

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 ON SANCTION

I. INTRODUCTION

In its written decision dated November 4, 2019, the Hearing Tribunal described its findings with respect to the allegations set out in the Notice of Hearing dated January 3, 2019 against Mr. Karim Ramji.

Based on the findings of “unprofessional conduct” and “misconduct” the Tribunal requested that the Complaints Director and Mr. Ramji provide submissions to the Hearing Tribunal for its deliberation and consideration on the sanctions to be ordered under section 82 of the *Health Professions Act* (“HPA”). Both parties agreed to provide written submissions. On February 26, 2020, the Hearing Tribunal held a meeting to consider the matter of sanctions in relation to the conduct of Mr. Ramji.

The following members of the Hearing Tribunal were in attendance:

Hearing Tribunal:

Chris Heitland, pharmacist and chair
Sarah Gutenberg, pharmacist
Patricia Matusko, public member

The following persons were also in attendance:

Gregory Sim, independent legal counsel to the Hearing Tribunal

In its written decision dated November 4, 2019, the Hearing Tribunal found that the following allegations had been factually proven and constituted unprofessional conduct and misconduct:

It was found that, between October 1, 2016 and April 30, 2017, Mr. Ramji, while both a licensed Alberta pharmacist (ACP Cert.#4258) and the licensee of Hewes Way Pharmacy (ACP License #1649:

1. Submitted, or allowed for the submission of, approximately \$3677.30 worth of claims to Alberta Blue Cross (ABC) for Advair (250 mcg metered dose inhaler) and Symbicort (200 Turbuhaler metered dose inhaler), without being able to provide the required supplier invoices;
2. Allegation 2 was dismissed;
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 he knew, or should have known, he was 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 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;

5. 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;
6. Breached his agreement with Alberta Blue Cross and failed to act ethically or honestly in his dealings with Alberta Blue Cross; and
7. Failed to properly create or retain required and accurate pharmacy records.

SUBMISSIONS ON SANCTION

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

1. Complaints Director's Written Submissions on Sanction dated December 20, 2019;
2. Mr. Ramji's Written Submissions on Sanction dated January 27, 2020;
3. The Complaints Director's Written Reply Submissions on Sanction dated February 14, 2020;
4. Mr. Ramji's Written Rebuttal Submission on Sanctions dated February 19, 2020.

II. Summary of Submissions on Sanction by the Complaints Director

Ms. Hale, legal counsel, made submissions on behalf of the Complaints Director. In her submission, Ms. Hale identified that discipline proceedings are an important part of a self-regulating profession such as pharmacy. They serve to regulate the members of the profession through a process where complaints can be made against a member of the profession and dealt with by a Hearing Tribunal comprised of registered pharmacists/pharmacy technicians and a public member. These proceedings have several important purposes which include protection of the public, maintaining the integrity of the profession, treating the member fairly, and deterrence of similar conduct both by the individual member of the profession and by the profession as a whole.

Ms. Hale made submissions regarding the sanctioning factors referred to in Casey, *Regulation of Professions in Canada*, at pages 14-7 to 14-14.1 when considering appropriate sanctions.

A. The Nature and Gravity of the Proven Allegations

Ms. Hale submitted that the conduct in issue was serious. She argued that Mr. Ramji engaged in a pattern of unprofessional conduct where he sought payment for drugs that were not dispensed to patients and that this was dishonest and unethical. Further to this, and as a result, false dispensing records were created that had the potential to cause patient harm. This activity also undermines the integrity and trust of the profession, to both patients and stakeholders such as ABC.

B. The Age and Experience of the Member

Ms. Hale submitted that Mr. Ramji is an experienced pharmacist and has been on the clinical pharmacist register since 1988, has been a licensee since 2003 and Mr. Ramji has sufficient experience to know his conduct was improper and was both a serious breach of the Code of Ethics, Standards of Practice for Pharmacists and Pharmacy Technicians and Standards for the Operation of Licensed Pharmacies.

C. The Presence or Absence of Prior Complaints or Convictions

Ms. Hale submitted that Mr. Ramji does not have a disciplinary history with the ACP and this is a mitigating factor in favour of Mr. Ramji.

D. The Age and Mental Condition of the Offended Patient

Ms. Hale submitted that this is not a relevant factor in this case.

E. The Number of Times the Offence was Proven to Have Occurred

Ms. Hale submitted that Mr. Ramji's conduct in this case presented as a pattern of conduct. Of the 59 original prescriptions that were reviewed by ABC, the Hearing Tribunal found aspects of unprofessional conduct with respect to 11 transactions.

F. The Role of the Member in Acknowledging What has Occurred

Ms. Hale submitted that Mr. Ramji cooperated with the investigation and admitted his conduct to the Hearing Tribunal; this factor weighs in favour of the member. Mr. Ramji has also repaid the \$6,182.92 owing to ABC.

G. Whether the Member has Already Suffered Other Serious Financial Penalties or Other Penalties as a Result of the Allegations Being Made

Ms. Hale submitted that the Complaints Director is unaware of Mr. Ramji having suffered other penalties because of the allegations and hearing aside from the repayment of monies to ABC.

H. The Impact of the Incident on the Offended Patient

Ms. Hale submitted that there was no evidence before the Hearing Tribunal of direct physical harm to patients because of Mr. Ramji's unprofessional conduct. However, patient records contained false information that implied patients received drugs that they had not received. This has significant potential for patient harm if incorrect information was relied on by other health professionals.

I. The Presence or Absence of any Mitigating Circumstances

Ms. Hale submitted that Mr. Ramji cooperated with the investigation and while he disagreed with ABC, he cooperated with the audit and repaid the amount owing to ABC. Mr. Ramji also stated that he has already implemented systemic changes to his record keeping systems.

J. The Need to Impose Specific and General Deterrence

Ms. Hale submitted that the health care system in Alberta relies on the honesty and integrity of pharmacists, licensees, and proprietors. She suggests that a strong message should be sent to Mr. Ramji and to the membership of ACP that such conduct will not be tolerated. Ms. Hale submitted that on an annual basis, hundreds of millions of dollars of claims are submitted by Alberta pharmacies and paid by ABC on the basis of trust. Should ABC or the payers' trust in Alberta pharmacies' claim submissions be eroded, this will disrupt patients' ability to obtain timely pharmacy services and medications.

K. The Need to Protect the Public

Ms. Hale submitted that creating false dispensing records can put patients at risk of harm that they would not otherwise be exposed to and there is no justification to expose the public to this risk.

L. The Need to Maintain the Public's Confidence in the Integrity of the Profession of Pharmacy in Alberta

Ms. Hale submitted that Mr. Ramji's dispensing practices were not always ethical as he charged dispensing fees when he knew or ought to have known that patients hadn't received drugs. Further to this, his record keeping practices fell below the minimum standard expected of a member. Ms. Hale further submitted that, in Mr. Ramji's case, monetary gain won out over ethical dispensing and billing practices. This conduct detracts from the integrity of the profession and this was noted by the Hearing tribunal in their November 4, 2019 decision.

M. The Degree to Which the Conduct is Clearly Outside the Range of Permitted Conduct

Ms. Hale submitted that there is no question that the conduct in this case exceeds the range of permitted conduct as Mr. Ramji demonstrated a repeated pattern of dishonest interactions with an insurer, the creation of false dispensing records and deficient record keeping. In the Complaints Director's view, charging dispensing fees without providing the drugs to a patient is clearly dishonest and unethical; there is no context in which this is permissible.

N. The Range of Sentences in Other Similar Cases

The Complaints Director identified 3 previous hearing tribunal decisions which Ms. Hale submitted are comparable to the facts of this case and with those being;

- *Mohammed Haggag* – 2019,
- *Si Huu Nguyen* – 2019, and
- *Tuyen Huynh and Loi Nguyen* – 2010.

These three decisions contained some or all the following sanctions:

- A written reprimand;
- Fines ranging from \$2000 to \$30,000;
- Payment of Hearing Costs ranging from 50% to the full costs of the Hearing/Investigation costs;

- Practice permit restrictions or conditions ranging from suspension to prohibition from being a licensee, proprietor or owner for up to 5 years;
- Completion of the Alberta College of Pharmacy's Ethics and Jurisprudence Exam; and
- Providing a copy of the Hearing Tribunal decision to any pharmacy employer for a set period.

In consideration of the sanctioning principles and the three cited prior cases of unprofessional conduct, Ms. Hale submitted the following sanctions orders should be imposed on Mr. Ramji under section 82 of the *Health Professions Act*:

1. Mr. Ramji shall receive a reprimand, with the Hearing Tribunal's written decision to serve as the reprimand.
2. Mr. Ramji shall pay \$8,500 in fines within 1 year of receipt of the Hearing Tribunal's decision.

The total fines shall be attributed as follows:

Allegation 1: \$1,000

Allegations 3, 4 and 5: \$2,000 each = \$6,000

Allegation 6: \$500

Allegation 7: \$1,000

TOTAL: \$8,500

3. Mr. Ramji shall be responsible for payment of the costs, expenses and fees related to the investigation and hearing of this matter to a maximum of \$30,000 within a period of one (1) year from receipt of the Hearing Tribunal's written decision and the statement of costs from the Alberta College of Pharmacy.
4. For the period of two (2) years from the date of the Hearing Tribunal's decision, Mr. Ramji shall not be permitted to be an owner, proprietor or licensee of a pharmacy. Mr. Ramji must pass the Alberta College of Pharmacy Ethics and Jurisprudence Exam before he is eligible to act as a licensee, proprietor or owner of a licensed pharmacy.

On behalf of the Complaints Director, Ms. Hale submitted that the reprimand would make clear that Mr. Ramji's conduct was unprofessional and unacceptable. The fines are in line with previous cases and Allegations 3, 4 and 5 merit the largest fines because they involved unethical and dishonest conduct. The prohibition on serving as a licensee, owner or proprietor is an essential part of the sanctions because the evidence demonstrated that Mr. Ramji had failed to meet the basic, fundamental expectations for maintaining and reconciling pharmacy records. Ms. Hale submitted that Mr. Ramji had not demonstrated the integrity and diligence required of a licensee, owner or proprietor and this privilege should be withdrawn. Finally, on costs Ms. Hale submitted that while a substantial costs order was warranted, Mr. Ramji would also be paying substantial fines. It is important to consider the overall impact of the proposed fines and costs and for the profession to bear some of the costs. This is why an order for Mr. Ramji to pay investigation and hearing costs up \$30,000 is reasonable.

Ms. Hale concluded that the sanctions proposed will protect the public and preserve the integrity of the profession. They will also serve to educate and deter the member and any other members of the pharmacy profession from any future conduct of this nature.

III. Summary of Submissions on Sanction by Mr. Karim Ramji

Mr. Galan Lund, legal counsel, made written submissions on behalf of Mr. Ramji. Mr. Lund submitted that based on the three complaints made by ABC, the ACP drafted and issued 7 allegations of unprofessional conduct against Mr. Ramji. Mr. Lund submitted that in this matter, the goal of sanctions is to protect patients, the public and the reputation and integrity of the profession and that the primary goal is not punishment and that potential sanctions should be assessed fairly and, in a manner, consistent with similar decisions. Mr. Lund submitted that punishment should be reserved for the most egregious findings of unprofessional conduct, where injury has occurred or where there is serious threat of injury or dishonesty.

In referring to the 7 allegations, Mr. Lund submitted the following:

Few complaints against pharmacists in Canada proceed to discipline hearings as hearings are reserved for the most serious allegations of professional incompetence and dishonesty. The majority of complaints are dealt with by the Complaints Director through an educational and remedial approach. Mr. Ramji was denied the benefit of this approach. None of the allegations against him warranted a discipline hearing. Mr. Ramji was cooperative throughout the ABC audit and in his limited communications with the Complaints Director. While he has previously been audited, Mr. Ramji has never been the subject of a complaint of any kind over his decades of practice.

Allegation 1 – Mr. Ramji neither disputed nor denied the ABC finding but did admit error and responsibility in failing to retain copies of invoices for the borrowed medications and admitted that the pharmacy's system for retaining inventory records had failed. Mr. Lund submitted that Mr. Ramji has since updated his pharmacy computing system and software, instituted related policies and this is performing as intended. Mr. Lund also asserted that Mr. Ramji had agreed to reimburse ABC the \$3,677.30 for the claims and that no further sanctions were necessary. The inventory deficiency did not involve a significant number of prescriptions, no patients were placed at risk and there was no dishonesty or unethical conduct. The proposal for Mr. Ramji to pay a fine and hearing costs was unmeasured and grossly disproportionate. It would only serve to punish Mr. Ramji. Mr. Lund stated in his submission that the Hearing Tribunal must consider Mr. Ramji's admission, his immediate acceptance of responsibility and his remedial actions including his significant investment in a new computer system. Mr. Lund said the Tribunal should also consider that two prior ABC audits had not identified any concerns over Mr. Ramji's work or record keeping. There was also no rational explanation as to why Mr. Ramji was denied the benefit of a remedial approach respecting this allegation.

Allegation 2 – Mr. Lund provided submissions regarding Allegation 2 even though it was dismissed by the Hearing Tribunal. Mr. Lund submitted that the Complaints Director had referred Allegation 2 alleging that Mr. Ramji committed a fraudulent act, acted dishonestly

and with corrupt intent. Mr. Lund submitted that this allegation was not one of the three complaints made by ABC and that [the auditor] (ABC) testified that ABC did not find false dispensing records. Mr. Lund also submitted that the Complaints Director relied exclusively on the ABC investigation and did not conduct any independent investigation. Mr. Lund asserted that the Complaints Director had breached his duty to conduct a fair investigation and the prosecution of this allegation was undertaken without any reasonable and probable cause. Mr. Lund then suggested that the Complaints Director and the ACP's conduct gave rise to civil claims for defamation and malicious prosecution and that Mr. Ramji sustained losses to his reputation and because his professional liability insurer denied his claim for legal defence costs so that he was forced to pay his own legal fees of over \$40,000.

Allegation 3 – Mr. Lund submitted that the impugned dispensing fees addressed in in this allegation involved extenuating circumstances and at the time, the pharmacy believed it was acting in the best interest of the patients. Mr. Lund submitted that there was no corrupt intent by Mr. Ramji, or the pharmacy and Mr. Ramji admitted the errors and assumed responsibility for submitting claims to ABC that he was not entitled to. Mr. Lund explained that Mr. Ramji had already refunded the claims for the medications and the dispensing fees to ABC so he had already been penalized. He submitted that no additional sanctions were warranted.

Allegations 4 & 5 – Mr. Lund submitted that the Hearing Tribunal misinterpreted the evidence with respect to two prescriptions for patient ■■■, identified as prescription numbers 230729 and 230736. Mr. Ramji did not admit that he knew ■■■ was hospitalized before those prescriptions were filled and sent for delivery on April 4, 2017. Mr. Lund said Mr. Ramji did not know ■■■ had been hospitalized until a second delivery was attempted. No one informed the pharmacy either. With respect to other prescriptions listed in these allegations, identified as prescription numbers 216113, 227357, 227360, 228561 and 234226, the pharmacy was simply unaware that the patient had been hospitalized or moved until after the medications were delivered. Mr. Ramji respected the finding of the Hearing Tribunal that he was not entitled to charge for processing and delivery of medications that were not received and thus not used by the specific patient(s) in this allegation. Mr. Ramji reversed the claims totaling \$373.03 and refunded ABC, so no further sanctions were warranted.

With respect to all of Allegations 3, 4 and 5, Mr. Lund submitted that these allegations arose from isolated cases and not from common practices at Mr. Ramji's pharmacy. The claim amounts were small, and the pharmacy made no significant or notable profit from them. Mr. Ramji simply made mistakes and those mistakes were remedied upon Mr. Ramji becoming aware of them. The mistakes were minor and did not warrant sanctions beyond education, remediation and the opportunity to improve.

Allegation 6 & 7 – Mr. Lund made no specific submissions about sanctions for these allegations that were found proven by the Hearing Tribunal in its November 4th, 2019 decision.

Mr. Lund submitted that the cases of *Mohammed Haggag*, *Si Huu Nguyen* and *Tuyen Huynh and Loi Nguyen* cited by the Complaints Director bore no similarity to Mr. Ramji's case so they are of no assistance to the Hearing Tribunal. He then argued that no pharmacy regulatory body in Canada has ever addressed such minor complaints with a referral to a discipline

hearing. He asserted that such complaints have been dealt with through the “common approach” of education and remediation.

Mr. Lund then submitted that Mr. Ramji has already been penalized by the ACP in a manner utterly disproportionate to the seriousness of his errors. Fines are financial penalties used to punish and deter. Mr. Lund said that in this case Mr. Ramji has already incurred a “financial penalty” in the amount of \$96,263.37. This was calculated based on the \$3,677.30 refunded to ABC in relation to Allegation 1, \$2,505.62 refunded in relation to Allegations 3, 4 and 5, \$50,000 for the pharmacy’s new computer system, and Mr. Ramji’s legal expenses in the amount of \$40,080.45.

Finally, Mr. Lund submitted that the false allegation of fraud in Allegation 2 has already penalized Mr. Ramji as it has harmed his reputation and will continue to do so. He said there is no reasoned and proportionate basis to demand Mr. Ramji to pay any costs because the ACP proceeded with the prosecution of false allegations. On the contrary, Mr. Lund suggested that the Hearing Tribunal should “correct the injury and damage to Mr. Ramji’s reputation and the cost he has incurred”.

Mr. Lund submitted that with regards to sanctions against Mr. Ramji that the Hearing Tribunal should:

1. Issue a well-reasoned and proportional decision dismissing ACP’s claim that additional sanctions are warranted; and
2. Issue a decision directing that ACP pay Mr. Ramji’s legal defense costs.

IV. Reply on Behalf of the Complaints Director

Ms. Hale submitted a reply in response to the submissions on sanction from Mr. Lund, counsel for Mr. Ramji. Ms. Hale’s reply submissions may be summarized as follows:

- Mr. Ramji relied on the fact that he had repaid the impugned claims to ABC and submitted that no further sanctions were necessary, but repaying improper claims is not a “sanction”. If this were so it would encourage pharmacists to systematically submit improper and unsubstantiated claims so long as the claims were repaid when the pharmacists were audited and “caught”.
- The Complaints Director disputed Mr. Ramji’s submission that the inventory discrepancies involved in Allegation 1 were not significant. Ms. Hale submitted that allegation 1 involved over 100 claims and the issue was the number of claims vs the amount of inventory that could be substantiated. Ms. Hale submitted that the ABC audit was limited to two drugs, Advair and Symbicort over five months and the discrepancies demonstrated more than a minor record keeping error.
- The Complaints Director also disputed Mr. Ramji’s suggestion that his conduct was merely in error and not unethical. Ms. Hale pointed to the Hearing Tribunal’s conclusions that Mr. Ramji knew he was creating inaccurate records on Netcare, that his conduct was not accidental and that he acknowledged that it was not the right

thing to do. Ms. Hale also pointed out that Mr. Lund's submissions generally rejected the Hearing Tribunal's findings of unprofessional conduct.

- Regarding Allegation 4, the Complaints Director disputed that the Hearing Tribunal had misapprehended the evidence. Ms. Hale submitted that it does not matter when Mr. Ramji or the Pharmacy learned that patient █████ was hospitalized. The issue is that once Mr. Ramji learned that █████ had been hospitalized before the prescription delivery and he knew █████ had not received the drugs, he failed to reverse the claim to ABC.
- Regarding Mr. Ramji's threats of civil actions, the Complaints Director submitted that Mr. Ramji can sue if he wants to and the ACP will defend those lawsuits, but those lawsuits are irrelevant to the Hearing Tribunal's current task. After the Hearing Tribunal makes its decision on sanctions then Mr. Ramji can decide whether he wants to exercise his right to appeal to the ACP's Council.
- Regarding Mr. Ramji's assertion that no other pharmacy regulators refer such minor matters to hearing, the Complaints Director referred to *Ontario (College of Pharmacists) v. Fam*, 2018 ONCPDC 36. In that case the member was charged and found to have committed unprofessional conduct for submitting or permitting the submission of claims for drugs which were not dispensed, including Advair. The issue arose because the claims for drugs dispensed exceeded the quantities of those drugs that the pharmacy could demonstrate it had acquired over the same period of time. These false claims were also held to have resulted in the creation of false or misleading dispensing records, documenting the dispensing of drugs that were not actually dispensed. Ms. Hale pointed out that at paragraph 30 of the *Fam* decision the Discipline Committee referenced four prior "similar" cases. Ms. Hale also attached 16 Notices of Hearing from the website of the Ontario College of Pharmacists, each of which included allegations that were similar to the Hearing Tribunal's findings with respect to Mr. Ramji.
- In response to Mr. Ramji's assertions that he had already sustained a significant financial penalty, the Complaints Director submitted that the costs Mr. Ramji paid to upgrade his pharmacy's computer system in order to comply with the Standards for the Operation of Pharmacies and the Standards of Practice for Pharmacists and Pharmacy Technicians cannot be considered a financial penalty.
- Regarding Mr. Ramji's submission that the Hearing Tribunal should order the Complaints Director to pay costs to Mr. Ramji, the Complaints Director submitted that is not a remedy that the Hearing Tribunal can give. There is no authority for it in the *Health Professions Act*.
- Regarding the proposal for Mr. Ramji to pay costs up to \$30,000, the Complaints Director referred to *Jaswal v. Medical Board (Nfld.)*, 1996 CanLII 11630 (NLSC) which described factors relevant to costs orders. These include Mr. Ramji's degree of success in having resisted the allegations, his financial circumstances and the degree to which his financial position has already been affected by other aspects of any penalties imposed. Ms. Hale submitted that the Hearing Tribunal found 6 of the

7 allegations proven and that they constituted unprofessional conduct. Ms. Hale also pointed out that Mr. Ramji has not already suffered any other financial penalties since repaying ABC for improper claims is not a penalty.

- Mr. Ramji accused the Complaints Director of acting improperly and unfairly. The Complaints Director submitted that there is no evidence and no finding that the Complaints Director acted improperly in any way and these allegations made by Mr. Ramji through Mr. Lund should be rejected. More specifically, Mr. Ramji asserted that Mr. Krempien relied exclusively on the ABC investigation. This is incorrect. Mr. Krempien also relied on Mr. Ramji's written response, his meeting with Mr. Ramji at the pharmacy and his interview with [the auditor].
- The Complaints Director asserted that the hearing was required because Mr. Ramji was not willing to acknowledge that his actions constituted unprofessional conduct. The parties engaged in without prejudice discussions, but those discussions did not lead to an agreement. The Hearing Tribunal concluded that Mr. Ramji did engage in unprofessional conduct and misconduct.
- The modest fine and capped costs order proposed by the Complaints Director is proportionate to the proven unprofessional conduct and misconduct.
- The prohibition on being a proprietor or licensee is an appropriate response to the additional responsibilities that go with the privilege of being a proprietor or licensee.
- Licensees in particular are responsible for ensuring accurate and honest claims to insurers and ensuring that systems are in place and employees are trained to properly track drug inventory and drug transactions. Acting as a proprietor or licensee is a statutory privilege which Mr. Ramji should not have access to for some period of time.
- The Complaints Director submits that the orders proposed will protect the public and preserve the integrity of the profession. They will serve to educate and deter Mr. Ramji from any future conduct of this nature.

Ms. Hale concluded that Mr. Lund may disagree with the Hearing Tribunal's findings; however, they remain the Hearing Tribunal's findings and they are the basis for sanctions.

V. Rebuttal Reply on Sanctions on Behalf of Mr. Karim Ramji

Mr. Lund submitted written Rebuttal Submissions on Sanctions on behalf of Mr. Ramji and in reply to the Complaint Director's written reply. Mr. Ramji's rebuttal submissions reiterated several of the points made in his original submissions on sanctions. The rebuttal submissions may be summarized as follows:

- Mr. Ramji asserted that his case presents a unique and unprecedented situation in that the ABC made a complaint to the ACP alleging three concerns and the ACP without

investigation or justification referred additional issues to the Hearing Tribunal as allegations.

- The Complaints Director had options he did not pursue, including resolution of the complaint without a hearing. A referral to the Hearing Tribunal was not required.
- It was unfair to force Mr. Ramji to proceed to the hearing on Allegation 2.
- The Hearing Tribunal has the authority to award costs to Mr. Ramji in order to “maintain the integrity of our judiciary and quasi-judicial systems of justice”.

In relation to the proposed sanctions, Mr. Lund submitted that:

1. The Hearing Tribunal issue a well-reasoned and proportional decision dismissing ACP’s claim that additional sanctions are warranted; and
2. The Hearing Tribunal issue a decision directing that ACP pay Mr. Ramji’s legal defense costs.

VI. ORDERS

The Hearing Tribunal has carefully considered the submissions of both Ms. Hale on behalf of the Complaint’s Director and Mr. Lund on behalf of Mr. Ramji and makes the following sanctions orders pursuant to section 82 of the *Health Professions Act*:

1. Mr. Ramji shall receive a reprimand, with the Hearing Tribunal’s written decision to serve as the reprimand.
2. Mr. Ramji shall pay \$8,500 in fines within one (1) year of his receipt of this written decision with the amount of \$8,500 attributed to the findings of unprofessional conduct as follows:

Allegation 1: \$1,000
 Allegations 3, 4 and 5: \$2000 each = \$6,000
 Allegation 6: \$500
 Allegation 7: \$1,000
 TOTAL: \$8,500

3. Mr. Ramji shall pay the costs, expenses and fees related to the investigation and hearing of this matter to a maximum of \$30,000 within a period of one (1) year from his receipt of this written decision and the statement of costs from the Alberta College of Pharmacy.
4. For the period of two (2) years from his receipt of this written decision, Mr. Ramji shall not be permitted to be an owner, proprietor or licensee of a pharmacy and Mr. Ramji must pass the Alberta College of Pharmacy Ethics & Jurisprudence Exam, at his own expense, before he is eligible to act as a licensee, proprietor or owner of a licensed pharmacy.

VII. REASONS

In determining the appropriate sanction orders to impose, the Hearing Tribunal carefully considered the evidence presented at the hearing as well as the written submissions of Ms. Hale on behalf of the Complaints Director and the written submissions from Mr. Lund on behalf of Mr. Ramji with respect to sanction.

The Hearing Tribunal specifically considered the submissions of the parties with respect to the factors referred to in the Casey text and in the cases (*Haggag, Nguyen, Huynh & Nguyen*) with their case-specific sanctions.

The Hearing Tribunal ultimately accepted that the sanctions proposed by Ms. Hale on behalf of the Complaints Director were proportionate and appropriate to be ordered for Mr. Ramji. Even though the Tribunal found six allegations of unprofessional conduct and misconduct proven against Mr. Ramji, Mr. Lund's submissions did not suggest that any sanctions should be imposed. Mr. Lund's submissions largely refuted the findings of unprofessional conduct. While Mr. Ramji may disagree with the Hearing Tribunal's findings, they remain the Hearing Tribunal's findings. Those findings warrant sanctions.

Mr. Ramji's conduct was serious. While there was no evidence that any patients were actually harmed, this is reflected in the sanctions ordered above. The Tribunal agreed with the Complaints Director that honesty and accuracy in claims submitted by pharmacists to payors such as ABC and others are serious matters. The drug benefit insurance system and the public's ability to access it depends upon it. This was not a case of a few isolated errors. This was a pattern of dishonest interactions with ABC engaged in by an experienced member of the profession. Mr. Ramji has been a regulated member of the ACP since 1988 and a pharmacy licensee since 2003. He is a senior member of the profession and the Tribunal considered this when deciding what sanctions to impose. It is important to protect the public's trust and confidence in the pharmacy profession not to abuse the drug benefit insurance system and thereby to protect the public's trust and confidence in the regulation of the pharmacy profession. This requires the Hearing Tribunal to impose sanctions that will deter not only Mr. Ramji, but also other members of the pharmacy profession from similar conduct in the future.

The Hearing Tribunal also considered that there are mitigating circumstances. Mr. Ramji does not have a prior discipline history and his many years of unblemished service including prior audits that resulted in no concerns are a mitigating factor in his favour. There was also no evidence that any of Mr. Ramji's patients suffered any harm as a result of his proven unprofessional conduct. Mr. Ramji cooperated with the ABC audit, acknowledged his record keeping deficiencies and repaid the amounts that ABC determined were owing. Mr. Ramji also cooperated with the Complaints Director's investigation. Mr. Ramji has also taken steps to rectify some of the issues that gave rise to this case, including investing in a new computer system for his pharmacy at significant expense.

The sanctions proposed by the Complaints Director are within the range of sanctions demonstrated by the *Haggag, Si Huu Nguyen* and *Tuyen Huynh and Loi Nguyen* cases. The

proposed sanctions are most similar to the *Tuyen Huynh and Loi Nguyen* case in which the members received reprimands, fines of \$3,500 and \$2,000 respectively, orders to pay 50% of the costs each and Ms. Huynh received a 2-year prohibition on serving as a licensee and she was required to pass the ACP's jurisprudence exam before she could serve as a licensee. The sanctions for Mr. Ramji are less severe than the sanctions in the *Haggag* and *Si Huu Nguyen* cases in which the disputed claim values were much higher.

A reprimand is appropriate to denounce Mr. Ramji's proven unprofessional conduct. This written decision combined with the Hearing Tribunal's November 4, 2019 decision on the findings of unprofessional conduct will serve as the reprimand for this purpose. The \$8,500 in fines are also appropriate to deter Mr. Ramji and other members of the pharmacy profession from similar unprofessional conduct in the future. It should be made clear to the profession that there is no financial benefit for submitting inaccurate claims or in omitting to reverse claims when drugs are not actually dispensed in the manner that they are claimed. While it is important that the fines be substantial to have a deterrent effect, the Hearing Tribunal considered that the Complaints Director was also proposing that Mr. Ramji pay a substantial portion of the costs, fees and expenses accrued by the ACP in this matter. Therefore, higher fines in this particular case would be excessive. The Hearing Tribunal accepted this.

While a reprimand and fines have punitive aspects, the Hearing Tribunal is expressly authorized by section 82 of the *Health Professions Act* to impose them where it determines they are warranted. On behalf of Mr. Ramji, Mr. Lund suggested that punitive sanctions should be reserved for only the most egregious cases, where there has been injury, a serious threat of injury or dishonesty. Mr. Lund provided no authority for this and the Hearing Tribunal did not accept it.

A two-year prohibition on serving as a pharmacy owner, licensee or proprietor is also warranted in this case. Serving in these roles requires the utmost compliance with regulatory standards. Licensees are responsible for claims made to insurers, drugs dispensed and for creating and maintaining accurate records. Accurate inventory and dispensing record keeping are critical components of these roles and standards. As described in the Hearing Tribunal's November 4, 2019 decision, the Pharmacy and Drug Regulation mandates pharmacy licensees to ensure that accurate records are created and maintained in accordance with the Standards for the Operation of Licensed Pharmacies. Pharmacists must also comply with the Standards of Practice for Pharmacists and Pharmacy Technicians. Withdrawing this privilege from Mr. Ramji for two years and until he completes the ACP's Jurisprudence and Ethics exam will have both remedial as well as punitive aspects. It will ensure that when Mr. Ramji is again entitled to serve as an owner, licensee or proprietor he will have demonstrated his understanding of the rules and standards involved in such a responsible position. It will also serve to deter Mr. Ramji and other members of the pharmacy profession from similar unprofessional conduct in the future.

Finally, the Hearing Tribunal agrees with the Complaints Director's submission that Mr. Ramji should be responsible for the costs, expenses and fees of the investigation and the hearing of this matter up to a maximum of \$30,000. The Complaints Director submitted that the costs, expenses and fees of the investigation and hearing before making submissions on sanction were \$41,000. The overall costs, expenses and fees will very likely exceed \$41,000

by a significant margin. \$30,000 therefore represents something less than 73% of the total costs, fees and expenses, and potentially much less. The Hearing Tribunal considered that Mr. Ramji successfully resisted allegation two, but the six remaining allegations of unprofessional conduct and misconduct were proven. The Complaints Director did not unduly prolong the hearing and no unnecessary witnesses or other evidence were called. It was appropriate for the ACP to bear some of its overall costs and this was reflected in the proposal to cap the costs payable by Mr. Ramji at \$30,000. There was no evidence of Mr. Ramji's particular financial circumstances for the Hearing Tribunal to consider.

The Hearing Tribunal considered Mr. Ramji's submissions that few complaints against pharmacists proceed to discipline and most are dealt with through an educational and remedial approach. Mr. Lund provided no authority or basis for this submission which was part of Mr. Ramji's argument that the Complaints Director had treated him unfairly by proceeding with Allegation 2 and referring this matter to a hearing. Ms. Hale referred the Tribunal to the case of *Ontario (College of Pharmacists) v. Fam* and 16 Notices of Hearing on the Ontario College of Pharmacists' website containing allegations similar to those against Mr. Ramji. The Hearing Tribunal did not accept Mr. Ramji's submission. Allegation 2 was dismissed, and the Hearing Tribunal is not revisiting that decision or the reasons for it. The Tribunal is only determining the appropriate sanctions and costs orders to make in light of the Tribunal's findings of unprofessional conduct and misconduct.

The Hearing Tribunal considered Mr. Ramji's submission that the Tribunal should order the Complaints Director to pay his legal expenses. Mr. Lund suggested the Hearing Tribunal had the authority to direct this in order to "maintain the integrity of our judiciary and quasi-judicial systems of justice". Mr. Lund provided no authority for this. The Hearing Tribunal declines to make any order that the Complaints Director pay costs to Mr. Ramji. The Hearing Tribunal does not have jurisdiction to do this.

The Hearing Tribunal also considered Mr. Ramji's submission that the steps he had taken to repay ABC obviated the need for any sanctions to be imposed. The Hearing Tribunal did not accept this submission. The Hearing Tribunal has considered that Mr. Ramji repaid ABC for the impugned claims, but this does not negate the need for any sanctions. As the Complaints Director pointed out, if pharmacy professionals found to have submitted improper drug and dispensing fee claims only had to repay the payor, it would encourage others to submit improper claims as only some would be detected. It would also undermine the Hearing Tribunal's role in the complaints and discipline process.

Nor did the Hearing Tribunal accept Mr. Ramji's submission that he had already sustained a substantial financial penalty by repaying ABC, investing in a new computer system for the pharmacy and incurring legal fees. The Hearing Tribunal considered the steps that Mr. Ramji took to be mitigating factors, but these are not financial penalties that Mr. Ramji has sustained.

Sanctions are required to make clear to Mr. Ramji and others in the pharmacy profession that the unprofessional conduct found by the Hearing Tribunal is serious and unacceptable. Actions such as actively choosing not to reverse a charge for drugs never received by the patient was a conscious decision by Mr. Ramji that benefitted his pharmacy financially. The additional dispensing transactions and the claims for additional dispensing fees represented

dishonest conduct that harms the integrity of the profession and, also contravened the College's Code of Ethics Principle 10(2).

As indicated in the November 4, 2019 Decision of the Hearing Tribunal, 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 pharmacist and information they receive to be true. Insurers pay these claims in good faith and trust in the profession. Due to the number of claims, ABC relies on the honesty and integrity of pharmacists in billing. 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 intent of the ABC contract with a pharmacy is that ABC will pay a dispensing fee and the cost of the drug once the pharmacy has provided pharmaceutical services according to the law. The insurer is paying for a drug to be provided to its insured. ABC is entitled to repayment if the patient does not receive the drug. ABC has a high degree of trust with the pharmacy. In its November 4, 2019 decision, the Hearing Tribunal found breaches of the ABC agreement and dishonest conduct in its discussions of Allegation 3, 4 and 6. This conduct was unethical and unprofessional and warrants sanctions.

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. Appropriate record keeping goes to the heart of the integrity of the profession. There must be confidence that the information submitted to insurers is truthful and accurate. It is a serious matter to make pharmacy claims without invoices and without the ability to trace your pharmacy supply. The conduct in question harms the integrity of the profession.

The Hearing Tribunal feels that the orders on sanction properly reflect the seriousness of the conduct. The orders are proportionate to the findings of unprofessional conduct and misconduct and appropriate in that they help to ensure the public is protected from future misconduct of a similar nature by applying the principles of specific and general deterrence to the profession. With these orders, the Hearing Tribunal feels that integrity of the profession is maintained in the eyes of the general public, the insurance industry and other regulated members of ACP. Further, the orders are consistent and aligned with prior decisions of other ACP Hearing Tribunals.

Signed on behalf of the Hearing Tribunal by the Chair on March 30, 2020.

Per: _____ [Chris Heitland]
Chris Heitland, Chair