

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **MR. SAEED SATTARI**
Registration number 5921

DECISION OF THE HEARING TRIBUNAL

August 22, 2016

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Saeed Sattari. In attendance on behalf of the Hearing Tribunal were Mr. Jim Johnston, chairperson, Ms. Beverly Rushton, pharmacist, Ms. Carin Jensen, pharmacist and Mr. Brian Popp, public member.

The hearing took place on May 26, 2016 at the office of the Alberta College of Pharmacists (“ACP”) located in Edmonton, AB. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were Mr. James Krempien, Complaints Director; Mr. David Jardine, counsel for the Complaints Director; and Ms. Ayla Akgungor, independent counsel for the Hearing Tribunal.

II. ALLEGATIONS

The notice of hearing was entered as Exhibit 1 and set out the following allegations:

IT IS ALLEGED THAT during the period from August 1, 2014 to May 29, 2015 Mr. Sattari:

1. Diverted Viagra and Cialis from Shoppers Drug Mart #363 in Edmonton on multiple occasions resulting in the diversion of approximately 450 Viagra 100mg tablets and 575 Cialis 20mg tablets with an approximate value of \$13,500.00;
2. Diverted medications for beyond his personal use.

IT IS ALLEGED THAT Mr. Sattari’s conduct in these matters:

- a. undermined the integrity of the profession;
- b. is contrary to accepted pharmacy practice;
- c. involved multiple diversions of medications over an extended period from August 1, 2014 to May 29, 2015; and
- d. ended only when his employer discovered the diversions and terminated his employment

IT IS ALLEGED THAT Mr. Sattari’s conduct constitutes a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections, 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Sections 31(2)(a) and 38 of the Pharmacy and Drug Act;
- Principles 10(1 and 2) of the ACP Code of Ethics Bylaw; and
- Section C.01.041(1) of the Food and Drug Regulations.

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

III. PRELIMINARY MATTERS

Mr. Sattari did not attend the hearing. However, the Complaints Director sought to proceed with the hearing in Mr. Sattari's absence in accordance with section 79(6) of the *Health Professions Act*.

Decision to proceed in the absence of the investigated person

(a) Evidence

Ms. Margaret Morley, Hearings Director for the Alberta College of Pharmacists, was called as a witness by Mr. Jardine to establish that notice had effectively been served to Mr. Sattari in order to proceed with the hearing under section 79(6) of the *Health Professions Act*. Exhibit 2 was entered which was a memo typed by Ms. Morley outlining her communication with Mr. Sattari. The memo was dated May 25, 2016 and had been typed the morning of that day. Ms. Morley indicated in her memo, and spoke to the fact that:

- On March 7, 2016, she emailed Mr. Sattari, at the e-mail address in his ACP registration record, to try and set a hearing date and to ask if he had legal counsel to whom the notice should be sent.
- On March 11, 2016 she phoned Mr. Sattari and left a voicemail for him. He responded to her call via email later that day and said he would not have legal counsel and to send the notice directly to him.
- On March 11, 2016 a Notice to Attend was sent to Mr. Sattari by registered mail to his address on file with the Alberta College of Pharmacists.
- On March 14, 2016 a F. Sattari signed for the registered mail.
- On May 20, 2016 she left a voice mail for Mr. Sattari at the phone number on file with the College and asked him to call her at the ACP office.
- On May 20, 2016 Mr. Sattari emailed Ms. Morley asking if his attendance was absolutely mandatory and indicated he would not have legal counsel.

After writing the memo, Ms. Morley received another email from Mr. Sattari a copy of which was entered as Exhibit 3. In the email Mr. Sattari indicated he would not be present for the hearing and asked instead for his email to be read to the Hearing Tribunal.

Further attempts were made by independent counsel for the Hearing Tribunal by way of e-mail dated May 25, 2016 (Exhibit 4) to explain to Mr. Sattari what the implications would be if he was absent from the hearing.

(b) Submissions

Mr. Jardine, on behalf of the Complaints Director, took the position that the hearing should proceed in Mr. Sattari's absence. He noted that Mr. Sattari is resident in Edmonton so that it was not an issue of Mr. Sattari not being able to attend the hearing, but rather than he did not want to attend the hearing. Mr. Jardine noted that, in addition to having been served with the Notice of Hearing by registered mail, there had been multiple contacts with Mr. Sattari urging him to attend the hearing. He further indicated that the Complaints Director understood that attending professional conduct hearings can be embarrassing for members but that all members have obligations to participate in the proceedings of their regulatory bodies.

(c) Decision on preliminary matter

Based on the testimony from Ms. Morley as well as the email from Mr. Sattari, the Tribunal confirmed that Mr. Sattari was adequately notified of the hearing and chose not to attend or to seek an adjournment. The Hearing Tribunal is satisfied that Mr. Sattari was served with the Notice of Hearing as required by s. 120(3) of the *Health Professions Act* (registered mail). Accordingly, we find that we have the authority to proceed in Mr. Sattari's absence pursuant to section 79(6) of the *Health Professions Act*

There were no objections to the jurisdiction or composition of the Hearing Tribunal

Although the hearing was open to the public, Mr. Jardine did ask that any patient names that were shown in evidence in this case be redacted in any written decisions from the Hearing Tribunal to protect patient privacy.

IV. EVIDENCE(a) Evidence of the Complaints Director

Mr. Jardine called Mr. Krempien, Complaints Director, as his next witness. Mr. Jardine also introduced, through Mr. Krempien, Exhibit 5, the Record of Decision referring this matter to a hearing, and Exhibit 6, the Investigation Report and Supplemental Investigation Report. Mr. Krempien introduced the following key points as he walked through these two documents

Exhibit 6 contains many documents that made up Mr. Krempien's investigation and were used to prepare his Record of Decision. Relevant information obtained through the investigation is as follows:

- Tab A is an investigation report dated January 11, 2016 that summarizes the investigation into the complaint against Mr. Sattari.
- Tab 1 is a phone transcript of a conversation between Mr. Krempien and Bill Venoit. Mr. Venoit is a Regional Pharmacy Manager for Shopper's Drug Mart and he phoned Mr. Krempien to file a complaint about Mr. Sattari. In the conversation Mr. Venoit indicated the official complaint would come forward from the licensee.

- Tab 2 is a transcript from a subsequent call from Mr. Venoit to Mr. Krempien discussing the missing Viagra and Cialis from the store.
- Tab 3 contains a letter from the associate owner, Ms. Somayeh Sattari, indicating that Mr. Saeed Sattari was terminated from her pharmacy on May 29, 2015 due to theft of Viagra and Cialis. Ms. Somayeh Sattari is Mr. Sattari's daughter. Also attached is a report from Daryl Blackmore, Loss Prevention Specialist for Shopper's Drug Mart. In his testimony, Mr. Krempien discussed Mr. Blackmore's report and highlighted reference to the surveillance video that was also supplied to Mr. Krempien. There were references to specific dates and times of video that Mr. Krempien reviewed. Mr. Krempien indicated that his review of the matter aligned with Mr. Blackmore's investigation. While Mr. Krempien could see images in the video of Mr. Sattari taking boxes off the shelf it was not clear enough to specifically read the names Viagra or Cialis on the packaging. However, Mr. Blackmore confirmed that the camera was trained on the Viagra and Cialis section of the dispensary.
 - Mr. Krempien pointed out that the front store manager at the Shoppers Drug Mart noticed write-offs for Cialis and Viagra and he contacted an IT person to investigate the records. In this investigation it was discovered that a secondary wholesaler account was opened for McKesson. Shoppers Drug Mart almost exclusively orders their inventory from Matrix, their own warehouse. The McKesson account was odd and did not seem right in these circumstances. Larry, the IT person, contacted Mr. Blackmore to get him involved.
 - Mr. Blackmore attended the pharmacy after hours one day, reviewed CCTV camera footage and repositioned the cameras on May 3, 2015 to show the stock sections of Cialis and Viagra
 - On May 5 and 6 of 2015 there was video footage showing the apparent removal of stock by Mr. Sattari.
 - On May 22, 2015 Mr. Blackmore installed a covert camera to show a better angle of the stock area of these two medications.
 - On May 29 at approximately 9:30pm, after the store had closed, Mr. Sattari left the pharmacy and quickly exited the building. A loss prevention person, Mike McRae, followed him out of the building and soon after brought him back into the store with handcuffs. It was confirmed at that time Mr. Sattari had removed both Cialis and Viagra from the pharmacy.
- Tab 6 of Exhibit 6 contains a letter to Mr. Sattari from Mr. Krempien asking for his cooperation into the investigation and outlines the complaint against him. The letter also contained a copy of the report from Mr. Blackmore
- Tab 7 is a letter to Ms. Sattari asking for more information, specifically her inventory records for Cialis 20mg and Viagra 100mg. Mr. Krempien asked for all invoice receipts from Matrix and McKesson in addition to details on all prescriptions filled for these medications for the time period of August 1, 2014 to May 29, 2015.
- Tab 8 contains a letter to McKesson asking for records from them with respect to all inventory shipped to the pharmacy.

- Tab 9 is a transcript of a phone conversation with Mr. Sattari. In this conversation Mr. Sattari is made aware of the letter coming to him and he asks if he can have a lawyer respond to it.
- Tab 11 is a letter from Ms. Sattari to Mr. Krempien in which she enclosed the prescription records and shipment invoices that he requested of her. She also outlined the details around some physical inventory counts that they had conducted on September 24, 2015. The inventory records from the dispensing software also show manual on-hand quantity edits that were completed on these medications.
- Tab 13 is a letter from McKesson showing copies of all the inventory on these drugs that they shipped to this pharmacy
- Tab 14 is an In/Out analysis completed by Mr. Krempien after looking at all the records supplied by Ms. Sattari and McKesson. In his analysis it showed a discrepancy of 457 Viagra 100mg tablets and 576 Cialis 20mg tablets during the period of August 1, 2014 and May 29, 2015. Mr. Krempien opined that given the quantities at issue it was almost as if everything ordered from McKesson did not make it into the pharmacy stock.
- Tab 15 is a letter to Mr. Krempien from Mr. Royer, legal counsel for Mr. Sattari. In the letter he asks for an extension on the time frame for Mr. Sattari to provide a written response to Mr. Krempien due to the fact that Mr. Sattari was facing criminal proceedings.
- Tab 16 is a response to Mr. Royer where Mr. Krempien agrees to a 60 day extension provided Mr. Sattari provide a written undertaking to suspend his practice.
- Tab 18 is a response from Mr. Royer with a copy of Mr. Sattari's undertaking not to practice until this matter is concluded. This response also indicated that Mr. Sattari would be out of the country from September 16, 2015 to November 17, 2015. To date, Mr. Sattari has complied with his undertaking and has not practiced pharmacy.
- Tab 19 is a letter back to Mr. Royer indicating that the investigation would be suspended until Mr. Sattari was back in the country and that a written response would be required by November 30, 2015.
- Tab 20 is a letter to Mr. Royer dated Dec. 1, 2015 asking for a response as it had not been received by the requested deadline.
- Tab 21 is a response from Mr. Royer dated Dec. 3, 2015 indicating that they have been unable to contact Mr. Sattari and asked for patience.
- Tab 22 is a letter sent to Ms. Sattari since she is the daughter of Mr. Sattari. Mr. Krempien asked if she knew the whereabouts of Mr. Sattari and how to contact him. This letter was sent by registered mail and email. The registered mail could not be delivered and was returned to sender and the email indicated that delivery status was unknown.
- Tab 24 is a follow-up letter to Mr. Royer dated January 4, 2016 once again asking for a response.
- Tab 26 is a response from Mr. Royer dated January 7, 2016 indicating that they had lost contact with Mr. Sattari and that he was removing himself as counsel.

- Tab 27 is a letter sent by Mr. Krempien to Mr. Sattari on January 7, 2016 with a copy of the response from Mr. Royer. In that letter he indicates that it may be necessary to continue without the cooperation of Mr. Sattari.
- Tab 28 is a list of the video surveillance clips that were digitally available.
- Tab B followed by Tabs 29 to 34 are a summary of what happened after Mr. Krempien sent the letter to Mr. Sattari indicating he would be proceeding without him.
- Tab 29 contains a January 9, 2016 e-mail from Mr. Sattari to Mr. Krempien indicating he had been out of the country until now and that he would contact his lawyer about the documents required. Mr. Krempien responded on January 11.
- Tab 30 is a memo summarizing a voicemail Mr. Krempien received from Mr. Sattari on January 11 where he asked for a meeting so he could explain what happened to him while outside of Canada.
- Tab 31 is a transcript of the phone conversation that took place between Mr. Krempien and Mr. Sattari on January 11. In that conversation Mr. Sattari explains that while he was out of the country he was attacked by dog and required surgery before he could come home.
- Tabs 32 through 34 contain more details from Mr. Sattari about the dog bite and his time in Iran.
- In addition to walking through the contents of Exhibit 6 Mr. Krempien provided testimony as to what he witnessed on Feb. 19, 2016 during the parallel criminal court proceedings regarding this case.
 - Mr. Sattari was present at court with Mr. Royer
 - Mr. Elford, Crown Prosecutor, told Mr. Krempien that a trial was not needed because Mr. Sattari would plead guilty to section 33 of the *Pharmacy and Drug Act*.
 - Mr. Krempien was concerned that Mr. Sattari was going to plead guilty to s. 33 of the *Pharmacy and Drug Act* given that Cialis and Viagra are Schedule 1 drugs so the applicable section should have been s. 31 of the *Pharmacy and Drug Act*.
 - Mr. Krempien met with Mr. Elford and shared his thoughts that Mr. Sattari should be pleading guilty to Section 31(2)(b) of the *Pharmacy and Drug Act* rather than s. 33.
 - Mr. Royer asked about sanction from the ACP and Mr. Krempien said it was too early to talk about that as the matter had not yet been heard by a tribunal.
 - Mr. Sattari did plead guilty in the criminal matter and a joint submission on sanction was submitted. Mr. Sattari was given until July 2016 to pay a \$2300 fine (a \$2,000 fine plus a 15% victim surcharge).
 - In speaking to the criminal charges, the Crown prosecutor stated that on four separate occasions in May of 2015 Mr. Sattari “took out” Viagra and Cialis from the pharmacy and sold it. Mr. Sattari admitted to the conduct as read by the Crown prosecutor.
- Mr. Krempien also established the following key points:

- The allegation referring to diversion is based on the quantities taken. Cialis is effective for 48 to 72 hours. The period in question was 10 months or 300 days. Based on the quantity of Cialis that was taken it would suggest a sufficient quantity to last 4 to 5 years for one person.
- There is no indication to use both Viagra and Cialis at the same time so the quantities of Viagra are in addition to the Cialis.
- At the time of the hearing Mr. Krempien had still never received a written response from Mr. Sattari in relation to the allegations.
- The use of McKesson as a secondary wholesaler does not make any sense as there was no valid business reason for this given that this pharmacy used its own warehouse, Matrix, almost exclusively.
- The amounts of Viagra and Cialis missing closely resemble the amounts shipped to the pharmacy by McKesson.
- Video evidence shows Mr. Sattari removing inventory of Viagra and Cialis in May 2016. These medications come in boxes of 4 or 8 tablets and both have been removed. The video footage is only from the month of May and it shows a significant amount taken during this month alone.
- In the prescription listing provided by Ms. Sattari for the period from August 1, 2014 to May 29, 2015, there is no evidence of Mr. Sattari having a prescription for either Viagra or Cialis.
- Without a prescription, there is no authorized purpose for removing this medication.
- There were no further reports of any missing Cialis or Viagra after Mr. Sattari's employment was terminated from Shoppers Drug Mart on May 29, 2015.
- Shoppers Drug Mart has security systems to prevent unauthorized access to the dispensary. Video footage does not show anyone else entering the dispensary at the times these medications went missing.

The hearing tribunal also viewed some of the video footage that was referenced in Tab 28 and summarized in Mr. Blackmore's report in Tab 3. The video surveillance viewed by the Hearing Tribunal showed Mr. Sattari behind the dispensary removing products from the shelf in the Cialis and Viagra section. It also showed Mr. Sattari wrapping the boxes inside a lab coat and placing the coat in his bag.

(b) Evidence of Mr. Sattari

While Mr. Sattari did not attend the hearing, he asked that an e-mail dated May 25, 2016 be shared with the Hearing Tribunal. Counsel for the Complaints Director did not object to the Hearing Tribunal reviewing the May 26, 2016 e-mail. The May 26, 2016 e-mail from Mr. Sattari described that it was embarrassing for him to attend the proceedings and asked that his absence from the proceedings absolutely not be taken as a sign of disrespect for ACP regulations and the *Health Professions Act*.

Mr. Sattari referred to the February 19, 2016 criminal court proceedings and confirmed that he was required to pay a \$2,300 fine. Mr. Sattari stated in his e-mail that he refused to accept any of the allegations of removing Cialis or Viagra without authorization except for the two times that he “took a few box of Cialis 20 mg and Viagra 100 mg and the third time was on May 29, 2015 that I was arrested by security and was sent to the police for more investigations”.

Mr. Sattari stated in his e-mail that he only took the Cialis and Viagra for personal use and did not sell any of them outside the pharmacy. He stated that he had a prescription from his family doctor, Dr. L. Kamdar and invited the Hearing Tribunal to review his Shoppers Drug Mart #363 file.

Mr. Sattari stated that the Hearing Tribunal should also consider that the Shoppers Drug Mart pharmacy area is accessible to lots of front store workers before the opening in the morning and after closing at night and any one has access to all the medication in the pharmacy.

Mr. Sattari stated in his e-mail that he paid \$7,000 to his lawyer to defend him in court and that he has not been able to work for almost a year, which is more than \$80,000 for a clinical pharmacist.

Mr. Sattari concluded his e-mail by apologizing to the Hearing Tribunal and ACP for his absence in this important decision making session.

V. SUBMISSIONS

Mr. Jardine reminded the Hearing Tribunal that the onus of proof is on the College and that the Tribunal has two jobs, first to determine if the allegations are factually proven and if so, determine if they constitute unprofessional conduct. He also reminded the Tribunal that the standard of proof in this situation is the balance of probabilities and the test to consider is whether it is more probable than not that the allegations have been proven.

With respect to Allegation 1, Mr. Jardine stated that removal of a Schedule 1 medication, as are both Cialis and Viagra, from the pharmacy without a valid prescription is outside normal conduct of the profession. He said that the word “sold” as used in section 31(2)(a) of the *Pharmacy and Drug Act* is broad but that documentation requirements must be met for a Schedule 1 drug to be removed from a pharmacy.

Mr. Jardine also highlighted that Mr. Sattari did admit to removing these medications in May of 2015 a few different times both during his court hearing and in the letter he sent to the Tribunal (Exhibit 3). Section 38 of the – *Pharmacy and Drug Act* considers this an offence. With respect to proof, Mr. Jardine indicated that there is a great deal of evidence including video footage, finding the medications in his bag after his arrest, the inventory counts, the fact that the Cialis and Viagra were ordered through McKesson, the fact that the quantities involved far exceed any level of personal use, no evidence that Mr. Sattari had a prescription for either Cialis or Viagra and Mr. Sattari’s admission in Court. In addition there is no shred of evidence that anyone else was taking

the Cialis or the Viagra from the pharmacy. He stated there is only one probable person who could have taken the Cialis and Viagra and, in May 2015 in particular, there was only one proven person, Mr. Sattari.

Mr. Jardine submitted that this conduct is a violation of Principle 10 of the Code of Ethics which deals with honesty and integrity and that Mr. Sattari did not comply with the letter of the law and that he was dishonest with his employer. Standard 1 of the Standards of Practice for Pharmacists and Pharmacy Technicians also states that pharmacists must practice in accordance with the law therefore making him guilty of breach of this standard as well.

Mr. Jardine also spoke about Allegation 2 and referenced Mr. Krempien's testimony about the quantities in question. He also referred to the email submitted by Mr. Sattari on May 25, 2016.

With respect to the May 25, 2016 e-mail, Mr. Jardine confirmed that the Complaints Director did not object to the e-mail being presented to the Hearing Tribunal. However, he argued that the e-mail was hearsay evidence and should be given very little weight by the Hearing Tribunal. He noted that the normal process is for a witness to attend the hearing and have their evidence be subject to cross-examination. In this case, there was no way to test the evidence in the e-mail through cross-examination as Mr. Sattari did not participate in the hearing. As such, very little weight should be given to untested evidence. Mr. Jardine also noted that the e-mail referred to documents which are not in evidence before the Hearing Tribunal and that in particular there was no evidence before the Hearing Tribunal that Mr. Sattari had a prescription for Cialis and/or Viagra.

In the May 25, 2016 e-mail Mr. Sattari does admit to taking Cialis and Viagra 2 times but he states that they were just for personal use and that he did not sell them outside of the pharmacy. Mr. Jardine reminded the Tribunal that since Mr. Sattari was not under oath when he wrote this email we could not give much weight to his claims.

As a summary Mr. Jardine stated that it is more probable than not that Mr. Sattari did take the medications out of the pharmacy and that it is highly improbable he personally used all the medications taken. Further he said that diverting drugs attacks the very basis of pharmacy and it impacts the profession. This was a case of multiple diversions and they ended only when he was terminated. Lastly he made the comment that if this is not an example of unprofessional conduct then it would be difficult to surmise what is.

VI. FINDINGS

The Hearing Tribunal considered each of the Allegations.

Allegation 1 referred to the large quantities of Cialis and Viagra being diverted from the pharmacy by Mr. Sattari between August 2014 and May 2015.

In focusing on May of 2015 there was significant evidence to suggest that these medications were diverted. The Hearing Tribunal considered the video evidence, both as summarized by Mr.

Blackmore and as viewed directly during the hearing, the admission in court and the admission in Mr. Sattari's email to the Hearing Tribunal. The Hearing Tribunal is satisfied that for May 2015, there is direct evidence establishing that Mr. Sattari removed Cialis and Viagra from the pharmacy without authorization or justification.

The Hearing Tribunal is cognizant of the fact that there is no video footage or other direct evidence for the period from August 2014 to April 2015 which confirms that Mr. Sattari removed Cialis or Viagra from the pharmacy over this period. However, the Hearing Tribunal is satisfied that there is overwhelming circumstantial evidence which establishes that Mr. Sattari engaged in the conduct set out in Allegation 1.

In considering the August 2014 to April 2015 timeframe, the Hearing Tribunal noted that the orders from McKesson were only done in this time frame and they closely matched the quantities that were missing from the pharmacy stock. It was very clear in looking at the dispensing records and shipment invoices that the counts were off and did not add up. Consideration was also given to the fact that the discrepancies in count ceased after the termination of Mr. Sattari's employment on May 29, 2015. The Hearing Tribunal also considered that Mr. Sattari admitted to diversions of Cialis and Viagra in May 2015 and that there is no evidence of anyone else being responsible for the diversions of Cialis and Viagra which are revealed by the in/out analysis at Tab 14 of Exhibit 6. Based on the observations from the evidence and testimony given, the Hearing Tribunal concluded that it is more probable than not that Mr. Sattari was responsible for diverting approximately 450 Viagra 100 mg tablets and 575 Cialis 20 mg tablets over the period from August 2014 to May 2015.

The Hearing Tribunal is cognizant of the fact that in his May 26, 2016 e-mail, Mr. Sattari denies taking any Cialis or Viagra beyond three occasions that occurred in May 2016. However, this denial was not given under oath, nor was it subject to cross-examination. Accordingly, the Hearing Tribunal has put no weight on the denial. In any event, the Hearing Tribunal is satisfied that the conduct alleged in Allegation 1 has been established by the circumstantial evidence described above. Allegation 2 stated that the diverted medications were for beyond personal use. In this case the Tribunal considered the testimony from Mr. Krempien who heard the Crown prosecutor state in court that the medications were taken in order to be sold. The Tribunal considered how much weight to give this evidence and considered that Mr. Krempien directly testified to having heard this comment and that it came from an officer of the court. In contrast Mr. Sattari submitted an email to the Tribunal in which he stated he took some medication for personal use only. This email is considered hearsay, it was not given under oath and Mr. Sattari did not appear at the hearing to be subject to cross-examination, or to contest the allegations nor did he respond to Mr. Krempien's requests for written information regarding the allegations. The quantities that were diverted were very substantial and the Tribunal also considered the fact that clinically it is not reasonable that the missing quantities could be for one person's personal use.

In his May 25, 2016 e-mail, Mr. Sattari stated that he had a prescription from his family doctor and invites the Hearing Tribunal to review his file at Shoppers Drug Mart #363. He does not clarify if the prescription was for Cialis or Viagra. The Hearing Tribunal was provided at Tab 11

of Exhibit 6 with a list of all individuals who held prescriptions for Cialis 20mg or Viagra 100 mg with Shoppers Drug Mart #363 over the period from August 1, 2014 to May 29, 2015. Mr. Sattari does not appear anywhere on these lists as having a prescription for either Cialis 20 mg or Viagra 100mg with Shoppers Drug Mart #363 over the period from August 1, 2014 to May 20, 2015. In light of this evidence and considering that Mr. Sattari's assertion that he did have a prescription was not made under oath nor was it subject to cross-examination, the Hearing Tribunal does not accept that Mr. Sattari had a prescription for either Cialis or Viagra during the relevant time frame.

Mr. Sattari indicated in his May 25, 2016 e-mail that he visited his family doctor on June 1, 2015 in order to renew his Cialis 20 mg prescription. This is irrelevant to the issues before the Hearing Tribunal as the allegations do not relate to conduct which occurred in June 2015.

Based on these facts the Tribunal finds that Allegation 2 is also proven based on the balance of probabilities.

In consideration of whether these proven allegations constitute unprofessional conduct the Tribunal looked at the definition of unprofessional conduct as outlined by the *Health Professions Act*. Section 1(1)(pp)(ii) and 1(1)(pp)(iii) define it as contravention of the Act, a code of ethics or standards of practice or contravention of another enactment that applies to the profession. Section 1(1)(pp)(xii) also defines it as conduct that harms the integrity of the regulated profession. In this case it is clear that the statutes listed in the allegations were contravened.

The Hearing Tribunal accepts without hesitation that dispensing Schedule 1 drugs without a prescription attacks the heart of the pharmacy profession and has no difficulty concluding that by engaging in the conduct set out in Allegations 1 and 2 Mr. Sattari has engaged in unprofessional conduct.

VII. SANCTION

Given the finding of unprofessional conduct the Tribunal then moved directly into the sanction phase of the hearing. Some consideration was given as to whether Mr. Sattari should be given an opportunity to receive the Hearing Tribunal's findings on unprofessional conduct and then provide submissions on sanction.

However, the Hearing Tribunal determined that it would continue on to the sanctions phase in Mr. Sattari's absence given that it has the authority to proceed under s. 79(6) of the *Health Professions Act* and considering that Mr. Sattari stated he did not want to attend and would respect the decision of the Hearing Tribunal.

Mr. Jardine reminded the Tribunal that the purpose of sanction is four fold: to protect the public, to protect the integrity of the profession, to provide deterrence and to be fair to the member. He referenced *Jaswal v. Medical Board (Newfoundland)* and the factors outlined in that case that

should be considered in this case. Specifically he added the following comments on some of the key factors:

- Nature and gravity of the proven allegations – In this case there is a strong element of dishonesty and the allegations are very serious and cut to the core of the professional obligations of a pharmacist.
- Age and experience of the offending member – Mr. Sattari is not a new member and is not inexperienced.
- Previous complaints or convictions – In this case there is one other prior issue with Mr. Sattari. The situation is not related and had to do with absence of malpractice insurance. It was described in a decision of the Hearing Tribunal dated August 20, 2012. While this previous case is unrelated in terms of the conduct at issue it does show a lack of attention to his obligations as a pharmacist. However, Mr. Jardine acknowledged that given the different conduct at issue, the prior finding of unprofessional conduct would not support a stiffer penalty in this case.
- Number of times the offence was proven to have occurred – The diverted medications took place over a period of 10 months. They only stopped when he was terminated. The conduct at issue was not a single isolated occurrence.
- The role of the member in acknowledging what had occurred – Mr. Sattari says he is embarrassed but he did not show up for the hearing, has not cooperated with Mr. Krempien in the investigation and the emails from him do not show any acknowledgement of what has happened.
- Whether the offending member has already suffered other serious financial or other penalties – Mr. Sattari was terminated from his employment. He has not worked for a year due to his undertaking. However, the request for the undertaking arose because Mr. Sattari requested that the proceedings be put on hold while he voluntarily left the country for a significant portion of time. As such the period of time that Mr. Sattari has been unable to practice as a pharmacist should not be considered a significant mitigating factor. Further, it should be noted that the undertaking was a voluntary undertaking and not an interim suspension imposed by the College under s. 65 of the *Health Professions Act*. Mr. Sattari also has a Court fine of \$2300 to pay by July 2016.
- The need to maintain the public's confidence in the profession – Mr. Jardine submitted that this factor relates to what is necessary to show the public and other members of the profession that the profession takes the conduct very seriously and will act to sanction it.
- The range of sentence in other similar cases – Four different cases were referenced in this regard by Mr. Jardine:
 - Ms. Wested was a case involving forgery of prescriptions and the creation of fake dispensing records. In this case there was a 24 month suspension from date of hearing, she needed to meet all requirements for registration after the suspension and then was required to work under direct supervision for the next 12 months. She also had a 5 year period of disclosure and prevention from becoming a licensee as well as a fine of \$4000.

- The second case was from October 2013. It involved diversion of medications but also involved some mental health considerations. In this case there was a fine of \$2000, the member could not practice until they received medical clearance and they needed to remain under the care of a psychiatrist. They would need to work under direct supervision for 200 hours and had to pay all costs of the hearing.
- Mr. Walsh was another case involving diversion. In this case the member was under a monitoring program and was cooperative with the investigation and hearing. He faced a 1 year suspension, could not become licensee for 5 years and had a 5 year disclosure period. He also had to remain in a monitoring program for 5 years and he paid full costs for the hearing.
- The fourth case had multiple issues identified but one of them was theft of approximately \$1000 worth of front store items. In this case there was a 30 day suspension, a \$2500 fine and payment of all costs.
- Although none of these cases are exactly the same there are certainly similarities that can be considered in crafting the orders for penalty in this case.

After considering each of these factors Mr. Jardine proposed the following penalties as his submission:

- A \$5000 fine. The medications that were diverted had a value of over \$13,500 therefore the fine should be higher as the value is higher than previous cases.
- Suspension for 1 year from the date of this order. This suspension is less than that of Ms. Wested but more than other cases since this is such a significant matter. The suspension should not include the time that he has been without work due to his undertaking. It was his choice to postpone the investigation, his choice to leave the country and at no point did he ask to be relieved of the undertaking. Therefore, there should be no consideration for time away from practice as a result of the undertaking.
- Payment of costs of the investigation and hearing to a maximum of \$20,000. Since he is not present at the hearing it is reasonable to cap the costs. It is important to note that these costs may have been lower with his cooperation in this matter. These costs are to be payable on a schedule satisfactory to the College.
- Decision to be disclosed to any pharmacy employer for 5 years from the date of the written decision.
- Unable to be an owner, proprietor or licensee of a pharmacy for a period of 5 years from the date of the written decision.
- Publication of the decision.

Mr. Jardine felt these proposed penalties are in accordance with the factors outlined in *Jaswal* and he felt they provide protection to the public. This was the end of Mr. Jardine's submission.

Orders

The Hearing Tribunal was in agreement with the proposal from Mr. Jardine.

The Hearing Tribunal agrees that the conduct at issue is very serious and cuts to the core of professional obligations of a pharmacist. Mr. Sattari demonstrated an alarming lack of judgment in engaging in the conduct he did. The Hearing Tribunal is also concerned with the length of time over which the diversions occurred and the quantity of Viagra and Cialis that were diverted. The Hearing Tribunal has also taken into account the fact that the diversions only ceased when they were discovered by Mr. Sattari's employer. All of these factors point to the need for a serious and severe sanction such as the suspension and fine urged by Mr. Jardine.

The Hearing Tribunal has also considered that Mr. Sattari lost his employment and is facing a \$2,300 fine as a result of the criminal proceedings. However, the Hearing Tribunal does not put significant weight on the fact that Mr. Sattari has been out of practice some time given that the undertaking only arose when Mr. Sattari asked that the unprofessional conduct proceedings be delayed. As such, the Hearing Tribunal is of the view that a fine of \$5,000 is appropriate in the circumstances and will serve as a specific deterrent to Mr. Sattari.

The order to disclose this decision to any pharmacy employer for a five-year period and the order restricting Mr. Sattari from holding the position of owner, proprietor and licensee of a licensed pharmacy for a five-year period are important components of public protection. They ensure a monitoring element aimed at deterring any future behavior of this nature by Mr. Sattari while, at the same time, the orders are limited to a period of five years in order to be fair to Mr. Sattari.

On balance, we accept the submission of the Complaints Director on sanctions as appropriate orders for penalty in this case. The proposed penalties are in line with the penalties ordered in previous cases and satisfy the purposes of issuing sanctions, including specific and general deterrence and maintaining the integrity of and public confidence in the pharmacy profession.

The Hearing Tribunal also agrees with the submissions on behalf of the Complaints Director that it is appropriate for Mr. Sattari to bear the costs of the investigation and hearing. The Hearing Tribunal found that all of the allegations referred to in the Notice of Hearing were proven. The hearing was required because of the serious unprofessional conduct of Mr. Sattari. In these circumstances, it is reasonable and proper that Mr. Sattari be ordered to pay the costs of the investigation and hearing. The College and its members should not be forced to bear the expense of the hearing when the need for the hearing arose as a direct result of the unprofessional conduct of Mr. Sattari. The Hearing Tribunal imposes a maximum amount of \$20,000 in costs payable by Mr. Sattari so that there is some certainty with respect to the total amount of costs payable by Mr. Sattari.

The Hearing Tribunal orders that Mr. Saeed Sattari:

1. Pay a fine of \$5000 payable within six (6) months of receipt of this written decision.
2. Have his practice permit suspended for a period of 1 year from the date of this written decision.
3. Pay all costs of the investigation and hearing to a maximum of \$20,000. These costs are to be paid in a schedule satisfactory to the Complaints Director.
4. Disclose this written decision to any pharmacy employer for a period of 5 years from the date of the written decision.
5. Be prohibited from holding the position of owner, proprietor or licensee of a licensed pharmacy for a period of 5 years from the date of this written decision.

Signed on behalf of the hearing tribunal by
the Chair

Dated: _____August 22, 2016_____

Per: _____[Jim Johnston]_____

Jim Johnston