

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**KARIM S. RAMJI**

**Registration Number 4258**

**DECISION OF THE HEARING TRIBUNAL**

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Karim S. Ramji. In attendance on behalf of the hearing tribunal were Christopher Heitland, Pharmacist and Chairperson; Sarah Gutenberg, Pharmacist and Patricia Matusko, Public Member.

Gregory Sim acted as independent legal counsel to the Hearing Tribunal.

The hearing took place on two separate days, starting on the 8th day of May 2019 and the second day being on the 24th day of May, 2019 with both dates being at the second-floor conference center, 8215 112 St. NW, Edmonton, AB. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing on May 8, 2019 were James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”); Paula Hale, counsel for the Complaints Director; Karim Ramji, Pharmacist and investigated person and Galan Lund, legal counsel for Mr. Ramji. On May 24, 2019 Ms. Hale was unable to attend the hearing so David Jardine attended in her place.

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 preliminary matters raised by either party.

## **II. ALLEGATIONS**

The Hearing Tribunal held a hearing to inquire into the following complaints or matters with respect to Mr. Ramji, as set out in the Notice of Hearing, entered as Exhibit 1:

IT IS ALLEGED THAT, between October 1, 2016 and April 30, 2017, while you were both a licensed Alberta pharmacist (ACP Cert.#4258) and the licensee of Hewes Way Pharmacy (ACP License #1649) that you:

1. Submitted, or allowed for the submission of, approximately \$3677.30 worth of claims to Alberta Blue Cross for Advair (250 mcg metered dose inhaler) and Symbicort (200 Turbuhaler metered dose inhaler), without being able to provide the required supplier invoices;
2. Created, or allowed for the creation of, false dispensing records when the pharmacy submitted claims to Alberta Blue Cross for Advair (250mcg metered dose inhaler) and Symbicort (200 Turbuhaler metered dose inhaler) when the pharmacy did not have the corresponding stock for those products to have been dispensed to patients;
3. Submitted, or allowed for the submission of, approximately \$2,132.59 worth of claims to Alberta Blue Cross for Ref#L-267, original prescription number 205275 (Ref #15) and Ref #L-175, Ref #L-117 and Ref #L-290, when you knew, or should have known, you were not entitled to the number of dispensing fees claimed;

4. Submitted, or allowed for the submission of, approximately \$373.03 worth of claims to Alberta Blue Cross for original prescription numbers 230729, 230736, 216113, 227357, 227360, 228561 and 234226, when you knew, or should have known, the services and drugs were not provided to the patient and the claims and dispensing records were not properly reversed and corrected;
5. Created, or allowed for the creation of, associated patient dispensing records for drugs that you knew were not received and thus not used by the patient for original prescription numbers 230729, 230736, 216113, 227357, 227360, 228561 and 234226;
6. Breached your agreement with Alberta Blue Cross and failed to act ethically or honestly in your dealings with Alberta Blue Cross; and
7. Failed to properly create or retain required and accurate pharmacy records.

The Notice of Hearing went on to allege that Mr. Ramji's conduct breached his statutory and regulatory obligations to the College as an Alberta pharmacist and a pharmacy licensee; undermines the integrity of the profession; decreased the public's trust in the profession; created the potential for patient harm; and failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy licensee.

The Notice of Hearing also alleged that Mr. Ramji's conduct breached Standards 1 (1.1 and 1.2), 6 (6.2(a), 6.2(c)), 7 and 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians; Standards 1 (1.1 and 1.2) and 8 (8.1) of the Standards for the Operation of Licensed Pharmacies; Principles 1(1) and 10(1) and (2) of the College's Code of Ethics; Section 10(1)(a) and 10(1)(d)(iv) of the *Pharmacy and Drug Act* ("PDA") and Section 12(1) of the Pharmacy and Drug Regulation.

### **III. OPENING STATEMENTS**

Ms. Hale began with a brief opening statement. She explained that while the evidence against Mr. Ramji discloses neither the highest dollar value, nor the highest number of issues of the matters she has reviewed, the evidence will establish that Mr. Ramji engaged in a pattern of unprofessional conduct in his billing claims. Ms. Hale explained that she would call the Complaints Director, Mr. Krempien to testify about his investigation, the evidence he gathered and his decision to refer this matter to a hearing. Ms. Hale said she would also call [REDACTED], an Alberta Blue Cross Pharmacy Consultant to address the Alberta Blue Cross documents that would be entered into evidence.

Mr. Lund then presented his opening remarks, stating that the Notice of Hearing levels very serious allegations against Mr. Ramji. In response to Allegation 2, Mr. Lund suggested he would lead evidence demonstrating that there were no false dispensing records. In response to Allegations 3, 4 and 5, that Mr. Ramji allowed the pharmacy and its pharmacists to dispense medication in a manner that breached the Alberta Blue Cross ("ABC") Service Agreement and that he thereby acted unethically, Mr. Lund suggested he would lead evidence to demonstrate there was absolutely no breach of the Agreement.

#### **IV. EVIDENCE**

Ms. Hale called two witnesses, Mr. James Krempien, Complaints Director of the Alberta College of Pharmacy, and [REDACTED] of ABC.

##### **James Krempien, Complaints Director, Alberta College of Pharmacy**

Mr. Krempien testified that he was a regulated member of the College and had been the Complaints Director for approximately 11 years. Mr. Krempien practiced as a clinical pharmacist with the Canadian Armed Forces from 1991 to 1999. He then practiced as a clinical pharmacist in community practice in both Calgary and Edmonton between 1999 and 2008.

Mr. Krempien identified and described the records in Exhibit 2, which were the Investigation Records arising from Mr. Krempien's investigation of the complaint from [the ABC auditor].

Mr. Krempien explained that he received a letter from [the ABC auditor]. [The auditor] is a pharmacist and works as a Pharmacy Consultant with ABC to assist them in performing and reviewing audits and reviews of licensed pharmacies in Alberta. Upon receipt, Mr. Krempien assessed the letter and, in his opinion, it formed the basis for a complaint under section 54 of the HPA. Mr. Krempien determined that he would conduct an investigation into the complaint from [the auditor] and ABC pursuant to section 55 of the HPA and he assigned Mr. Monty Stanowich and himself as investigators. Mr. Krempien explained that he contacted ABC for additional information about the complaint and a notification of the complaint was also sent to Mr. Ramji.

ABC responded to Mr. Krempien's request for additional information and provided records of its claims review of Hewes Way Pharmacy. Mr. Krempien identified the documents obtained from ABC and these were marked as Exhibit 3. Mr. Krempien reviewed this evidence as it pertained to [the auditor]'s initial letter of complaint.

Mr. Krempien then identified the ABC Final Report for its claims review of Hewes Way Pharmacy and this was marked as Exhibit 4. Mr. Krempien contacted Mr. Ramji and reviewed both the ABC Final Report and the supporting documents with him. Mr. Krempien explained his concerns arising from the ABC claims review.

The first issue identified in the ABC Final Report was that during the roughly six-month audit period, ABC had selected five different medications to review and found there was a lack of supporting invoices or receipts of medication to support the claims made for those five drugs. For two of the drugs, Advair 250 and Symbicort 200, there was a clear absence of supporting invoices to support the claims that had been made. Upon review of the table on page 247 of Exhibit 4, it was noted that the pharmacy was unable to provide the supporting invoice documentation for 15 Advair Diskus and 12 Symbicort Turbuhalers over the 6-month period during which they had made corresponding claims to ABC.

This concerned Mr. Krempien for a few reasons. It meant that the corresponding dispensing records may be inaccurate. If a pharmacy does not have records of obtaining stock of a particular drug it would be implausible that the pharmacy could dispense that drug to a patient.

If the pharmacy does not have the drug in stock and there is no record of obtaining it, but the pharmacy then makes a claim to ABC for dispensing the drug and a corresponding record of care or dispensing record, those records would be inaccurate.

Mr. Krempien also explained that making a claim to ABC for dispensing a drug that the pharmacy did not have in stock would be unethical. It would mean claiming an insured benefit without having actually provided the product or service. This could also be a breach of the pharmacy's contract with ABC.

Ms. Hale asked Mr. Krempien about Mr. Ramji's explanation for the lack of documentation identified by ABC. Mr. Krempien referred to Tab 11 of Exhibit 2 which was Mr. Ramji's response to the complaint. Mr. Ramji indicated that "Opening and closing inventories are approximations of quantities kept...we do purchase products from other suppliers and pharmacies in emergencies or in situations when we have a shortage or a product is required on short notice...". Mr. Ramji went on to say "It is possible that we cannot find some invoices..."

Mr. Krempien testified that in pharmacy practice it is important to keep accurate opening and closing inventory records. He confirmed there is a regulatory obligation to keep records of all Schedule 1 and 2 drugs coming in and out of a pharmacy, but he acknowledged it is common for pharmacies not to keep running inventory records. Mr. Krempien referred to Mr. Ramji's practice of acquiring emergency stock from secondary suppliers, such as other pharmacies, without standard invoicing and documentation. Mr. Krempien acknowledged that this is a common practice, but he said that in his experience pharmacies would maintain a ledger of stock acquired from, or lent to other pharmacies. He said that when pharmacies dispense medications it is in the pharmacies' best interests to keep records of what they have dispensed and the value. Mr. Ramji did not produce any such ledgers or other records of stock acquired from any secondary suppliers.

The second issue identified in the ABC claims review that concerned Mr. Krempien was the claiming of additional fees referenced on page 248 of Exhibit 4. Mr. Krempien described a number of situations where Hewes Way Pharmacy billed multiple dispensing fees for ABC clients when only one dispensing event took place. These additional fees were in turn reversed and "clawed back" by ABC. Mr. Krempien testified that claims for dispensing fees that were not associated with an actual dispensing event means that the dispensing records were necessarily inaccurate. Dispensing records are intended to describe transactions in which medications are actually given to a patient. Having accurate patient records of the services and drugs being provided by a pharmacy is a foundational obligation of all licensed pharmacies and pharmacists. Mr. Krempien came to the same conclusions as the ABC claims review that there were inaccurate transactional and patient records created for a number of patients. Lastly, Mr. Krempien went on to say that the creation of inaccurate records may potentially not be in line with pharmacists' ethical principles about dealing honestly with patients and third-party insurance providers.

Mr. Krempien summarized in broad strokes that the way in which the payment scheme for licensed pharmacies dealing with third party insurers works is on a good faith basis. The insurer, the payer, is not present, for example, when a patient receives a medication, they are not present when a claim is made, but they pay those claims on good faith. The whole basis

for that good faith payment system relies on the 100 percent accuracy and honesty of all pharmacists. When there is a deviation or lack of adherence with that, it is concerning to the College, both from a broad professional perspective and also for the individual practitioner prospective.

In this case it was noted that the College was not aware of any patients being harmed by inaccurate record keeping by Hewes Way Pharmacy. Mr. Krempien also stated that records must often speak in place of a patient or for a patient with regards to other health care providers that rely on the absolute accuracy of those records, especially as it pertains to the dispensing of medications. So when records are inaccurate, that is concerning to the College because it has the potential for creating an environment where patients are more at risk. Since 2007, records are not just kept locally at the pharmacy but are required under the *Health Information Act* and its regulations to be uploaded to the patient's electronic provincial health care record, which is then accessible by all custodians that have authorization to review those records, such as other physicians. When those dispensing events are not accurate and another health care professional, say, in an emergency department has to rely on those uploaded records from the pharmacy and make current health care decisions for that patient based on those records, there is the potential that a patient may be harmed. When other health care professionals access those records they should be able to trust that they are true and accurate to assist with medical decision making.

The third specific finding and concern from the ABC claims review was titled "Pharmaceutical Service Not Provided by the Pharmacy" on page 250 of Exhibit 4. Mr. Krempien testified that ABC found Hewes Way Pharmacy had made claims for dispensing events and yet the corresponding medication was not received by the patient. There were instances in which the patient was in the hospital; where the patient had transferred to another pharmacy; and where the patient was away on vacation with no opportunity to receive the drug or service. Mr. Krempien said that dispensing includes the delivery of a drug to the patient, so no delivery meant no dispensing event had been completed. He said that pharmacies should not charge fees unless performing the full dispensing event. In this case because the drugs were not fully dispensed, the pharmacy should have corrected the dispensing records and reversed the claims to ABC for dispensing fees, despite the pharmacy having incurred packaging and labour costs to prepare the drugs.

Mr. Krempien referred to Exhibit 2, Tab 11, which was Mr. Ramji's response to the complaint. Mr. Ramji described a patient, [REDACTED]. (Ref #5 & 6) who lives in a senior's residence who had medication delivered to the residence. Mr. Ramji also described learning that the patient was admitted to hospital upon delivering medications to the senior's residence for her on April 7. He said that the blister pack was returned to the pharmacy but they did not reverse the claims, as per "store policy" because he could not return or re-use these medications once they left the pharmacy as per Alberta College of Pharmacy guidelines, more specifically, Standard 19. Mr. Krempien testified that whether or not the medications could be returned or reused, pharmacies are not entitled to charge dispensing fees unless they have provided the dispensing service. He explained that ACP Standard of Practice 19 speaks to the limited circumstances in which a pharmacist may reuse drugs, not about their return to a pharmacy if unclaimed. Mr. Krempien further stated that in this particular instance, it doesn't change a registrant's professional responsibilities in terms of ensuring that the records that are maintained for the patient are accurate. For example, if a medication leaves the care and control of the pharmacy and then

comes back, whether it is reused for another patient or not, and whether that is allowable under the Standards or not, the initial dispensing record may have to be amended to accurately reflect what has been dispensed to that patient.

Mr. Ramji's response had also described a patient, [REDACTED] (Ref# L-8) who had not picked up her medication from the pharmacy in November 2016. Mr. Ramji indicated that the pharmacy tried to contact her, to no avail, and then they attempted to deliver the medications to the patient by leaving it between the doors at her residence. Mr. Ramji said that the pharmacy later learned that the patient had moved and changed pharmacies so they stopped dispensing her medications. Mr. Krempien said this was a concern because there was no information to confirm that the patient received the medication and, thus, it wasn't dispensed to the patient. It was left between the doors of where the patient had been residing but not delivered to, or received by the patient or the patient's agent. The patient had, in fact, moved to a different pharmacy and, thus, that dispensing event and those records should have been corrected to accurately reflect that the medication was not dispensed. Mr. Krempien stated that the corresponding claim should have been cancelled to accurately reflect that the medication was not dispensed to the patient as initially recorded on NetCare. Mr. Krempien expressed similar concerns about dispensing fees and records for patients and prescriptions identified as [REDACTED] (Ref# 9,10) and [REDACTED] (Ref. #13) in Exhibit 2, Tab 11,

Mr. Krempien concluded his direct testimony by confirming that throughout the investigation, Mr. Ramji was cooperative, open and professional in providing his responses. Mr. Krempien also acknowledged that relative to other matters before the College, the amounts at hand, the instances of inaccurate record keeping, and the claims issues were on the less serious end of the scale.

On cross-examination, Mr. Krempien acknowledged that he had not obtained from Mr. Ramji and reviewed each of the prescriptions for which Mr. Ramji or his staff submitted disputed claims to Alberta Blue Cross. He did not obtain and review the actual transaction records or speak with any patients, pharmacists or technicians, other than Mr. Ramji, from Hewes Way Pharmacy. Mr. Krempien also acknowledged he may not have received a copy of the Alberta Blue Cross Agreement with Hewes Way Pharmacy, nor did he specifically investigate whether there were breaches of the Agreement. Mr. Krempien did not agree that the question of ethical breaches depended on proof of a breach of the Agreement. Mr. Krempien confirmed that he based his decision on the information provided by ABC including the ABC Final Report and supporting documents, which referred to the ABC Agreement with Hewes Way Pharmacy.

Mr. Krempien was asked why he rejected Mr. Ramji's explanation that his pharmacy obtained emergency supplies of drugs from secondary suppliers and this is how it had inventory to fill prescriptions and submit claims to ABC. Mr. Krempien acknowledged Mr. Ramji's explanations but said he gave them less weight. Mr. Krempien concluded that given the quantities of drugs involved, 12 Advair and 15 Symbicort, it was more likely than not that dispensing records were created and claims were made to ABC for patients who did not actually receive the drugs because there was no record of those drugs having come into the pharmacy. Mr. Krempien explained that these drugs had a value of about \$3,600. Mr. Ramji had said he couldn't find records to substantiate his acquisition of that quantity of Advair and Symbicort. Mr. Krempien concluded it was unlikely that there would be no records for that quantity of drugs.

Mr. Krempien agreed that the delivery of drugs to an agent, such as an adult child of a patient or a lockbox at the patient's living facility would amount to complete dispensing. Mr. Krempien said that there were cases where Hewes Way Pharmacy had been advised that the patient hadn't received the drugs but the Pharmacy failed to reverse the claims and correct its dispensing records. Mr. Krempien confirmed that if a pharmacy is aware that drugs have not been received by a patient, but fails to correct its dispensing records to accurately reflect that fact, that would breach the College's Standards of Practice.

Mr. Krempien was also asked and acknowledged that his investigation report was not in evidence, nor had he disclosed records of his consultations with his legal counsel. Ms. Hale and Mr. Lund both made submissions on the issue of whether communications between Mr. Krempien and his legal counsel should have been disclosed. The Hearing Tribunal also obtained advice on the record from Mr. Sim that records of solicitor-client privileged communications between Mr. Krempien and his legal counsel would not be subject to disclosure. The Hearing Tribunal took notice of the fact that records of Mr. Krempien's consultations with his legal counsel had not been produced and asked Mr. Lund to move to his next line of questioning.

██████████, **Alberta Blue Cross**

Ms. Hale then called her second and final witness, ██████████.

[The auditor] stated that he has been a licensed pharmacist in Alberta for over 40 years and worked as a community pharmacist for 32 years. For the last 26 years, [the auditor] has also been employed by ABC as an auditor and has a good understanding of the standards of practice in Alberta.

[The auditor] described the ABC audit process and how it had shifted from random audits to targeted audits based upon dispensing data, algorithms, and tips through ABC's "Tip line". In regard to Hewes Way Pharmacy, [the auditor] was assigned to obtain and analyze data for a total of 17 prescriptions and verify the documentation at the pharmacy. [The auditor] then described the results of his review, which was the ABC Final Report, Exhibit 4, containing four sets of findings for different patients that led to his complaint to College.

[The auditor] explained that he had been prepared to testify about all four findings in the ABC Final Report, but he had spoken with his supervisor and had been advised that he should not speak to the conclusions in specific finding 1 as those conclusions were not his area of expertise. Mr. Lund then asked that Allegations 1 and 2 in the Notice of Hearing be struck since the complainant would not be providing a witness to speak to them. Ms. Hale responded that there had already been significant evidence in support of Allegations 1 and 2 adduced through Mr. Krempien. She said it would be up to the Hearing Tribunal to weigh all of the evidence, make findings of fact and determine the allegations in the Notice of Hearing. The Hearing Tribunal advised the parties it would hear all of the evidence and arguments before making any decisions.

[The auditor] began by describing the transactions under specific finding #2 in Exhibit 4, the ABC Final Report, entitled "Claiming of Additional Fees".

[The auditor] described transactions for a patient, ■■■, (Ref #L-267). In this patient's case, Hewes Way Pharmacy claimed weekly dispensing fees for medications that were blister packed from November 2014 until the date of the Final Report. As part of [the auditor]'s investigation, he had sent out a clarification letter to the patient. ABC received a written response confirming that the patient had received his medications weekly and that there were no special arrangements with the pharmacy. Normally, this would be the end of the patient-specific investigation, however, Alberta Blue Cross received a tip on February 18, 2018 that this patient had in fact not received his medications weekly and the frequency indicated in the letter was incorrect.

The tip led to further investigation by phoning the patient's family member who picked up the blister packs. The family member confirmed that they had regularly picked up the blister packs every two to four weeks, but the pharmacy prepared them weekly so that she could pick them up at her convenience. This created a discrepancy whereby the patient's agent was picking up the blister packs every two to four weeks yet the billing record to Blue Cross was showing weekly dispensing and claiming of additional fees.

As part of the claims review, ABC asked Mr. Ramji to reply in writing surrounding ■■■'s prescriptions and the following was received from Mr. Ramji on February 28, 2018:

*This client's medications have been always prepared in weekly blister packs as per physician's request. His medications were picked up or delivered on weekly basis while he was living in Edmonton. Upon moving to ■■■ his daughter requested our pharmacy to continue to have his medications prepared in weekly blister packs and she would pick them up during the father's regular doctor's appointment in Edmonton, on monthly basis when she would give him the medications one week at a time.*

ABC determined that Hewes Way Pharmacy had been preparing 7-day blister packs of the patient's medication and charging weekly dispensing fees but only dispensing the medication to the patient through his agent every two weeks. There was no problem with using 7-day blister packs, but the frequency of the dispensing fees charged to Alberta Blue Cross was wrong. Alberta Blue Cross recovered 130 dispensing fees for the period of 2014 to 2018 for ■■■. In response to the Final Report, [the auditor] said Mr. Ramji had changed Hewes Way Pharmacy's practice to ensure dispensing fee claims followed the ABC Agreement.

[The auditor] next led the Hearing Tribunal through the second set of transactions that related to a different patient, ■■■. (Ref. #L-175) in Exhibit 4. In this case, ABC had received a complaint from a plan administrator that then prompted a letter to the patient about what medications she had received from Hewes Way Pharmacy during the period of October 1, 2017 to April 30, 2018. The written response from the patient indicated that when she went south for the winter, she would receive all of her medications at once and there was no form to fill out or sign.

The written response from ■■■. prompted several follow-up phone calls with ABC to verify her assertions and also to address the patient's questions about why ABC had contacted Hewes Way Pharmacy. ■■■. was upset because ABC had "thrown her under the bus" and the pharmacy was now calling her and asking her why she had shared this information. In speaking to ABC she said that she had gone to ASEBP and her complaint was supposed to be anonymous and

now she was supposed to go to the pharmacy and have a long conversation with the pharmacist because he had called and told her that she had to. ABC informed ■■■ that she was under no obligation to speak to the pharmacy. In light of this conversation, ABC sent Hewes Way Pharmacy a letter asking them for their side of the story. In Mr. Ramji's response dated September 15, 2017, he replied:

*This client's medications were generally dispensed on a monthly basis. During these periods in question the clients wanted more than one month's supply for vacation. So the pharmacist on duty suggested to dispense required quantity needed while on vacation and they can manually submit their claims to Blue Cross, but the clients did not want to manually submit the claims, so approximately four months of medication supply were given in advance and billed monthly as per client's request*

In a later letter to Alberta Blue Cross from Mr. Ramji, he stated:

*...the medications for this patient have been dispensed as per prescription written by her physician. Her medications and inhalers were dispensed monthly as requested. I called the patient to clarify about the prescriptions in question and was informed she stopped using the inhaler earlier this year, 2017. She said that she always received her meds as filled and requested. We sincerely do not recall why the patient would have not received the meds in question.*

[The auditor] then explained that the issue for ABC was that the patient received four months of medications all at once but the pharmacy billed for dispensing the medications monthly. [The auditor] clarified ABC's vacation authorization process whereby a pharmacy can obtain authorization to dispense up to 180 days of medication all at once after providing specifics about the medications and where the client is going etc. ABC recovered all of the dispensing fees for ■■■'s prescriptions for the vacation supply.

The next claims of concern were for a patient, ■■■ (L-117) in Exhibit 4. The patient was sent a letter from ABC to determine the frequency at which the patient obtained prescriptions and if there were any special arrangements with the pharmacy. The patient responded that the prescriptions were received monthly. Hewes Way Pharmacy had submitted two weekly dispensing fee claims to ABC on October 18 and 25, 2018. Hewes Way Pharmacy was contacted to provide a response. Mr. Ramji responded as follows:

*...This client's medications are filled, prepared and picked up weekly as prescribed. He is on multiple therapies and blood thinners. The client was on vacation for two weeks on October 19th, 2016, and requested an extra week supply of medications. The pharmacist advanced him a one-week quantity at the time to be billed later.*

ABC recovered one weekly dispensing fee for each medication because the pharmacy gave the patient a two-week supply of the medications all at once, but billed ABC for dispensing the medications weekly.

The last example of improper dispensing fee claims was for patient, ■■■ (L-290) in Exhibit 4. Alberta Blue Cross wrote to the patient to verify the frequency of obtaining the medications. The patient responded through his agent who had his Power of Attorney. This patient had his

medications prepared in blister packs and delivered. The pharmacy was instructed to place his medications in a lock box in the room at his living facility, since his medications were administered by his caregiver. The patient's response explained that he had been in the hospital since the third week of April, 2017. On April 19, the medications were delivered and put in a lock box in his room as per instructions. At the time of the next delivery, April 26, the room was locked, and upon questioning the facility manager the delivery person was told the patient had been admitted in the hospital. The pharmacy stopped dispensing medications in May, as the patient was in and out of the hospital due to ill health and he used the medications that had been delivered to him earlier until he needed more. The patient's agent picked up his medications from the Pharmacy on May 10, 2017 but the Pharmacy charged a dispensing fee to give them to her. Alberta Blue Cross recovered fees in this case because two dispensing fees were charged when only one was eligible.

[The auditor] then described Alberta Blue Cross' finding number 3, entitled "Pharmaceutical Service Not Provided by the Pharmacy" in the Final Report, Exhibit 4.

Patient ■■■. (Ref# 5, 6) in Exhibit 4 was a patient of Hewes Way Pharmacy who received several medications in compliance blister packaging. Alberta Blue Cross received a tip regarding this patient from a nurse at the hospital that there were prescriptions billed through and recorded on NetCare. As a result, ABC reached out to Hewes Way Pharmacy. The ABC Final Report indicated that the pharmacy attempted to deliver medications to ■■■.'s senior's residence on April 7, 2017 but were informed that ■■■. was in hospital. ABC later verified that ■■■. was hospitalized as of March 31, 2017. The pharmacy had not heard from the patient since learning she was hospitalized. The pharmacy did not reverse its claims due to its policy not to return or reuse drugs once they have left the pharmacy.

The next patient for whom pharmaceutical services were billed but not received was patient ■■■., (L-8) in Exhibit 4. The ABC Final Report stated that this patient did not pick-up her prescription for Abilify 10mg in November 2016. The pharmacy tried to contact the patient and also attempted to deliver the drug products to the patient's residence on November 3, November 10, and November 17 of 2016. As the member was not home, the medication was left between the doors of her building. The pharmacy was later informed that the member had moved and changed pharmacies. The pharmacy did not reverse the claim based on its policy not to return or reuse a drug produce once it has left the pharmacy. ABC contacted the patient and learned she had received her medication monthly, despite the Pharmacy having billed for weekly dispensing. Alberta Blue Cross received the following explanation from the Pharmacy:

*This client did not show up to pick-up her medication in November 2016. The pharmacy tried to contact her but there was no response. Her medication was then delivered to her residence and placed between the doors. We are later told that she moved and changed her pharmacy and, therefore, we stopped dispensing her medications. Blue Cross recovered those claims, all three of them, November 3rd, 10th, and 17th of 2016.*

The ABC Final Report described a third patient, ■■■. (Ref #13 and 14), for whom pharmaceutical services were billed but not received. Again, ABC had received a tip that a patient was hospitalized and records of care and claims had been posted to NetCare and submitted to ABC. This prompted ABC to send Hewes Way Pharmacy a letter asking for an explanation surrounding six medications that were blister packed. ABC received a response

from the pharmacy that the blister packs were picked up by the member's wife on March 3, 2017, but that no one picked up the blister pack on March 31. When the pharmacy followed up they were told the member was in the hospital. The pharmacy indicated that it had not heard from the member since. ABC confirmed the patient was admitted to the hospital February 10 and was still in the hospital as of April 3, 2017. The pharmacy indicated it did not reverse the claims since "it is the pharmacy's policy not to return or reuse a drug product once it has come into contact with other products in the blister pack."

The ABC Final Report then described its findings about prescriptions for a fourth patient, [REDACTED]. (Ref #9 and 10) in Exhibit 4. Consistent with the previous patients, this patient's prescriptions were blister packed and delivered to a senior's residence after the patient had been hospitalized. There was also a tip submitted surrounding this patient having prescriptions posted to NetCare and claims submitted to ABC. Hewes Way Pharmacy was contacted about this patient's claims and Mr. Ramji provided the following response:

*The patient, [REDACTED], this patient has his medication prepared in blister packs and delivered also to his senior residence. During the service dates in question the pharmacy was not informed of his hospital admission, and upon delivering the medications on March 24th we were informed by the building manager that he was admitted in the hospital. It is our policy not to return or reuse the medication once it leaves the pharmacy as per College guidelines.*

[The auditor] summarized Mr. Ramji's response to the ABC draft claims review report and reiterated that Mr. Ramji was cooperative during the claims review. Mr. Ramji advised ABC of a number of store policy and procedure changes related to the claims review findings. More specifically, in his response dated May 18, 2018 (Exhibit 4 Tab C) Mr. Ramji stated that Hewes Way Pharmacy had implemented the following policy and procedural changes to their operations:

- 1. Our pharmacy has now implemented a strict policy to monitor any meds that are owed and picked up in situations where there is not enough inventory for dispensing.*
- 2. All staff have been told to ensure all invoices and purchase documents are kept and recorded accurately for further reference, including supplies purchased from other pharmacies in emergency cases.*
- 3. Staff reinforced that prescriptions and pharmaceuticals must be dispensed according to guidelines outlined in the ABC Contract Services as always done previously.*

*Findings:*

*1. Quantity Claimed Support.*

*The two drug products that were claimed could not find documents to support, it is primarily due to poor report keeping in the pharmacy. Please note that many times when we have a shortage or need products are very soon we borrow or purchase items from other drugstores and in some instances the receipts are not kept with regular invoices and have been misplaced.*

2. *Additional Fees Claimed.*

*Due to prescription filing frequency not corresponding to delivery or pick-up frequency of clients indicated in the draft report we have reemphasized and implemented strict policy in the pharmacy to make sure dispensing and pick-up or presentations must follow the policy outlined in ABC agreement. We have now instructed our staff to verify all dispensing to be counter checked for accuracy, inventory availability, and pick-up or delivery. Prescriptions not pickup after request will be followed up with clients before proceeding to prepare the next batch.*

3. *Pharmaceutical services not provided, claims:*

*We have re-adapted policies regarding compliance packaging services provided to clients who are in Hospital, Vacation or Not available.*

*All clients that are admitted to hospital must make arrangements to inform the pharmacy to hold dispensing and preparation of their medication until further notice. In addition, our staff has been requested to verify that clients on compliance packaging program including those in Group Homes and Institutions are in residence before preparing their medications.*

*We have forwarded all documents that were requested. We will forward anymore documents when found in our continued search to ABC. Thank You Kindly. Sincerely [signed Karim Ramji], Hewes Way Pharmacy*

Lastly, [the auditor] explained that it was his decision to submit his complaint to the College. He said that as a licensed pharmacist in the province of Alberta, he has a responsibility to complain if he sees something that is professionally concerning. [The auditor] also said that he recognizes that when he makes a complaint there is someone else who decides whether the concerns are significant or not.

On cross-examination, [the auditor] acknowledged that ABC reviewed the original prescriptions and transaction records for Advair and Symbicort but discovered no false dispensing records for these medications in the claims review. In re-direct he explained that ABC had not been looking for any false dispensing records. [The auditor] was also asked about the ABC Pharmaceutical Services Provider Agreement with Hewes Way Pharmacy and whether he had reviewed it as part of this case. [The auditor] said that he was not a specialist in the Agreement. [The auditor] acknowledged that the ABC Final Report does refer to breaches of the Agreement, but his complaint to the College is based on his concerns about unprofessional conduct and ethics. His complaint is not based on specific contractual contraventions.

[The auditor] was also cross-examined about ABC's findings regarding patients discussed in its Final Report. For patient [REDACTED] (L-267), [the auditor] agreed the patient always received his medications but the patient's daughter was only picking up the medication every two to four weeks. The pharmacy was claiming for weekly dispensing and this didn't make sense. [The auditor] acknowledged the pharmacy had been preparing the medications in weekly blister packs, but he said weekly blister packs can be dispensed two, three or four weeks at a time.

Pharmacists are only entitled to claim one dispensing fee regardless of the number of blister packs dispensed at one time.

For patient ■■■. (L-117), [the auditor] explained he was dispensed two weeks' worth of medication at one time so he could go on a vacation. [The auditor] acknowledged the pharmacy had prepared the medications in two weekly blister packs but they were given to the patient at the same time. This was one dispensing event and it was improper for the pharmacy to claim for having dispensed the medication weekly, for two weeks in a row.

For patient ■■■. (L-290), [the auditor] explained that pharmacy staff had attempted to deliver medications for the patient on April 26 but they were informed the patient had been hospitalized. The pharmacy could not deliver the medications on April 26 but failed to reverse the claim to ABC for dispensing those medications. [The auditor] said that the bottom line was that the patient did not receive the medications so the claim should have been reversed.

For patient ■■■., [the auditor] explained that the pharmacy had attempted to deliver medications to the patient on April 4, 2017 and learned she had been hospitalized. While on cross-examination [the auditor] said that delivery of medications to a patient's agent would amount to complete dispensing, he clarified on re-direct examination that he did not believe the medications were received by ■■■.'s agent on April 4, 2017.

For patient ■■■. (L-8), [the auditor] acknowledged the pharmacy made several attempts to deliver the patient's medications, but he maintained the pharmacy should have reversed its claim because the medication was never delivered. [The auditor] said the pharmacy had options other than leaving the medication at the patient's building.

For patient ■■■., [the auditor] acknowledged that he did not notify the pharmacy when he learned the patient had been hospitalized as he was not certain when ABC had received the tip. [The auditor] disagreed with Mr. Lund that ABC had a duty to inform pharmacies when it learns of patients who have been hospitalized.

For patient ■■■., [the auditor] confirmed that the pharmacy delivered weekly blister packs of medication to the patient's senior's residence on March 24 and learned that the patient was hospitalized. The pharmacy did not reverse its claim to ABC. [The auditor] explained that the pharmacy should have reversed its claim because the patient never received the medications. [The auditor] agreed with Mr. Lund that pharmacists can complete the dispensing of a medication by giving it to a patient's agent, like their spouse, mother, child, etc., so long as the patient gets the medication and the plan gets value for the money that it pays.

Ms. Hale informed the Hearing Tribunal that [the auditor] was her final witness and the hearing adjourned until May 24 when all parties were available to reconvene, and Mr. Lund could present his evidence and call his witnesses to testify.

On May 24, the tribunal reconvened with Mr. Jardine representing the Complaints Director in Ms. Hale's absence. Mr. Lund called his first and only witness, Mr. Ramji.

**Karim S. Ramji, Hewes Way Pharmacy**

Mr. Ramji gave evidence that he studied pharmacy at the University of Alberta and has been practicing in Alberta for 31 years in both community and hospital pharmacy. In 2003, he opened Hewes Way Pharmacy in Edmonton and currently employs 3 pharmacists and 5 pharmacy assistants. Mr. Ramji's pharmacy is well-established in his local community of Millwoods and the core of his business is providing and delivering compliance packaging services to patients in group homes, institutions, nursing homes and other patients.

Mr. Ramji identified Exhibit 6, a letter from ██████████ a nurse and case manager with Alberta Health Services. Ms. ██████████ looked after dementia patients and she requested that Hewes Way Pharmacy deliver blister packs to clients at ██████████ ██████████ and place the blister packs in lock boxes or on top of specific cupboards and not to give them directly to patients to prevent confusion or patients taking medications at the incorrect times. Ms. ██████████'s letter requested the medications to be left in the designated spot even if the patient was not in the room. Mr. Ramji explained the delivery process and stated that the delivery driver usually does not see the clients and they place the blister packs where they are told. Mr. Ramji also stated that Hewes Way Pharmacy does not charge for delivery or charge any extra fees for preparing these medications in blister packs.

Mr. Ramji then testified that he was here before the Hearing Tribunal as a result of a complaint that stemmed from an ABC claims review. Prior to this claims review, Mr. Ramji had been audited by ABC on two separate occasions with nothing but insignificant anomalies discovered.

Mr. Ramji then went through the allegations in the Notice of Hearing.

The first two allegations related to Advair and Symbicort inventory deficiencies compared to the number of claims for these medications. Mr. Ramji described the pharmacy's normal process for procuring medications through their wholesaler. In cases where they had a shortage and need the medication right away, the pharmacy's normal procedure is to borrow or exchange product from other pharmacies. Mr. Ramji identified that their system of logging owes/borrows was flawed, in that the staff would not record all purchases or loans either manually or electronically in their computer software. When ABC conducted its claims review, the staff could not produce documentation of obtaining product from other pharmacies. They have since corrected the problem. In the case of both Advair and Symbicort, Mr. Ramji made available all supporting invoices, copies of prescriptions and transactional records for the audit period. Mr. Ramji also testified that in all of his dealings with ABC through this claims review, no one suggested to him that his transactional records were falsified. Mr. Ramji stated that all of the transactions listed in Exhibits 7 & 8 were filled and all of the patients received their medications. To Mr. Ramji's knowledge neither ABC, nor the College have contacted the patients or his pharmacy staff to confirm otherwise.

Specifically, in response to the second allegation, Mr. Ramji testified that neither he, nor any member of his staff created false dispensing records. Mr. Ramji maintained that he cooperated with both ABC and the College in their investigations and he never denied that he was missing inventory records. Mr. Ramji also stated that in his initial interactions and the notice of investigation that there was no mention of creation of false dispensing records and his staff was not questioned on this matter.

Allegation 3 alleged that Mr. Ramji submitted claims for dispensing fees to which he was not entitled. Mr. Ramji described Exhibit 5, the ABC Pharmaceutical Services Provider Agreement between Alberta Blue Cross and his pharmacy. Mr. Ramji testified that he did not have a hand in drafting the Agreement and that he had simply signed and agreed to it. Mr. Ramji testified that Appendix A to the Agreement (at page 13 of the Agreement) set out timelines for submissions of claims. Mr. Ramji also testified that he was not aware of anything in the Agreement preventing ABC from paying claims for medications dispensed without documented inventory. Mr. Ramji explained that he elected not to dispute ABC's recovery of alleged overpayments because of the amount of time it would consume to argue with them and he just wanted to move on.

For Allegation 3, which referenced approximately \$2,132.59 worth of disputed claims for patients ■■■ (L-267), ■■■ (L-175), ■■■ (L-117) and ■■■ (L-290), Mr. Ramji denied that he breached section 1.2(a) of Appendix A to the ABC Agreement as described in the Alberta Blue Cross Final Report.

Mr. Ramji then discussed each patient to explain why he filled each patient's prescriptions and submitted claims to ABC as he did. Mr. Ramji stated that for patient ■■■ (L-267), the physician had specified weekly blister packs. Hewes Way Pharmacy filled them weekly and made them available for a family member to pick up weekly even though they were picked up less frequently after the patient moved out of town. Mr. Ramji believed that he was entitled to those dispensing fees and that he did not breach section 1.2(a) of Appendix A of the Alberta Blue Cross Provider Agreement.

Mr. Ramji testified that patient ■■■ (L-175) and their family had been loyal customers since 2007. The patient regularly came in to pick up prescriptions after calling the pharmacy and placing orders in advance. The patient required her medication in order to take a long trip, so Mr. Ramji dispensed several months of medications at one time, but continued to submit claims to ABC for dispensing on a monthly basis. Mr. Ramji said he had explained to the patient that ABC would only pay for 3 months of medication to be dispensed at one time and she would have to pay for the extra 2-3 months and submit claims herself for the balance. The patient refused this as she could not afford it. Mr. Ramji admitted that he agreed to give the patient the full supply of medication and that he would continue to bill it "as usual on monthly" basis and that because she was a loyal customer, he would help her out.

The next patient was ■■■ (L-117). The situation was a similar situation to patient ■■■. The patient was going on vacation and required two weeks of medication. Mr. Ramji said he dispensed two weeks' worth of blister packs, but instead of submitting one claim for dispensing two weeks' worth of medication, Mr. Ramji submitted two claims, one week at a time.

Patient ■■■ (L-290) was also a weekly blister pack patient for whom the pharmacy delivered medications in blister packs to a lockbox at the request of Alberta Health Services. In this patient's case, the pharmacy's delivery driver was advised that the patient was in hospital when they went to deliver medications.

Allegation 4 alleged that Mr. Ramji submitted or allowed for the submission of claims for services and drugs that were not provided to the patient and the claims and dispensing records were not properly reversed and corrected. Allegation 5 alleged that Mr. Ramji created or

allowed for the creation of associated patient dispensing records for drugs that were not received and thus not used by the patient.

Mr. Ramji testified that for patient [REDACTED]. (Ref# 5, 6), arrangements were in place for the pharmacy to fill four weeks of blister packs at a time and have them delivered to [REDACTED] where they were placed on top of a cupboard and AHS staff would administer the appropriate day's dosages. [REDACTED]. was hospitalized a few days after a routine delivery. Mr. Ramji testified that the pharmacy was advised and they updated their computer records and did not fill any further prescriptions. Yet ABC found in their claims review that section 1.2(c) of Appendix A of the Provider Agreement had been breached.

The next patient under Allegation 4, [REDACTED]. (L-8), was a weekly blister pack patient for whom multiple 1-week blister packs were dispensed. Mr. Ramji explained that when no one picked up the patient's medications he became concerned and attempted to phone her. He then asked staff to deliver the medications and they left the medications between the doors of her residence. After that the pharmacy filled one more prescription for [REDACTED]. but they learned that the patient had moved. The claims for dispensing these medications were not reversed as the pharmacy did not have any information to indicate that the patient did not receive the medications.

The next patient, [REDACTED]. (Ref #13, 14) was a 4-week blister pack patient whereby the patient's spouse picked up the blister packs from the pharmacy on a regular basis. The staff had noticed that these blister packs were overdue for pick up and they called the patient's home only to find out that the patient was in the hospital. The prescription claims were not reversed and ABC alleged that section 1.2(c) of Appendix A to the ABC Agreement had been breached.

Mr. Ramji then discussed patient [REDACTED]. (Ref #9, 10). Mr. Ramji testified that this was another weekly blister pack patient at [REDACTED]. The pharmacy delivered the patient's blister packs to a designated spot at the facility. In this case, the blister packs were prepared and delivery was attempted on March 24, 2017 but the pharmacy representative was informed that [REDACTED]. was in the hospital. Mr. Ramji said that the claims to ABC for dispensing these medications were not reversed.

Allegation 6 alleged that Mr. Ramji breached his agreement with ABC and failed to act ethically or honestly in his dealings with ABC. In Allegation 7, Mr. Ramji is alleged to have failed to properly create or retain required and accurate pharmacy records. To both allegations, Mr. Ramji testified that in his opinion he had not acted dishonestly or unethically in his dealings with ABC or allowed for the creation of any false records.

Mr. Ramji said he was shocked that this matter was being referred to a Hearing Tribunal and in hindsight, had he known that this was going to happen, he would have challenged ABC on their findings in an effort to correct the situation and avoid a Hearing Tribunal. Mr. Ramji referred to Mr. Krempien's July 23, 2018 letter to the complainant [the auditor] which mentioned "resolving the matter" and the use of "an educational and remedial approach focusing on quality improvement." Mr. Ramji asserted that he was never offered the opportunity to resolve this matter through an educational or remedial approach. Mr. Ramji said that he had already spent \$30,000 to \$40,000 for new systems and staff training in his pharmacy and to ensure they had ample minimum inventory to minimize borrowing stock from

other pharmacies. Mr. Ramji noted that the College proceedings have affected him drastically, causing him stress. He asserted his passion for pharmacy and patient care and denied any ethical wrongdoing.

On cross examination Mr. Ramji admitted that he is the licensee for Hewes Way Pharmacy and responsible for the operation of the pharmacy and the services provided. Mr. Ramji was then asked about his understanding of dispensing, the process of dispensing a prescription medication and the responsibilities of the licensee in the operation of a pharmacy. Mr. Ramji admitted that providing the drug to the patient is a part of dispensing. Mr. Ramji also acknowledged that in the community pharmacy setting, if medications are ready for pick up but no one picks them up within 30 days then according to the ABC Agreement pharmacies are supposed to reverse the dispensing fee claim. He said that if the medications have been mixed, like in a blister pack, they can't be put back into inventory. He asked who would take the loss on expensive medications? Mr. Ramji said that he knew it was a "grey line" but his pharmacy could not afford to cover the cost of those drugs.

Mr. Ramji also acknowledged that once a medication has been prepared and is ready for pick up, there is a record on Netcare indicating that the medications have been provided to the patient. The same records are provided to insurers to claim dispensing fees. Anyone reviewing that patient's records would see that the prescription had been filled. Mr. Ramji agreed that those records should be corrected if medications are not picked up, given his obligations to ensure all records are complete and accurate. Mr. Ramji agreed that insurers should be able to assume that all such records are complete and accurate, as the system would otherwise grind to a halt. He agreed he has an ethical duty of honesty and to advise insurers of all relevant facts to permit them to adjudicate claims.

Mr. Ramji was asked about giving 5 or 6 months of medication to a patient. [REDACTED] (L-175) to take on vacation, but recording it and claiming it as being dispensed monthly. Mr. Ramji agreed that he did that; even though it probably wasn't the right thing to do. Mr. Ramji said that if something had happened he would have taken the loss on the medications, probably for \$2,000 to \$3,000. He said he wasn't entirely comfortable but he did it. He acknowledged the patient's records would have shown extra transactions for monthly dispensing and billing even though all of the medication was dispensed at once.

Mr. Ramji was asked about his August 31, 2018 letter of response to Mr. Krempien (Exhibit 2, Tab 11). In relation to Allegation 1, Mr. Ramji had written that it is possible that the pharmacy could not find some of the invoices from obtaining stock from secondary sources. He acknowledged he hadn't provided any invoices or receipts for obtaining stock from a secondary source. He said they couldn't find anything. He agreed that what he had provided to ABC was not sufficient to demonstrate they had the inventory to fill the Advair and Symbicort prescriptions.

Mr. Ramji was also asked about the changes to his pharmacy's policies and procedures set out in his August 31, 2018 letter to Mr. Krempien. Mr. Ramji agreed he was telling Mr. Krempien that he would not have future issues because he was changing his pharmacy's policies. Mr. Ramji denied that he was changing the policies because of ABC's findings about the patients mentioned in its Final Report.

Mr. Ramji was asked whether he believed it honest and fair not to advise the insurer if he knew a patient had not received a drug for which a claim had been submitted. Mr. Ramji explained that he believed it was a matter between the patient and the pharmacy. He said the patient who wasn't present to receive delivery should deal with the matter. Mr. Ramji acknowledged that the pharmacy would have a dilemma, but he said it shouldn't be up to the pharmacy to deal with it. He asked who would pay his staff? Who would pay his overhead? Mr. Ramji said he wasn't making excuses but when he has to communicate with ABC it takes 15-20 minutes and his pharmacy is busy. They lose clients every day because of things like that. He acknowledged he did not seek guidance on this at all. He did not ask ABC, or the College, or the Alberta Pharmacists' Association for guidance.

For patient ■■■ (L-267), Mr. Ramji admitted that he continued to prepare the patient's medications weekly and claim for weekly dispensing even after the patient's agent moved out of town and came to pick up the medication only every two to four weeks. Mr. Ramji agreed he was creating records and claiming fees for weekly dispensing when that was not what was occurring. Mr. Ramji acknowledged that the records he created on Netcare would not have shown the amount of medication that was actually advanced at a time. He agreed these records were inaccurate. As a result other healthcare providers looking at the patient's records on Netcare would not know how much medication he had. Mr. Ramji said this was a situation he didn't like and in hindsight he should have filled exactly what she came to pick up. Mr. Ramji's only explanation for not just billing two or three weeks of medication as one dispense was that they didn't know when the agent would be coming.

With respect to patient ■■■ (L-175), Mr. Ramji agreed that she received a benefit that the insurer would have refused had he claimed it as it was given to the patient. Mr. Ramji also agreed that the records he created on Netcare showing monthly dispensing were inaccurate.

For patient ■■■ (L-117), Mr. Ramji admitted he dispensed two weeks' worth of medication but recorded and claimed it as if it had been given one week at a time. Mr. Ramji admitted this suggested that he had evaluated the patient more frequently than he really had. He also agreed that the records created for this patient's care were inaccurate.

For patient ■■■ (L-290), Mr. Ramji acknowledged that his staff attended to deliver medications to the patient's lockbox and learned the patient had been hospitalized. Mr. Ramji agreed that while in hospital the patient's care transferred to the hospital but he did not reverse his claim for dispensing fees for the medications. Similarly, for patient ■■■ (Ref# 5, 6) Mr. Ramji admitted that he did not reverse his claim or advise the insurer when he learned the patient had been hospitalized.

For patient ■■■ (L-8), Mr. Ramji said that the second time his staff attempted to deliver medications to the patient's residence they were advised she had moved and not to deliver there anymore. Yet he agreed that they did not contact the insurer or reverse the dispensing claim. Mr. Ramji admitted he did not know who got the medication but he assumed it was given to someone from the patient's family and that she would get it.

For patient ■■■ (Ref# 5, 6) Mr. Ramji admitted that he did not advise ABC or reverse his claims when he learned that the patient was hospitalized.

For patient O.W. (Ref# 13, 14) Mr. Ramji admitted that when [REDACTED]'s medications weren't picked up he phoned and learned the patient was hospitalized. The medications never left the pharmacy, but Mr. Ramji agreed they did not notify the insurer or reverse the dispensing claim.

For patient [REDACTED]. (Ref# 9, 10) Mr. Ramji's delivery staff were attempting delivery to the patient's room at [REDACTED] [REDACTED] when they learned the patient had been hospitalized. Mr. Ramji admitted the claim had been billed to the insurer but he did not notify the insurer or reverse the claim.

#### **IV. SUBMISSIONS**

##### **Complaints Director's Submissions**

Mr. Jardine made submissions on behalf of the Complaints Director. He argued the Complaints Director has the onus to first prove the allegations are true on a balance of probabilities. Second, the Complaints Director has the onus to demonstrate that the proven conduct amounts to unprofessional conduct.

Mr. Jardine then referred to the definitions of unprofessional conduct in the HPA and of misconduct in the PDA. He also referred to the College's Standards of Practice 1(1.1) and (1.2), 6(6.2), 7(7.16) and 8.

Mr. Jardine argued that the College's Standards of Practice define the elements of dispensing for the purposes of the HPA and confirm that dispensing is not complete under the HPA until the patient receives the medication. Mr. Jardine said this is sensible since a prescription is a physician's direction to provide a drug to a specific patient. Mr. Ramji's suggestion that he had fully dispensed medications without ensuring that the medication was received by the patient misses the point.

Mr. Jardine referred to sections 10(1)(b) and (d) of the PDA. Subsection 10(1)(b) provides that a pharmacy licensee must ensure that due diligence is exercised in the dispensing of drugs in accordance with the standards of practice under the HPA for the practice of pharmacy. Subsection 10(1)(d)(ii) provides that a licensee must ensure that counselling in respect of a patient is conducted in accordance with the standards of practice under the HPA for the practice of pharmacy. Mr. Jardine submitted that these subsections illustrate that dispensing is to be dealt with under the HPA and it involves a number of steps.

Regarding insurers, Mr. Jardine explained there can be a variety of contractual arrangements between insurers and pharmacies, but there are also ethical duties that pharmacists owe to the insurer/payor of their services. Insurers must be able to trust the accuracy and integrity of the information in claims submitted to them.

Mr. Jardine then discussed the allegations in the Notice of Hearing. Allegation 1 alleged that Mr. Ramji submitted, or allowed for the submission of claims for Advair and Symbicort without being able to provide the required supporting supplier invoices. Mr. Ramji's evidence was that he thought the pharmacy had the medications to dispense but he couldn't provide anything to verify it, or who they got the medications from, or when they got the medications.

Mr. Jardine said it is impractical to have to rely on patients a year and a half later to say whether they received a medication or not. Insurers and the College should be able to rely on pharmacists to keep comprehensive, accurate records. Insurers pay out hundreds of millions of dollars of claims based on their trust in the accuracy and completeness of pharmacy records. Mr. Jardine submitted that Allegation 1 was factually proven. Mr. Jardine submitted that the facts in Allegation 1 also amounted to unprofessional conduct. He said it was serious not to be able to justify claims through the use of inventory records. If it were otherwise it would send the wrong message to the profession.

Allegation 2 alleged that Mr. Ramji created, or allowed for the creation of false dispensing records when the pharmacy submitted claims for Advair and Symbicort when the pharmacy did not have the corresponding stock for those products to have been dispensed to patients. Mr. Jardine submitted that there were transaction records in evidence stating that these medications were dispensed. He acknowledged the Complaints Director could not prove that there was insufficient inventory to dispense the medications as reflected in those transaction records, but the pharmacy's records were incomplete and there are inferences to be drawn from the facts under Allegation 1. Mr. Jardine argued it was not sufficient for Mr. Ramji to say he believes the medications were dispensed.

Allegation 3 alleged that Mr. Ramji submitted, or allowed for the submission of claims when he knew, or should have known that he was not entitled to the number of dispensing fees claimed. Allegation 4 alleged that Mr. Ramji submitted, or allowed for the submission of claims when he knew, or should have known that the services and drugs were not provided to the patient and the claims and dispensing records were not properly reversed and corrected. Allegation 5 alleged that Mr. Ramji created, or allowed for the creation of associated patient dispensing records for drugs that he knew were not received and thus not used by the patient. Mr. Jardine referred the Tribunal to Mr. Ramji's cross-examination. Mr. Jardine explained there was nothing wrong with Mr. Ramji's pharmacy processing prescriptions and preparing medications for pick up or delivery. The problems arose when the pharmacy learned that the directions to provide drugs for the patient were not fulfilled but they failed to reverse the claims made to ABC. Mr. Ramji felt it was unfair for him to bear the cost of drugs that couldn't be delivered, but he had an obligation to provide insurers with only honest, accurate information. A pharmacist who becomes aware that a claim is based on inaccurate information cannot remain silent. They must inform the insurer and reverse the claim. The integrity of the health insurance system and the profession of pharmacy depend on it. If it were otherwise then insurers could never trust transaction records submitted with a drug claim. Mr. Jardine also pointed out that the inaccuracies in the records resulted in income for Hewes Way Pharmacy. The Pharmacy benefitted from the inaccuracies and that is a factor to be considered.

Regarding the interpretation of the ABC Agreement, Mr. Jardine acknowledged that sections of the Agreement are not models of clarity but he also pointed out that pharmacists in community practice deal with the Agreement multiple times each day and would be expected to be familiar with it. Mr. Jardine submitted that a key principle of contractual interpretation is that the words of an agreement should be read in light of the Agreement's purposes and concepts; what the parties actually intended based on the background, citing *Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4 and *IFP Technologies (Canada) Inc. v. EnCana Midstream and Marketing*, 2017 ABCA 157. Mr. Jardine submitted that ABC is an insurer. It pays the costs of drugs as well as dispensing fees

for drugs to be provided to its plan members pursuant to prescriptions. Mr. Jardine said that an interpretation of the Agreement that would require ABC to pay when the drugs are not actually provided to the patient would be absurd.

Allegation 6 alleged that Mr. Ramji breached his agreement with ABC and failed to act ethically or honestly in his dealings with ABC. Mr. Jardine asserted that there was a failure to comply with the Agreement in this case, and a failure to act ethically and honestly. He said there was also professional misconduct by Mr. Ramji in his capacity as a licensee. Mr. Jardine said that Mr. Ramji's conduct breached the College's Code of Ethics Principle 10, which requires regulated members of the College to be honest in dealings with patients, the College and contractors, suppliers and any others encountered in business dealings related to the practice of pharmacy or the operation of a pharmacy. Mr. Jardine said that pharmacists' ethical obligations are paramount to financial considerations in the operation of pharmacies.

Mr. Jardine referred to the case of Shereen Elbayomy, in which a pharmacist was held to have submitted dispensing fee claims for a large amount of Ensure as well as some Advair and Symbicort without being able to produce inventory records to support the quantity claimed. The pharmacist did not appear at the hearing and the Hearing Tribunal found that she received substantial monetary benefits to which she was not entitled. The Tribunal held the pharmacist had breached the College's Code of Ethics Principles 1.1 and 10(1) and (2) and her conduct harmed the integrity of the profession. Mr. Jardine said the Tribunal also found the pharmacist's false claims meant the transaction records in support of those claims were also false.

Mr. Jardine also referred to the case of Si Nguyen. An insurer's claims audit found that the pharmacist had failed to provide invoices to support inventory for \$110,000 in claims. The Hearing Tribunal found that the pharmacist had failed to produce invoices to support the necessary inventory to justify his claims. The pharmacist claimed he had "owes" for a long period of time but the Tribunal rejected this. The Tribunal held the failure to provide adequate evidence of inventory for his claims and the likely false records he created for those claims were unprofessional conduct.

### **Mr. Ramji's Submissions**

Mr. Lund then made submissions on behalf of Mr. Ramji. Mr. Lund first argued that in order for the Hearing Tribunal to find that Mr. Ramji committed unethical, or unprofessional conduct there would need to be more than just a few mistakes on his part.

Mr. Lund then argued that Mr. Ramji was honest and cooperated without reservation with the investigation into his conduct but the investigation was not fair or balanced. Mr. Lund pointed out that Mr. Krempien had not asked Mr. Ramji any questions about Advair or Symbicort, he hadn't talked to the other pharmacists or staff at Hewes Way Pharmacy, he hadn't spoken with any patients or reviewed the actual transaction records or the original prescriptions. Mr. Lund argued that without these investigative steps the acknowledged deficiency in record keeping could not be conflated into false dispensing records. Mr. Lund argued that the Hearing Tribunal has to weigh the evidence and determine the allegations based on that evidence. The Complaints Director asked the Tribunal to infer that there were false prescribing records, but this was not so.

Mr. Lund then argued that Allegations 3, 4, 5 and 6 all relate to issues with claims made to ABC. He said the basis for these allegations is alleged breaches of the ABC Agreement. Mr. Lund argued that the Tribunal would have to find a breach of the Agreement in order to find unethical, or unprofessional conduct. Mr. Lund said if someone alleged to have breached an agreement did not actually breach it, then it follows that the person cannot have been acting unethically.

Regarding the proper interpretation of the Agreement, Mr. Lund referred to *Ledcor Construction Ltd. v. Northbridge Indemnity Co.*, 2016 SCC 37 for the principle that any ambiguities in a standard form agreement, where there is no ability for one of the parties to negotiate the terms, should be interpreted against the author of the agreement. Mr. Lund argued that in this case the Agreement was authored by ABC and it is not clear. He argued that it could not be said that Mr. Ramji breached the Agreement. The Agreement permitted Mr. Ramji to charge fees so long as the transaction occurred within 14 days of the charge being issued, and if the service is not provided, then the provider must reverse the claim.

Mr. Lund acknowledged there were two breaches of the Agreement in this case. Mr. Ramji acknowledged he breached the Agreement for [REDACTED]. (L-175). Mr. Ramji acknowledged he should not have agreed to submit claims monthly for medications dispensed all at once. He had no financial motive to do this because the dispensing fees he claimed were trivial.

Mr. Lund also acknowledged that Mr. Ramji may have breached the Agreement for patient [REDACTED]. (L-8). The pharmacy was dispensing her psychiatric medications weekly. When she did not pick up her medication the pharmacy attempted to deliver it to her without knowing if she ever actually received it. Mr. Lund said these were mistakes, but not unethical conduct.

Lastly, Mr. Lund argued that this case should not have been referred to the Hearing Tribunal. He said this case should have been resolved through other, remedial means such as education. Mr. Ramji was denied the option to resolve the matter through other, more appropriate means. Mr. Lund said Mr. Ramji has instead been exposed to personal stress, legal fees, time away from work and this is grossly unfair.

### **Complaints Director's Reply Submissions**

Mr. Jardine replied that a finding of unprofessional conduct can be made without finding conduct disgraceful or dishonourable, nor does it depend on finding a breach of the ABC Agreement. Mr. Jardine also responded to Mr. Lund's suggestion that Mr. Krempien's investigation was incomplete and unfair. Mr. Jardine argued that issues with the adequacy of the investigation can be rectified by a hearing before an independent, impartial Hearing Tribunal, referring to *Histed v. Law Society of Manitoba*, 2006 MBCA 89.

## **V. FINDINGS**

Regarding the allegations set out in the Notice of Hearing, the Hearing Tribunal found all of the allegations, with the exception of Allegation 2, to be founded. The Hearing Tribunal also found Mr. Ramji's conduct does constitute unprofessional conduct under the HPA, and as a

licensee under the PDA his conduct constitutes misconduct. The Hearing Tribunal's rationale and reasons are set out below.

### **Allegation 1**

Allegation 1 alleged that Mr. Ramji submitted, or allowed for the submission of, approximately \$3,677.30 worth of claims to ABC for Advair and Symbicort, without being able to provide the required supplier invoices. Mr. Ramji did not dispute that he was unable to provide invoices to support the inventory necessary to dispense the medications for which he submitted claims, or allowed for the submission of claims to ABC.

As the licensee of Hewes Way Pharmacy, Mr. Ramji was responsible for the claims submitted to ABC, for the drugs dispensed to patients of the pharmacy and for creating and retaining appropriate records.

While it may be common practice to borrow or purchase stock from other pharmacies, and while collegial relationships exist between neighbouring pharmacies in an attempt not to fragment patient care, pharmacies and licensed members of the College have a regulatory obligation to keep accurate records surrounding the purchase or sale of every Schedule 1 and 2 drug product. Section 12 of the Pharmacy and Drug Regulation requires a pharmacy licensee to ensure that records referred to in section 12.1 are created and maintained in accordance with the Standards for the Operation of Licensed Pharmacies. Section 12.1(b) and (d) include records of all Schedule 1 and Schedule 2 drugs received by the pharmacy along with the name of the suppliers who provide drugs to the pharmacy and records of all Schedule 1 and Schedule 2 drugs dispensed from the pharmacy. Standard 8.1(d) of the Standards for the Operation of Licensed Pharmacies imposes a similar obligation. Advair (250 ug metered dose inhaler) and Symbicort (200 Turbuhaler metered dose inhaler) are Schedule 1 drugs.

While borrowing or loaning of product may seem like a convenient short-term solution, pharmacies are required to be able to produce paper-based or electronic records of all drugs they receive and who supplied them. A best practice for all intents and purposes would be for an actual transaction to take place whereby the selling pharmacy fills the stock transfer as a prescription and the receiving pharmacy scans or references the receipt in their drug inventory file for audit purposes. In this case Mr. Ramji was unable to produce any records of how his pharmacy obtained the drugs claimed to have been dispensed.

There is no question Mr. Ramji submitted, or allowed for the submission of claims without being able to provide the required supplier invoices. Mr. Ramji's submission of the claims, or his allowance of submissions of claims to ABC in these circumstances was unprofessional conduct under the HPA and misconduct under the PDA. Mr. Ramji's conduct was conduct that harms the integrity of the pharmacy profession.

Mr. Ramji fairly indicated in his testimony that pharmacists have an ethical duty to be honest in dealings with insurers. An important part of preserving the integrity of the profession is behaving ethically in submitting accurate claims to insurers. There are billions of dollars paid by public and private insurers based on electronic claim receipts from pharmacies, and insurers

trust the integrity of the pharmacy and the integrity of the information they receive to be true and they pay these claims in good faith and trust in the profession. It is essential that all insurers be able to rely on the integrity of the pharmacist/pharmacy and the assurance that the information in the transaction records that are being provided is accurate. The requirement to create and maintain records of all Schedule 1 and Schedule 2 drugs received by the pharmacy and dispensed from the pharmacy is an important regulatory obligation because it ensures there are records for insurers like ABC and regulators like the College to review to verify those pharmacies' claims are valid.

The Hearing Tribunal found Allegation 1 proven. It is unprofessional to claim dispensing fees and drug costs without records documenting that the necessary stock was received to dispense the drugs.

## **Allegation 2**

Allegation 2 alleged that Mr. Ramji created, or allowed for the creation of, false dispensing records when the pharmacy submitted claims to ABC for Advair and Symbicort when the pharmacy did not have the corresponding stock for those products to have been dispensed to patients.

Mr. Jardine acknowledged the Complaints Director could not prove that Hewes Way Pharmacy had insufficient inventory to dispense the Advair and Symbicort for which Mr. Ramji submitted claims, or allowed for the submission of claims. Mr. Jardine asked the Hearing Tribunal to infer that the pharmacy lacked the inventory from the acknowledged lack of records documenting the acquisition of the necessary inventory.

Mr. Lund argued that it would be inappropriate to conflate Mr. Ramji's acknowledged record keeping deficiencies with false dispensing records. Mr. Lund said that the Hearing Tribunal has to weigh the evidence and determine the allegations based on that evidence. The Hearing Tribunal should not infer that Hewes Way Pharmacy did not actually dispense the Advair and Symbicort thus rendering its dispensing records false, from the failure to keep records of how it obtained those medications.

While Mr. Ramji could not demonstrate adequate record keeping regarding the acquisitions of Advair and Symbicort, the Hearing Tribunal did not feel there was sufficient evidence to prove that Mr. Ramji created, or allowed for the creation of, false dispensing records for claims submitted to ABC for these 2 medications. It was not Mr. Ramji's obligation to prove that his dispensing records were true. The onus was on the Complaints Director to prove they were false. In Mr. Krempien's evidence he had testified that he was concerned by the pharmacy's lack of records because it meant the corresponding dispensing records may be inaccurate. Mr. Krempien was concerned that without documentation of acquiring inventory of a drug, it would be implausible that the pharmacy could dispense that drug, but the Tribunal declined to infer that the dispensing records were false based only on the lack of records documenting sufficient inventory.

Mr. Jardine referred to two previous cases, Shereen Elbayomy and Si Nguyen. In both cases the Hearing Tribunal found that the lack of records establishing sufficient inventory to dispense medications meant that the dispensing transaction records for those medications were false. In

the Elbayomy matter the value of the disputed claims was approximately \$300,000. Ms. Elbayomy did not appear, call evidence or make arguments at the hearing. In the Nguyen matter the value of the disputed claims was at approximately \$100,000 and Mr. Nguyen admitted all of the allegations at the hearing, including the allegation that he created false dispensing records. The Hearing Tribunal was not prepared to infer that Mr. Ramji's dispensing transaction records for \$3,677.30 worth of Advair and Symbicort were false based on the evidence at the hearing.

### **Allegation 3**

Allegation 3 alleged that Mr. Ramji submitted, or allowed for the submission of, approximately \$2,132.59 worth of claims to ABC for █. (L-267), and █. (L-175), █. (L-117) and █. (L-290), when he knew, or should have known, he was not entitled to the number of dispensing fees claimed.

#### **█. (L-267)**

[The auditor] testified that Mr. Ramji's pharmacy claimed weekly dispensing fees for █. After receiving a tip, ABC contacted the patient's family member and verified that the pharmacy was preparing weekly blister packs of medications but she was only picking up the blister packs every two to four weeks. Mr. Ramji responded to ABC's inquiry on February 28, 2018 and confirmed that the medications were always prepared in weekly blister packs but when the patient moved out of town his daughter picked them up less often. ABC recovered 130 dispensing fees for the period of 2014 to 2018 for █.

In his evidence Mr. Ramji admitted that he continued to prepare the patient's medication weekly and claim weekly dispensing even after the patient moved out of town and the frequency of his daughter's visits to pick up the medication were reduced to every two to four weeks. Mr. Ramji also admitted that the records he was creating on Netcare were inaccurate because they did not reflect the amount of medication he was actually dispensing at a time. Other healthcare providers looking at the records would not have known how much medication the patient had.

#### **█. (L-175)**

[The auditor] testified that ABC had written to Mr. Ramji's pharmacy and received a response dated September 15, 2017 explaining claims for █. Mr. Ramji explained that the client's medications were generally dispensed monthly but the client had requested several months' supply for a vacation. The client did not want to submit claims to ABC for reimbursement herself, so Mr. Ramji agreed to advance several months' supply but continued to claim for monthly dispensing. [The auditor] explained that ABC has a process to authorize up to 180 days of medication to be dispensed all at once but Mr. Ramji did not use that process in this case. He advanced several months' of medication all at once but continued to claim for dispensing the medication monthly, resulting in additional claims and fees for the pharmacy. [The auditor] said that ABC recovered all of the monthly dispensing fees related to the vacation supply of medication.

In his own evidence Mr. Ramji acknowledged that what he did for ■■■. probably wasn't the right thing to do. He acknowledged that by submitting claims for monthly dispensing he claimed for extra dispensing transactions. He also acknowledged that the patient's records were inaccurate in that they would have shown extra dispensing transactions.

■■■. (L-117)

[The auditor] testified that ABC asked Mr. Ramji's pharmacy about two weekly claims for dispensing medication for ■■■. on October 18 and 25, 2018. Mr. Ramji responded to ABC and said that the client was to be on vacation for two weeks starting on October 19 and requested an extra week's supply of medication. Mr. Ramji said that the pharmacy advanced him an extra week of medication to be claimed later. [The auditor] explained that ABC recovered one weekly dispensing fee because the pharmacy dispensed two weeks of medication all at once, but claimed to have separately dispensed the medication one week at a time.

In his own evidence Mr. Ramji admitted that he dispensed two weeks' worth of medication but recorded and claimed it as if it was dispensed one week at a time. Mr. Ramji also admitted that this suggested he had evaluated the patient more frequently than he had, and that the dispensing records he created for the patient were inaccurate.

■■■. (L-290)

[The auditor] testified that ABC had written to Mr. Ramji's pharmacy about dispensing claims for ■■■. on April 26 and May 10, 2017. ABC had received information that the patient had been hospitalized during the third week of April, 2017. Mr. Ramji responded that on April 19, 2017 medications were successfully delivered to the patient's lock box in his room. At the next attempted delivery on April 26, 2017, the pharmacy's delivery driver was told the patient was in hospital. The pharmacy stopped dispensing medications until the patient's agent came to pick up his medications from the pharmacy on May 10, 2017. The pharmacy had claimed a dispensing fee for April 26 and May 10, 2017. ABC recovered one of the dispensing fees as only one was eligible.

In his evidence Mr. Ramji agreed that while in hospital the patient's care had transferred to the hospital, but he had nevertheless claimed dispensing fees on April 26, 2017.

Under the ABC Agreement, a dispensing fee is payable for each act of dispensing. For each of these patients, ■■■., ■■■., ■■■. and ■■■., Mr. Ramji submitted, or allowed for the submission of claims for dispensing drugs more frequently than they were actually dispensed to the patient. This resulted in additional dispensing transactions and additional dispensing fees for Hewes Way Pharmacy.

The Hearing Tribunal found the allegation factually proven. Mr. Ramji's conduct was also unprofessional conduct under the HPA and misconduct under the PDA. The additional dispensing transactions and the claims for additional dispensing fees represented dishonest conduct and contravened the College's Code of Ethics Principle 10(2). Mr. Ramji's conduct also harms the integrity of the profession of pharmacy in the eyes of the public. The public

are entitled to expect that pharmacists will not manipulate drug benefit claims to insurers or other payors for their own benefit or for the benefit of individual patients.

Mr. Lund argued that before the Hearing Tribunal could find that Mr. Ramji committed unethical, or unprofessional conduct, it would have to find a breach of the ABC Agreement. Mr. Lund acknowledged that Mr. Ramji breached the ABC Agreement by continuing to submit monthly dispensing fee claims for [REDACTED], after having dispensed several months of medication all at once so the family could go on vacation. While Mr. Lund did not acknowledge that Mr. Ramji breached the ABC Agreement with the claims submitted for [REDACTED], [REDACTED], and [REDACTED], the Hearing Tribunal considered that he did.

Article 3.1 of the ABC Agreement with Hewes Way Pharmacy, Exhibit 5, provides that the provider, the pharmacy, will provide pharmaceutical services. Article 1.13 defines "Pharmaceutical Services" to mean drug benefits, provider services and/or pharmacy services to be provided to or for the benefit of plan members. Article 3.3(a) provides that when the provider provides a pharmaceutical service, the provider, acting reasonably, will submit a claim. A claim is defined in Article 1.4 as an electronic billing/claim for payment made by the provider to ABC regarding a pharmaceutical service. The ABC Agreement provides for providers to submit claims when they perform a pharmaceutical service. Where a claim has already been submitted for a pharmaceutical service there is no provision for submitting additional claims for that same pharmaceutical service. That is what Mr. Ramji did, or allowed to happen at his pharmacy.

#### **Allegation 4**

Allegation 4 alleged that Mr. Ramji submitted, or allowed for the submission of, approximately \$373.03 worth of claims to ABC for original prescription numbers 230729, 230736, 216113, 227357, 227360, 228561 and 234226, when he knew, or should have known, the services and drugs were not provided to the patient and the claims and dispensing records were not properly reversed and corrected.

#### **Prescription #230729 and 230736**

These were prescriptions for patient [REDACTED]. (Ref# 5, 6). [The auditor] testified that ABC received a tip from a nurse that there were prescriptions from Hewes Way Pharmacy recorded on Netcare while the patient was in hospital. ABC contacted the pharmacy. Mr. Ramji responded to ABC that they attempted to deliver medications for the patient on April 7, 2017 but were informed the patient was hospitalized as of March 31, 2017. The pharmacy had not heard from the patient since then. Mr. Ramji confirmed they had not reversed the claim to ABC based on their policy not to return or reuse drugs once the drugs have left the pharmacy. [The auditor] clarified in his evidence that he did not believe the patient received the medications so the pharmacy had not completed the dispensing of the medication.

Mr. Ramji's August 31, 2018 letter to Mr. Krempien, Exhibit 2, Tab 11, also stated that the patient was in hospital when the pharmacy attempted to deliver her medications on April 7, 2018.

In his evidence Mr. Ramji testified that [REDACTED] was hospitalized a few days after a routine delivery and the pharmacy did not fill any further prescriptions once they found out. This was inconsistent with Mr. Ramji's previous response to ABC and his letter to Mr. Krempien. On cross-examination Mr. Ramji admitted that care of a patient transfers to the hospital when the patient is hospitalized, but he did not advise ABC or reverse his claims when he learned the patient had been hospitalized.

### **Prescription #216113**

This was a prescription for patient [REDACTED] (L-8). Mr. Ramji explained to ABC that when no one picked up the patient's medication they tried to contact her, and also attempted to deliver it to her residence. The medication was left between the doors to her building. Mr. Ramji admitted the pharmacy was later advised that the patient had moved and changed pharmacies. [The auditor] testified the pharmacy should have reversed its claim because the medication was never delivered.

In his evidence Mr. Ramji explained that the claims to ABC had not been reversed because the pharmacy had no information suggesting the patient did not receive the medications. On cross-examination Mr. Ramji admitted he did not know who got the medication, although he assumed someone in the patient's family got the medication and gave it to the patient. Mr. Ramji also admitted that they had not advised ABC or reversed the claim when the pharmacy learned the patient had moved and changed pharmacies.

In argument Mr. Lund acknowledged that Mr. Ramji may have breached the ABC Agreement for [REDACTED] because the pharmacy delivered her medication and claimed for dispensing without knowing if she ever actually received it. Mr. Lund said this was an error but it did not amount to unethical conduct.

### **Prescription #227357 and 227360**

These were prescriptions for patient [REDACTED] (Ref# 13, 14). [The auditor] testified that ABC had received a tip that transaction records had been recorded to Netcare and claims had been made to ABC for dispensing medications while the patient was hospitalized. ABC wrote to Mr. Ramji's pharmacy for a response. Mr. Ramji responded that no one had picked up the patient's medications on March 31, 2017 so the pharmacy made inquiries and learned that the patient was in hospital. Mr. Ramji also indicated they had not heard from the patient since. ABC confirmed the patient was hospitalized as of February 10, 2017 and remained in hospital as of April 3. Mr. Ramji had said they did not reverse the claims to ABC based on the pharmacy's policy not to return or reuse a drug once it has come into contact with other products in the blister pack.

In cross-examination Mr. Ramji admitted that the medications had been prepared for the patient but they never left the pharmacy. Mr. Ramji did not notify ABC or reverse the dispensing claim when they learned the patient was in hospital.

### **Prescription #228561 and 234226**

These were prescriptions for patient [REDACTED]. (Ref# 9, 10). [The auditor] testified that ABC also received a tip about Mr. Ramji's pharmacy posting transaction records to Netcare and submitting dispensing claims to ABC for services while this patient was hospitalized. ABC contacted Mr. Ramji's pharmacy and Mr. Ramji responded that while attempting to deliver medications on March 24, 2017 the pharmacy learned that [REDACTED] had been admitted to hospital. Mr. Ramji said that the pharmacy's policy was not to return or reuse medication once it leaves the pharmacy.

In cross-examination [the auditor] agreed that pharmacists can complete dispensing by giving medication to the patient's agent, so long as the patient gets the medication and the plan gets the value for the money that it pays. [The auditor] said that Mr. Ramji should have reversed the claims in this instance because the patient never received the medications.

In his cross-examination Mr. Ramji admitted that his staff had been attempting to deliver the medications for [REDACTED] on March 24, 2017 when they learned the patient was hospitalized. Mr. Ramji said they did not notify ABC or reverse their claims.

For all of the above prescriptions for [REDACTED], [REDACTED], [REDACTED] and [REDACTED], the medications were not delivered to the patient or to an agent of the patient. In one case the medications were left between the doors of the patient's residence but the pharmacy later learned she had moved. In the other cases the medications could not be delivered because the patients were hospitalized and care had transferred to the hospitals. Mr. Ramji agreed that ABC did not disallow claims for medications that were actually delivered to patient lockboxes. They only disallowed claims where the medications were not delivered. Mr. Ramji's pharmacy did not reverse its claims for dispensing the medications in any of these cases.

Mr. Ramji explained his pharmacy's policy that they do not return or reuse a drug once it has left the pharmacy or once it has come into contact with other products in a blister pack. Mr. Krempien confirmed that the College's Standard of Practice 19 defines limited circumstances in which a drug may be repackaged or reused. Mr. Krempien added that whether or not drugs can be returned or reused, pharmacists and pharmacies are not entitled to charge dispensing fees if they have not dispensed the drugs.

Mr. Krempien explained that claims for dispensing drugs and the dispensing transaction records that are made and posted to Netcare at the same time are intended to describe transactions in which drugs are actually given to a patient, directly or via an agent. In short, dispensing includes the delivery of the drug to the patient. Without delivery, dispensing is not complete and pharmacies should not charge for performing an incomplete service. Mr. Krempien acknowledged that if drugs leave the pharmacy but cannot be delivered and they come back, the pharmacy is required to reverse the dispensing claim and correct the dispensing transaction records to accurately reflect what has been dispensed to the patient. A failure to do this would contravene the College's Standard of Practice 18, which requires, among other information, the date that a drug is dispensed and the quantity dispensed to be recorded in a transaction record as well as an appropriate entry to be made in the patient's record. Mr. Krempien acknowledged that this may result in the pharmacy incurring drug, labour and packaging costs that cannot be recovered.

In argument Mr. Jardine also said that dispensing is not complete until the drugs are provided to the patient or the patient's agent. Mr. Jardine referred to the College's Standard of Practice 8 which requires that each act of dispensing requires a pharmacist or pharmacy technician to confirm the patient's identity and provide the patient with sufficient information to enable them to receive the intended benefit of the drug therapy. Mr. Jardine also referred to sections 10(1)(b) and (d) of the PDA which suggest that dispensing involves several steps that must be completed in accordance with the College's Standards of Practice.

Mr. Jardine argued that the ABC Agreement should be interpreted in accordance with the parties' intentions. There was no dispute that ABC is an insurer of health services including drug benefits. It pays the costs of dispensing drugs to its plan members pursuant to prescriptions from authorized prescribers to the extent those costs are covered by the plan. An interpretation of the ABC Agreement that would require ABC to pay for drugs that are not actually provided to its plan members would be absurd.

Mr. Lund argued that Mr. Ramji could only be found to have acted unethically, or unprofessionally if he breached the ABC Agreement, and he said Mr. Ramji did not breach it. Mr. Lund argued that Section 1.2(a) of Appendix "A" to the ABC Agreement provides that the provider must submit a claim to ABC within 14 days of the service date, meaning the day on which the pharmaceutical service is provided to, or made available to the plan member. Section 1.2(c) provides that if a pharmaceutical service has not been provided to a plan member within 30 days of the day when the pharmaceutical service is available to the plan member and the provider has submitted a claim, then the provider must reverse the claim. Mr. Lund argued that the ABC Agreement is ambiguous and the ambiguities should be construed against its author, which was ABC, and in favour of Mr. Ramji who had no ability to negotiate the terms of the Agreement.

The Hearing Tribunal did not accept that it was necessary to find a breach of the ABC Agreement in order to find this allegation proven. The allegation alleged that Mr. Ramji submitted, or allowed for the submission of claims to ABC when he knew, or should have known that the services and drugs were not provided to the patient and the claims and dispensing records were not properly reversed. The allegation was factually proven. Mr. Ramji agreed that providing the drugs to the patient is a part of dispensing. Mr. Ramji also admitted he did not reverse the claims made to ABC for the medications that his pharmacy could not deliver to ■■■, ■■■, ■■■ and ■■■. Mr. Ramji also omitted to correct the dispensing transaction records made for these patients when the deliveries could not be made.

The Hearing Tribunal concluded that Mr. Ramji's conduct was unprofessional conduct under the HPA and misconduct under the PDA. Mr. Lund suggested that a few mistakes could not amount to unethical, or unprofessional conduct but the Tribunal did not accept this. The definition of unprofessional conduct in section 1(1)(pp) of the HPA provides that unprofessional conduct does not depend on the conduct being disgraceful or dishonourable. Unprofessional conduct includes contraventions of the HPA, a Code of Ethics or Standards of Practice, contraventions of other enactments that apply to the profession and conduct that harms the integrity of the regulated profession. Misconduct under section 1(1)(p) of the PDA includes contraventions of the PDA, conduct that is detrimental to the best interests of the public, and conduct that harms the integrity of the profession of pharmacy.

The Tribunal considered that Mr. Ramji's conduct harms the integrity of the pharmacy profession and the public interest. The public is entitled to expect that pharmacists will only bill insurers and other payors for dispensing drugs that are actually delivered to the patient directly or indirectly through an agent. A system in which pharmacists could claim dispensing fees for medications that never leave the pharmacy or are never delivered would be prone to abuse. The public could fairly expect the costs of pharmacy services to increase as a result of such abuse. In the case of ■■■, Mr. Ramji knew or ought to have known that ■■■ did not receive the medications as they were not given to anyone. They were merely left between the doors to her building. In the case of ■■■, Mr. Ramji acknowledged that the medications never even left his pharmacy. Yet in both cases Mr. Ramji admitted he did not reverse the dispensing fee claims or correct the dispensing transaction records. The cases of ■■■ and ■■■ were similar. Billing insurers or payors for drugs and dispensing services in these circumstances and creating corresponding dispensing transaction records suggesting medications were actually dispensed to the patients is also dishonest, contrary to the College's Code of Ethics Principle 10(2).

Even if it was necessary to find that Mr. Ramji breached the ABC Agreement, the Tribunal concluded that he did. In argument Mr. Lund conceded that Mr. Ramji may have breached the ABC Agreement in his dealings with the claims for ■■■. Mr. Lund said the pharmacy delivered ■■■'s medications without knowing if she ever actually got it. Mr. Lund did not concede that Mr. Ramji breached the ABC Agreement for ■■■, ■■■ or ■■■, but the facts are substantially the same.

Section 1.2(c) of Appendix "A" to the ABC Agreement provides that if a pharmaceutical service has not been provided to the plan member within 30 days of the day when the pharmaceutical service is available to the plan member and the provider has submitted a claim, then the provider must reverse the claim. This provision is not ambiguous. The ABC Agreement defines "Pharmaceutical Services" to include drug benefits. The term "Drug Benefits" is defined to include those drugs and drug products that must be dispensed. A "claim" means an electronic billing/claim for payment submitted by the provider to ABC regarding a pharmaceutical service that complies with the coverage and all other obligations and processes in the ABC Agreement.

Under section 1.2(c), if a pharmacist fills a prescription for a drug and prepares the drug for pick-up or delivery then the pharmacist has made a pharmaceutical service available to the plan member. If the pharmacist has submitted a claim to ABC for dispensing the drug but the plan member does not pick-up the drug and the drug is not delivered to the plan member within 30 days of the pharmacist making the drug available, then the pharmacist must reverse the claim to ABC. Section 1.2(c) required Mr. Ramji to reverse the claims to ABC when the prescriptions for ■■■, ■■■, ■■■ and ■■■ had not been picked up or delivered within 30 days of making those drugs available.

Mr. Lund argued that section 1.2(a) excused Mr. Ramji's conduct, or created an ambiguity in the ABC Agreement sufficient to require that the Agreement be interpreted in Mr. Ramji's favour and that the allegation be dismissed. Section 1.2(a) is not ambiguous. It creates an obligation on providers like Hewes Way Pharmacy to submit claims to ABC within 14 days of the date on which a pharmaceutical service is provided, or made available to the plan member, whichever is earlier. It merely creates an obligation to submit claims in a timely manner after

providing a pharmaceutical service or making it available to a plan member. Section 1.2(a) does not permit providers to make claims where pharmaceutical services have not actually been provided to the plan member, or to make additional claims for the same pharmaceutical service provided the claims are made within 14 days. Section 1.2(a) does not create an exception to the obligation to reverse claims in section 1.2(c).

### **Allegation 5**

Allegation 5 alleged that Mr. Ramji created, or allowed for the creation of, associated patient dispensing records for drugs that he knew were not received and thus not used by the patient for original prescription numbers 230729, 230736, 216113, 227357, 227360, 228561 and 234226.

As described above, Mr. Ramji knew or ought to have known that the drugs prepared by his pharmacy pursuant to these prescriptions were not actually delivered to patients ■■■, ■■■, ■■■, and ■■■. Mr. Ramji admitted that he did not reverse the claims to ABC for dispensing these drugs, nor did he correct the dispensing transaction records that were created when the medications were prepared and the claims were made. This meant that the dispensing transaction records were inaccurate. They wrongly reflected that the drugs had been provided to the patients and were available for the patients' use.

Mr. Ramji acknowledged that once a drug is prepared and ready for pick-up or delivery, there is a record on Netcare indicating that the drug has been provided to the patient. The same records are provided to insurers and payors to claim dispensing fees. Anyone reviewing these records would see that the drug has been provided to the patient. Mr. Ramji agreed that other healthcare providers and insurers should be able to rely on these records to be complete and accurate. He also agreed that these records should be corrected if the drugs are not picked-up or not delivered, given his obligation to ensure that all records are complete and accurate.

The Hearing Tribunal concluded this allegation was factually proven. The Tribunal also found that Mr. Ramji's conduct was unprofessional conduct under the HPA and misconduct under the PDA. As above, unprofessional conduct under the HPA includes the contravention of Standards of Practice or another enactment that applies to the profession. Misconduct includes conduct that contravenes the PDA. Mr. Ramji's failure to correct the dispensing transaction records contravened the College's Standard of Practice 18 and sections 10(1)(a) and 10(1)(d)(iv) of the PDA. Mr. Ramji's failure to correct the dispensing transaction records was also conduct that harms the integrity of the pharmacy profession. The public are entitled to expect that health professionals in positions of trust and responsibility, and having access to Netcare will ensure that health records made and posted to Netcare will be accurate. Posting inaccurate records or failing to correct records later determined to be inaccurate breaches the trust that the public places in pharmacists and pharmacy technicians..

### **Allegation 6**

Allegation 6 alleged that Mr. Ramji breached his agreement with ABC and failed to act ethically or honestly in his dealings with ABC.

In argument, Mr. Jardine asserted that there was a failure to comply with the ABC Agreement in this case, and a failure to act ethically and honestly. Mr. Jardine said that Mr. Ramji's conduct breached the College's Code of Ethics Principle 10, which requires in section 10(2) that regulated members of the College be honest in dealings with patients, the College and contractors, suppliers and any others encountered in business dealings related to the practice of pharmacy or the operation of a pharmacy. Mr. Jardine said that pharmacists' ethical obligations are paramount to financial considerations in the operation of pharmacies.

In his argument Mr. Lund acknowledged that Mr. Ramji breached the ABC Agreement in his dealings with claims for patient [REDACTED]. (L-175). Mr. Lund also acknowledged that Mr. Ramji may have breached the Agreement in his dealings with claims for [REDACTED]. (L-8). Mr. Lund maintained that although Mr. Ramji breached the Agreement, his conduct was not unethical or unprofessional. It could only be described as a few mistakes.

As described above, the Hearing Tribunal determined that Mr. Ramji did breach the Agreement. The Tribunal also found that Mr. Ramji's conduct in making extra dispensing claims and in claiming dispensing fees when drugs were not actually delivered to patients was dishonest. The Hearing Tribunal determined this allegation to be factually proven. Mr. Ramji's conduct was also unprofessional conduct under the HPA and misconduct under the PDA. The College's Standard of Practice 10(2) required Mr. Ramji to be honest in his dealings with ABC. Mr. Ramji's conduct also harms the integrity of the pharmacy profession. The public are entitled to expect pharmacists to be accurate and honest with insurers and payors of pharmaceutical services. If it were otherwise the public could fairly expect the cost of pharmaceutical services to increase.

### **Allegation 7**

Allegation 7 alleged that Mr. Ramji failed to properly create or retain required and accurate pharmacy records.

In argument Mr. Jardine related this allegation to the missing inventory records for Advair and Symbicort. As described above, Mr. Ramji acknowledged he had produced no invoices or receipts for obtaining Advair and Symbicort stock from secondary suppliers. Mr. Ramji agreed that the documentation he provided to ABC was insufficient to demonstrate that Hewes Way Pharmacy had the inventory to fill the Advair and Symbicort prescriptions.

The Hearing Tribunal concluded that Mr. Ramji and his pharmacy did fail to properly create and retain the required, accurate pharmacy records. As described above, pharmacies and licensed members of the College have a regulatory obligation under the *Pharmacy and Drug Regulation* to keep accurate records, including records of all Schedule 1 and Schedule 2 drugs received by the pharmacy along with the name of the suppliers who provide drugs to the pharmacy and records of all Schedule 1 and Schedule 2 drugs dispensed from the pharmacy.

Mr. Ramji's conduct was unprofessional under the HPA and misconduct under the PDA. Mr. Ramji's conduct failed to comply with the PDA and the Pharmacy and Drug Regulation, which are enactments that apply to the pharmacy profession. Insurers and payors of pharmacy services must be able to rely on the integrity of the pharmacist and the pharmacy and their

assurances that the information in dispensing transaction records and claims is accurate. The requirement to create and maintain pharmacy records ensures that there are records available to verify the accuracy of those claims.

While Mr. Ramji was highly cooperative with the investigation and hearing regarding his conduct, and his case did not involve large sums of money or a large number of claims, the Hearing Tribunal noted a clear pattern of unprofessional conduct in this case. Mr. Ramji's conduct harms the integrity of the pharmacy profession in the eyes of the public and had the potential to cause serious harm to his patients.

The Hearing Tribunal will receive submissions on sanctions. The parties are invited to make written submissions on a scheduled they may determine, or if either party wishes to request an oral hearing they may request one and the Hearing Tribunal will consider that request.

Signed on behalf of the hearing tribunal by the Chair on November 4, 2019

[Christopher Heitland] \_\_\_\_\_  
Christopher Heitland.