:

Ms. Athwal stressed that the primary responsibilities of the College are to protect the public and the integrity of the pharmacy profession. Conduct as shown by Ms. Patel may seriously undermine the public confidence in the profession unless such conduct is fully addressed by appropriate orders from this Hearing Tribunal. Again, this is why the College is seeking sanction orders which will indicate to the public how seriously the College views such conduct.

Jaswal factor 12 - the degree to which the offensive conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct:

Ms. Athwal stated that the conduct in this case is clearly far beyond the range of permitted conduct. The allegations made against Ms. Patel, albeit subsequently admitted to and accepted by Ms. Patel, demonstrate an unwillingness to comply with the fundamental duties of a pharmacist. The conduct was very serious and completely unacceptable. Ms. Athwal stated that the Complaints Director could find no similar cases to point to, which provides even further evidence that Ms. Patel's conduct was far beyond any reasonable expectation of the range of permitted conduct. Her conduct was very serious and completely unacceptable. In addition, the Complaints Director stated in evidence that in his 12 years as the Complaints Director he has never seen such a case as this before. This is the first case where a pharmacist knowingly and intentionally, not by mistake, gave a patient the wrong medication.

Jaswal factor 13 - the range of sentence in other similar cases:

Ms. Athwal reiterated that there are no other similar cases.

In summation of her submission on the consideration of the *Jaswal factors*, Ms. Athwal stated that the Complaints Director, on behalf of the College, had considered all the relevant factors she had just outlined when determining the appropriate sanctions to be sought in this case.

Before concluding her submission, Ms. Athwal discussed the appropriate costs to be assessed in the sanction orders. She noted that when imposing costs, such costs should not be so high as to inadvertently deter people from defending themselves. In assessing costs, Ms. Athwal pointed out that Ms. Patel had admitted to the unprofessional conduct and that she and her counsel had cooperated throughout the investigation, and therefore it would be appropriate for the Hearing Tribunal to order that Ms. Patel be responsible for the full cost of the investigation

and the hearing process. It would be inappropriate for the rest of the profession to have to bear these costs as a result of her conduct.

Submissions of Ms. Patel

Mr. Saleem proposed the following orders for penalty:

1. A nine-month suspension with 3 months of the suspension being served and the other 6 months of the suspension being held in abeyance pending compliance with the other orders for sanction;
2. Completion of the Centre for Personalized Education for Professionals (CPEP) Probe course at Ms. Patel's own cost;
3. A 6-month period of direct supervision on reinstatement to practice;
4. An order, for a period of 3 years, to provide a copy of the Hearing Tribunal's written decision to the proprietor and licensee of any pharmacy in which she applies to work or works as a pharmacist;
5. An order prohibiting Ms. Patel for being an owner, proprietor or licensee of a pharmacy for a period of 2 years;
6. Costs of the investigation and hearing to a maximum of \$10,000 payable within 36 months of receipt of the Hearing Tribunal's written reasons for decision.

To facilitate his submission on sanctions, Mr. Saleem provided 6 cases for consideration by the Hearing Tribunal. These six cases mostly involved some measure of narcotics diversion. While the facts of these cases were different from those in the present case, Mr. Saleem submitted that the conduct could be considered similar to the conduct demonstrated by Ms. Patel in that it showed a lack of judgment. Mr. Saleem offered these 6 cases to demonstrate that the sanctions sought by the College were draconian in nature given the sanctions ordered in these six cases. Mr. Saleem reinforced that ensuring like sanctions for like conduct is integral to maintain confidence in the self-regulation process.

In the *Johnson* case, the pharmacist diverted and misused a significant amount of narcotics for his own personal use and altered inventory records to cover up the diversion. The orders for penalty included a 24-month suspension (6 months of actual suspension and 18 months of the penalty held in abeyance pending compliance with the other orders), a recovery and monitoring program, prohibition on acting as a licensee, owner or proprietor for 5 years, a 12-month period of direct supervision, 5-year term of being required to advise employers of the decision of the hearing tribunal and costs of the investigation and hearing.

Mr. Saleem submitted that the unprofessional conduct in the *Johnson* case was deliberate and intentional whereas Ms. Patel's conduct arose because of her inexperience. Mr. Saleem also noted that Mr. Johnson had previous instances of unprofessional conduct and multiple incidents of unprofessional conduct whereas this was not the case for Ms. Patel. Further, Ms. Patel lost her job whereas Mr. Johnson did not.

The *Agina* case involved a situation where a pharmacist re-used a syringe when administering an influenza vaccination thereby causing a needlestick injury. The pharmacist then failed to carry out proper needlestick injury management and failed to report the error. The orders for penalty included a reprimand, a condition on his practice permit prohibiting him from providing injections until he wrote a paper satisfactory to the Complaints Director, a requirement that the decision of the Hearing Tribunal be provided to future employers until all orders for sanction were satisfied and an order to pay full costs of the investigation and hearing. Mr. Saleem acknowledged that given her conduct, the sanctions for Ms. Patel should be greater than those ordered in the *Agina* case.

Small was another case involving significant diversion and misuse of several different types of narcotics as well as the alteration of inventory records. In this case, the pharmacist also practiced while incapacitated over a long period. The orders for penalty included a 24-month suspension, and an order requiring the following to be completed prior to reinstatement: treatment for addiction, medical confirmation of fitness to practice; and completion of all the registration requirements and the jurisprudence exam. Upon return to practice, Mr. Small was required to be in a monitoring and support program for 5 years, could not be a licensee or proprietor for a period of 5 years (could be reduced to 3 years at the discretion of the Complaints Director), and had to undergo a 12-month period of direct supervision. A 5-year term of being required to advise employers of the decision of the hearing tribunal and costs of the investigation and hearing (payment of costs deferred during the period of suspension) were also ordered. Mr. Saleem noted that the orders for penalty here were at the high end of the range of sentencing and that the conduct in the *Small* was certainly worse than that of Ms. Patel.

In *Manzouri*, the pharmacist stole 100 Oxycodone tablets and gave them to an individual to be provided to a further individual without authorization and under circumstances that called into question the safety of the person who was reported to be the end user of the Oxycodone. Orders for penalty included a three-month suspension, could not be a licensee, owner or proprietor for a period of 5 years, 5-year term of being required to advise employers of the decision of the hearing tribunal and costs of the investigation and hearing up to a maximum of \$20,000.

A second unprofessional conduct hearing was held for Ms. Manzouri as she practiced during the term of the three-month suspension ordered in first decision. The orders for penalty arising in this case included an 18-month suspension (6 months of active suspension and 12 months held in abeyance pending completion of the other orders for penalty), 4-year term of being required to advise employers of the decision of the hearing tribunal, could not be a licensee, owner or proprietor for a period of 4 years, \$5,000 fine and payment of the full costs of the investigation and hearing within 36 months.

In *Westad*, the pharmacist diverted and misused a significant number of drugs over a sustained period, created false patient records to conceal the diversion, billed the false prescription fills to third party insurers, failed to cooperate with the College and created false dispensing records. The orders for penalty included a 24-month suspension, \$4,000 fine and an order requiring completion of all the registration requirements prior to reinstatement. Upon return

to practice, orders were made for a 12-month period of direct supervision, 5-year term of being required to advise employers of the decision of the hearing tribunal and 5-year restriction on becoming a licensee. Costs of the investigation and hearing (reduced by the \$4,000 fine) were also ordered. Mr. Saleem submitted that this case was on the far end of the spectrum of unprofessional conduct as compared to Ms. Patel's conduct.

Mr. Saleem went on to address the *Jaswal* factors as they applied to the circumstances of Ms. Patel's case:

- a) Ms. Patel had only practiced for a very short amount of time and her reaction to the situation was originally due to her inexperience;
- b) This is the first and isolated instance of misconduct by Ms. Patel;
- c) Ms. Patel lost her employment;
- d) Ms. Patel has admitted to the allegations made, and in contrast to some of the 6 cases discussed, her conduct was not malicious or criminal;
- e) It was a clear lack of thinking by Ms. Patel that brought her to the situation. She did not think methodically about what she was going to do or what medicine she was going to administer, as alleged by the Complaints Director. Rather, she did it at a time when she felt intimidated, threatened and very pressured;
- f) While Ms. Patel did practice in India for 7 years prior to practicing in Alberta, that position was vastly different from the practice of pharmacy here in Alberta. The lack of experience in Alberta gave rise to the serious lapse in judgement, and this should be viewed as a mitigating factor in any findings;
- h) Ms. Patel does not have a previous record of misconduct or any prior convictions;
- i) Ms. Patel has acknowledged and admitted to her misconduct and a less severe sanction should be imposed on an individual who has genuinely admitted her conduct was wrong;
- (i) While the patient did identify some unusual feelings, it could be argued that these might not be a direct result of his taking Prednisone. Therefore, it could be argued that he did not suffer any direct harm from the incident. Mr. Saleem cautioned that the only evidence before the Hearing Tribunal with respect to harm to Patient Y was hearsay evidence. Patient Y did not testify; and
- (j) Mr. Saleem identified that a mitigating circumstance he wished to put to the Hearing Tribunal would be concerning the lack of education and training of Ms. Patel when it comes to dealing in high pressure situations with narcotics, and the patients who use them.

Mr. Saleem noted that the orders for penalty sought by the Complaints Director would amount to almost 3 years of not being able to practice pharmacy between the suspension, the coursework and the period of direct supervision. In these circumstances, an order for full costs of the investigation and hearing would be a very heavy burden to bear, especially as Ms. Patel had limited income and a young family. Further, Mr. Saleem submitted that the Structured Practical Training Program would cause a 6-month delay in Ms. Patel being able to get back to the practice of pharmacy. He noted that it should not be ordered by the Hearing Tribunal as the issue was not pharmacist competency but rather a lapse in judgment. If Ms. Patel were

ordered to retake, in whole or in part, the Structured Practical Training Program, she should only be required to complete portions which would better prepare her for dealing with high pressure conflict scenarios or aggressive patients. Mr. Saleem noted that this could equally be achieved with the period of direct supervision.

Reply submissions

Ms. Chisholm contended that the six cases presented by Mr. Saleem did not have any direct similarities to the conduct of Ms. Patel. She noted that the difference with the diversion cases is that there is often substance abuse at play which can cloud judgment and there was no such issue in Ms. Patel's case.

Ms. Chisholm emphasized that age and experience are not required for a pharmacist to know not to give medications that are not prescribed or to withhold medications from a patient that have been prescribed to them.

Ms. Chisholm also noted that while Ms. Patel may have felt pressured or intimidated at the time, she made the unauthorized drug substitution, this does not explain her conduct for the four following days when she continued to maintain that she had provided the correct drug to Patient Y.

In terms of the evidence related to patient harm, Ms. Chisholm drew the Hearing Tribunal's attention to s. 79(5) of the *Health Professions Act*, which provides that evidence may be given before the Hearing Tribunal in any manner that it considers appropriate and it is not bound by the rules of law respecting evidence applicable to judicial proceedings. Accordingly, it was up to the Hearing Tribunal to determine what weight it wished to place on the evidence related to harm to Patient Y.

Questions from Hearing Tribunal

The Hearing Tribunal queried whether both an 18-month suspension and a \$10,000 fine were necessary in this case. It was submitted on behalf of the Complaints Director that both were necessary in this case and that fines are usually appropriate where there is intentional conduct, as occurred in this case. On behalf of Ms. Patel, Mr. Saleem indicated that a fine was not necessary in addition to the lengthy suspension, significant financial costs of the coursework and the order being sought to pay full costs of the investigation and hearing.

The Hearing Tribunal also inquired of the parties as to whether there was any overlap between the order to attend the Structured Practical Training Program and the order for direct supervision such that both orders may not be required here. Counsel for the Complaints Director advised that the Structural Practical Training Program is divided into three levels: Level I (minimum 450 hours), Level II (minimum 450 hours) and Level III (minimum 100 hours). In general, the Structured Practical Training Program will take approximately 6 months to complete if a learner is working 40 hours per week on average.

Counsel for the Complaints Director submitted that the period of direct supervision will give Ms. Patel a greater opportunity to demonstrate what she has learned from the Structured Practical Training Program. Counsel for the Complaints Director further noted the concern that Ms. Patel's unprofessional conduct occurred very shortly after she had completed the Structured Practical Training Program as part of her normal training to become registered as a pharmacist in Alberta. Given that the conduct happened so close in time to completion of the Structured Practical Training Program the first time, it was clear that there was a need to repeat the training. The Complaints Director submitted that both the orders to attend the Structured Practical Training Program and the order for direct supervision were required because they both address the fundamental error made by Ms. Patel.

In response, Mr. Saleem indicated that, in his view, there was unnecessary duplication between the order to attend the Structured Practical Training Program and the order for direct supervision. He reinforced the notion that Ms. Patel does not need to address her overall competencies as a pharmacist but should focus on how to deal with patients in high pressure situations.

VIII. FINDINGS on PENALTY and ORDERS for PENALTY

The Hearing Tribunal finds that when the *Jaswal* factors are considered, the unprofessional conduct in this case calls for very significant penalties. While the act of making an unauthorized drug substitution is extremely serious in and of itself, the fact that Ms. Patel denied and attempted to hide her conduct until the video evidence was brought to her attention, serves to increase the seriousness and the gravity of the conduct.

The Hearing Tribunal accepts the fact that Ms. Patel was a relatively new pharmacist in Canada and was feeling pressured and intimidated by an aggressive patient may have contributed to the serious error in judgement which led to the unauthorized drug substitution. However, these circumstances do not explain her repeated denials in the days following the incident. Further, the Hearing Tribunal agrees that age and experience are not relevant factors when it comes to unauthorized drug substitutions. Any pharmacist of any age and experience should recognize that unauthorized drug substitutions are completely unacceptable.

In terms of any harm caused to Patient Y, the Hearing Tribunal agrees that there is no direct evidence before the Hearing Tribunal of any harm to Patient Y. However, the Hearing Tribunal accepts that intentionally making an unauthorized drug substitution always has the potential to cause significant harm to a patient. The fact that Ms. Patel intentionally placed Patient Y in a situation of risk is a factor which points to the need for serious penalties in this case.

The Hearing Tribunal has considered the cases presented by Mr. Saleem. The Hearing Tribunal notes that the *Johnson, Small* and *Westad* cases all involved cases of serious and significant drug diversion where addiction played a role in the unprofessional conduct. As noted by Ms. Chisholm, that is a distinguishing factor from the present case.

Manzouri was a case of serious drug diversion where only a 3-month suspension was ordered. However, in that case the pharmacist confessed immediately to the conduct. Ms. Patel's initial denials, which led to delayed notification to Patient Y and his healthcare providers, merit a more serious penalty in this case.

The Hearing Tribunal finds that the needlestick injury present in the *Agina* case is less serious than the unauthorized drug substitution and initials denials of the unauthorized drug substitution that took place in this case and the circumstances of this case merit significantly more serious penalties than were ordered in *Agina*.

ORDERS

After deliberation, the following are the sanctions ordered by the Hearing Tribunal together with their summary reasoning to confirm the orders.

1. Ms. Patel's practice permit shall be suspended for a period of 18 months starting on a date acceptable to the Complaints Director and being no later than 30 days after the date of the Hearing Tribunal's written decision.

The conduct of Ms. Patel in this situation was very serious and totally unacceptable. The deliberate substitution of the prescribed drug, the lies to the patient when questioned about this, the further lies to many others who became involved at the time and at the outset not admitting any errors to key individuals including fellow pharmacists as part of the investigation, all point to a most serious lapse of personal ethics and judgment. This lapse has serious impact on the pharmacy profession and its integrity. Ms. Patel must understand that the Alberta College of Pharmacy cannot tolerate such conduct. The Hearing Tribunal recognizes that the suspension of 18 months is severe, but such an order must be imposed to maintain the public trust in pharmacists and in the profession as a whole.

2. Ms. Patel shall successfully pass the Centre for Personalized Education for Professional's (CPEP) Probe Course at her own cost and provide proof of the same to the Complaints Director before her suspension is lifted.

PROBE (Canada) is an ethics course specifically designed to meet the unique needs of Canadian healthcare workers. It is a remedial program which "probes" into why participants went astray. The Tribunal concluded that such a remedial program is necessary for Ms. Patel as one key expected outcome of PROBE is an ability of participants to think ethically about the reasons for being referred to the course. This helps to ensure that the conduct will not be repeated in the future.

3. After completing Orders 1 and 2, and prior to being eligible to reinstate as a clinical pharmacist with the Alberta College of Pharmacy, Ms. Patel must complete, at her own cost, the components of the Structured Practical Training Program, including all evaluations required under the Structured Practical Training Program, to the satisfaction of the Registrar.

The Hearing Tribunal recognized that Mr. Saleem requested that Ms. Patel only be required to complete that portion of the Structured Practical Training Program which is relevant to the specific elements of this case. However, the Hearing Tribunal was concerned that Ms. Patel had undertaken the unacceptable practice of substituting Prednisone for the prescribed drug Suboxone, and had subsequently failed to own up to it, failed to create a drug error report and failed to consider the safety of the patient all within two months of originally completing the Structured Practical Training Program. Accordingly, in the Hearing Tribunal's view, the concerns raised by Ms. Patel's conduct can only be addressed with a full and complete undertaking of the whole Structured Practical Training Program.

4. After completing Orders 1, 2 and 3 and upon reinstating as a clinical pharmacist with the Alberta College of Pharmacy, Ms. Patel's practice permit shall be subject to the condition that she practice under direct supervision, under a direct supervisor approved by the Complaints Director, with a report to be provided by the direct supervisor to the Complaints Director on monthly basis and to the satisfaction of the Complaints Director.
 - a) A report to the satisfaction of the Complaints Director will include that there is no repeat of the conduct at issue in this matter.
 - b) This period of direct supervision will remain in place for a minimum of six months or until the Complaints Director receives satisfactory monthly reports for six continuous months, whichever is later.

It is essential that a pharmacist act with honesty and integrity. A pharmacist must concern themselves with the safety of the public. A pharmacist must be honest with their patients. Ms. Patel must show that she can be trusted to perform a pharmacist's duties in such a manner. The Hearing Tribunal is satisfied that this trust can be rebuilt and the public will be protected by ordering that there be supervision of Ms. Patel for a meaningful period of time after she is reinstated as a pharmacist, together with a formal reporting of her progress and adherence to the professional standards expected.

The Hearing Tribunal determined that the period of supervision could be reduced from 12 months to 6 months given that the Hearing Tribunal has ordered that Ms. Patel complete the full Structured Practical Training Program. The Hearing Tribunal understands that the Structured Practical Training Program will take approximately 6 months to complete. Accordingly, when the Structured Practical Training Program and the period of direct supervision are taken together, this amounts to approximately a 12-month period in total where there will be supervision of Ms. Patel's practice.

5. Ms. Patel shall provide a copy of the Hearing Tribunal's written decision to the proprietor and licensee of any pharmacy in which she applies to or works as a pharmacist, commencing on the date she receives a copy of the Hearing Tribunal's written decision and continuing for 5 years after she reinstates onto the clinical pharmacist register.

It is essential that Ms. Patel realize that her unprofessional conduct in this case was unacceptable and cannot be tolerated. It is also essential that others in the pharmacy profession be aware of her conduct and therefore, can be understanding of the remedial steps Ms. Patel has taken since this situation occurred. Transparency in all this is essential.

6. Ms. Patel shall not be permitted to be an owner, proprietor or licensee of a pharmacy, commencing on the day she receives a copy of the Hearing Tribunal's written decision and continuing for 3 years after she reinstates onto the clinical pharmacist register.

Reinstatement onto the clinical pharmacist register will enable Ms. Patel to again participate as a professional pharmacist. However, the Hearing Tribunal accepts that, in order to protect the public, a period of time is necessary after reinstatement before Ms. Patel can become an owner, proprietor or licensee of a pharmacy.

7. Ms. Patel shall pay a fine of \$10,000 payable in accordance with a monthly payment schedule as directed by the Hearings Director. The fine shall be paid in full within twelve (12) months of the date of receiving the Hearing Tribunal's written decision.

In a parallel consideration to Order 1, the Hearing Tribunal concludes that a significant fine of this amount is appropriate to reflect the severity of Ms. Patel's conduct, in particular, her initial attempts to hide her conduct rather than take advantage of opportunities to come clean and to take necessary steps to report her conduct and provide proper and timely care to Patient Y. This fine also sends a message to Ms. Patel and the profession at large that this conduct will not be tolerated.

While the Complaints Director sought payment of the fine within 180 days of receipt of the written reasons for decision of the Hearing Tribunal, the Hearing Tribunal has extended the time frame for payment to 12 months from receipt of the written reasons for decision in light of the significant amount of time that Ms. Patel will be required to be out of pharmacy practice and the impact that will have on her ability to earn income.

8. Ms. Patel shall be responsible for payment of all costs of the hearing and investigation. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director. Payment of the costs of the hearing and investigation will be held in abeyance during the period of the 18-month suspension. Once the period of suspension has expired, these costs shall be paid in full within 24 months of the date of expiry of the suspension.

It is most important that other pharmacists in the profession are not liable for the costs of the investigation and hearing, all resulting from the unprofessional conduct of Ms. Patel, one of their fellow professionals. In the circumstances, it is important that these costs be borne by Ms. Patel.

While the Hearing Tribunal acknowledges that Ms. Patel will be subject to a significant period of suspension and will incur other costs related to the orders for coursework, no

other specific evidence of her financial situation was put before the Hearing Tribunal, other than a reference to the fact that Ms. Patel has limited income and a young family. However, in recognition of the fact that Ms. Patel will not be able to earn income in her chosen profession of pharmacy during the period of suspension, the Hearing Tribunal is prepared to hold the payment of the costs of the investigation and hearing in abeyance until the suspension has expired. The costs of the investigation and hearing will then be payable within 24 months of the date that the suspension expires.

Signed on behalf of the Hearing Tribunal by the Chair on May 11, 2020.

Sarah Gutenberg

Sarah Gutenberg (May 11, 2020)

Per: Sarah Gutenberg