

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF A REGULATED MEMBER

Robert Stadnyk

Registration number 4957

DECISION OF THE HEARING TRIBUNAL

September 22, 2016

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Mr. Robert Stadnyk. The Hearing Tribunal consisted of: Mr. Naeem Ladhani, Pharmacist and Chairman; Mr. Rizwan Ahmed, Pharmacist; Ms. Denise Nilsen, Pharmacist; and Mr. Peter Kawalilak, Public Member. With the consent of all parties, the hearing was held concomitantly with related hearings into the conduct of Ms. Kathryn Kieser and Mr. Evan King.

The hearing took place on June 22, 2016 at the Varscona Hotel, Rutherford Room, located at 8202 106 Street NW in Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act* (the “Act”).

In attendance at the hearing were: Mr. James Krempien, Complaints Director for the Alberta College of Pharmacists (the “College”); Mr. David Jardine, counsel for the Complaints Director; Mr. Robert Stadnyk, investigated member; Mr. Luke Day, counsel for Mr. Stadnyk (by telephone conference); Ms. Kathryn Kieser, investigated member in the concomitant related hearing; Mr. Evan King, investigated member in the concomitant related hearing; Ms. Terry Reid, court reporter; and Ms. Julie Gagnon, independent counsel for the Hearing Tribunal.

There were no objections to the composition of the Hearing Tribunal, the jurisdiction of the Hearing Tribunal to proceed with a hearing, or with the timeliness of service of the Notice of Hearing. The hearing was open to the public.

II. ALLEGATIONS

The allegations to be considered by the Hearing Tribunal, as set out in the Notice of Hearing are as follows:

IT IS ALLEGED THAT during the period from January 1, 2010 to December 31, 2014 as licensee and manager (through your corporation, Pharmacy Relief Network) of the Medicine Hat Co-op Pharmacy located at 3030 13th Ave SE, Medicine Hat:

1. You negotiated drug purchases and vendor rebates or incentive payments based on the volume of each vendor’s drugs supplied to the pharmacy from 4 generic drug manufacturers: Actavis Canada (Cobalt); Apotex; Pharmascience; and Mylan (“the generic drug manufacturers”).
2. While the drug purchases and vendor rebates or incentive payments were negotiated by you with the generic drug manufacturers, the drugs were purchased on behalf of the owner of the pharmacy, Medicine Hat Co-op, and Medicine Hat Co-op paid for all of the drugs purchased.
3. While some of the vendor rebates or incentive payments were paid by the generic drug manufacturers to Medicine Hat Co-op Limited by cheque or “rapid draft”, a substantial portion of the vendor rebates or incentive payments were provided by the generic drug manufacturers directly to you for your personal use both at your home and at the pharmacy in the form of gift cards, prepaid credit cards, travel vouchers, paid trips, entertainment expenses and tickets to various events.

4. Based on its review of its own records and records provided by the generic drug manufacturers, Medicine Hat Co-op Limited has alleged that the total generic drug manufacturer vendor incentives or rebates received by you were as follows:

Actavis	2010-2013	\$569,218.00
Actavis	2014	\$8,000.00
Apotex	2010-2014	\$337,122.00
Pharmascience	2010-2013	\$54,655.00
Pharmascience	2014	\$32,434.00
Mylan	2010-2013	\$54,873.00

5. You have acknowledged that you personally benefited from some of the vendor incentives or rebates that were provided to you by the generic drug manufacturers but you did not provide an estimate of the total value of the incentives or rebates you personally benefited from and you did not:
- have a systematic or comprehensive list of the personal incentives or rebates that you received from the generic drug manufacturers; or
 - keep records of any of the incentives or rebates that you received and provided to other parties.
6. You benefited from rebates that were significantly larger than any nominal rebates provided by pharmacists for the personal benefit of pharmacists.
7. You did not report any of the personal incentives or rebates that you received to the Canada Revenue Agency.
8. You did not report any of the personal incentives or rebates to Alberta Blue Cross in respect to the drugs paid for by Alberta Blue Cross.
9. You did not report or account to Medicine Hat Co-op Limited in respect to any of the vendor incentives or rebates that you received from the generic drug manufacturers and used personally.
10. You knew, or ought to have known that the gift cards, prepaid credit cards, travel vouchers or paid trips, entertainment expenses and tickets to events that you received personally from the generic drug manufacturers should have been passed onto Medicine Hat Co-op Limited who paid for the drugs provided by the generic drug manufacturers;
11. The total amount of the vendor incentives or rebates that you received personally from the generic drug manufacturers are significantly larger than any nominal gifts or rebates that might be provided by vendors for the personal benefit of pharmacists;
12. The lengthy time frame over which the vendor incentives or rebates were received personally by you meant that you had many opportunities to speak with senior management of Medicine

Hat Co-op Limited to receive clear, documented direction about your receipt and use of the vendor incentives and rebates;

13. While it is possible that as a contracted service provider rather than an employee, you may not have received a copy of the Gifts Policy of Medicine Hat Co-op Limited that provided that any incentives provided by suppliers would be the property of Medicine Hat Co-op Limited and must be reported to senior management, you would have become aware of the Gifts Policy if you had taken any steps to review this issue with senior management of Medicine Hat Co-op Limited and to identify the very large rebates and incentives you were receiving from the generic drug manufacturers for your own personal benefit; and
14. You did not create or maintain any documentation in relation to:
 - any written agreements with the generic drug manufacturers for the provision of vendor incentives or rebates;
 - any pharmacy records to reconcile the amount of drugs purchased by the pharmacy and the amount of the vendor incentives or rebates provided to you by the generic drug manufacturers;
 - any records to indicate the value of the vendor incentives or rebates that you personally benefited from; or
 - any records to show what was done with the vendor incentives and rebates that you received.

IT IS ALLEGED THAT your conduct in these matters:

- a. undermined the integrity of the profession;
- b. was contrary to accepted pharmacist ethical standards;
- c. involved multiple receipts of vendor incentives or rebates that you used personally over an extended period from January 1, 2010 to December 31, 2014;
- d. ended only when your employer discovered from communications from the Canada Revenue Agency the extent of the incentives or rebates that you had received from the generic drug manufacturers and terminated your contract as a service provider;
- e. lacked honesty and integrity in your dealings with Medicine Hat Co-op Limited and in respect to your obligations to the Canada Revenue Agency.

IT IS ALLEGED THAT your 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 and 1.15 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections, 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*; and
- Principles 10(1 and 2) of the ACP Code of Ethics.

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

III. EVIDENCE

There were three separate hearings with three separate Notices of Hearing (Kieser, King, and Stadnyk), but with the consent of the parties and their respective legal counsel, the hearings were consolidated into one proceeding to minimize costs. There were admissions of unprofessional conduct in each case. By agreement between the parties, Mr. Jardine entered the documents as Exhibits for all three hearings. The following Exhibits relate to this hearing:

- Exhibit 3 Notice of Hearing for Robert Stadnyk dated May 3, 2016 and revised version dated June 13, 2016 with revised location of hearing
- Exhibit 6 Admission of Unprofessional Conduct by Robert Stadnyk dated June 22, 2016
- Exhibit 9 Investigation Report of Mr. Stadnyk
- Exhibit 12 Joint Submission on Sanctions for Robert Stadnyk dated June 22, 2016

Mr. Jardine asked that page 64 of Exhibit 9 be subject to an order of confidentiality by the Hearing Tribunal given that the document contains personal information from the employment file of the investigated member. The Hearing Tribunal granted the request and as such, page 64 of Exhibit 9 is to be treated as confidential and shall not be disclosed by the College to any third party.

Exhibit 6 set out written admissions of unprofessional conduct by Mr. Stadnyk pursuant to section 70 of the Act. He acknowledged and admitted that:

During the period from January 1, 2010 to December 31, 2014 as licensee and manager (through his corporation, Pharmacy Relief Network) of the Medicine Hat Co-op Pharmacy located at 3030 13th Avenue, SE, Medicine Hat:

1. He negotiated drug purchases and vendor rebates or incentive payments based on the volume of each vendor's drugs supplied to the pharmacy from 4 generic drug manufacturers: Actavis Canada (Cobalt); Apotex; Pharmascience; and Mylan ("the generic drug manufacturers").
2. While the drug purchases and vendor rebates or incentive payments were negotiated by him with the generic drug manufacturers, the drugs were purchased on behalf of the owner of the pharmacy, Medicine Hat Co-op, and Medicine Hat Co-op paid for all of the drugs purchased.
3. While some of the vendor rebates or incentive payments were paid by the generic drug manufacturers to Medicine Hat Co-op Limited by cheque or "rapid draft" or in the form of equipment for the pharmacy, a substantial portion of the vendor rebates or incentive payments were provided by the generic drug manufacturers directly to him for his personal use both at his home and at the pharmacy in the form of gift cards, prepaid credit cards, travel vouchers, paid trips, entertainment expenses and tickets to various events.

4. Based on its review of its own records and records provided by the generic drug manufacturers, Medicine Hat Co-op Limited has alleged that the total generic drug manufacturer vendor incentives or rebates received by him were as follows:

Actavis	2010-2013	\$569,218.00
Actavis	2014	\$8,000.00
Apotex	2010-2014	\$337,122.00
Pharmascience	2010-2013	\$54,655.00
Pharmascience	2014	\$32,434.00
Mylan	2010-2013	\$54,873.00

5. While Mr. Stadnyk does not agree with the figures provided by Medicine Hat Co-op Limited, he acknowledges that he personally benefited from many of the vendor incentives or rebates that were provided to him by the generic drug manufacturers and he did not:
- have a systematic or comprehensive list of the personal incentives or rebates that he received from the generic drug manufacturers; or
 - keep records of any of the incentives or rebates that he received and provided to other parties.
6. He benefited from rebates that were significantly larger than nominal rebates.
7. He did not report any of the personal incentives or rebates that he received to the Canada Revenue Agency (the "CRA").
8. He did not report any of the personal incentives or rebates to Alberta Blue Cross in respect to the drugs paid for by Alberta Blue Cross.
9. He did not provide reports or account to Medicine Hat Co-op Limited in respect to the vendor incentives or rebates that he received from the generic drug manufacturers and used personally.
10. He ought to have known that the gift cards, prepaid credit cards, travel vouchers or paid trips, entertainment expenses and tickets to events that he received personally from the generic drug manufacturers should have been passed onto Medicine Hat Co-op Limited who paid for the drug provided by the generic drug manufacturers or that such benefits should have been reported to the Medicine Hat Co-op Limited and the CRA.
11. The total amount of vendor incentives or rebates that he received personally from the generic drug manufacturers are significantly larger than any nominal gifts or rebates;
12. The lengthy time frame over which the vendor incentives or rebates were received personally by him meant that he had many opportunities to speak with senior management of Medicine Hat Co-op Limited to receive clear, documented direction about his receipt and use of the vendor incentives and rebates;

13. While it is possible that as a contracted service provider rather than as an employee, he may not have received a copy of the Gifts Policy of Medicine Hat Co-op Limited that provided that any incentives provided by suppliers would be the property of Medicine Hat Co-op Limited and must be reported to senior management, he likely would have become aware of the Gifts Policy if he had taken any steps to review this issue with senior management of Medicine Hat Co-op Limited and to identify the very large rebates and incentives he was receiving from generic drug manufacturers for his own personal benefit;
14. He did not create or maintain any documentation in relation to:
 - any written agreements with the generic drug manufacturers for the provision of the incentives or rebates;
 - any pharmacy records to reconcile the amount of drugs purchased by the pharmacy and the amount of the vendor incentives or rebates provided to him by the generic drug manufacturers;
 - any records to indicate the value of the incentives or rebates that he personally benefited from; or
 - any records to show what was done with the vendor incentives and rebates that he received.
15. He received multiple receipts of vendor incentives or rebates that he used personally over an extended period from January 1, 2010 to December 31, 2014; and
16. His conduct reflected a lack of full disclosure and integrity in his dealings with Medicine Hat Co-op Limited and in respect to his obligations to the Canada Revenue Agency.

Mr. Stadnyk further agreed and acknowledged that his conduct constituted a breach of the following statutes, regulations, and standards governing the practice of pharmacy:

- Section 1 and subsections 1.1 and 1.2 and 1.15 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 1(1)(pp)(ii) and 1(1)(pp)(xii) of the *Health Professions Act*; and
- Principles 10(1 and 2) of the ACP Code of Ethics.

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

As Complaints Director, Mr. James Krempien acknowledged that Mr. Stadnyk and his legal counsel were fully cooperative throughout the investigation and hearing process, that his participation in the receipt of rebates did not affect patient care and that no patient complaints or concerns had come forward in respect to these matters. He also acknowledged that Mr. Stadnyk has not been the subject of any prior complaints, investigations or complaint hearings of a similar nature.

Mr. Stadnyk acknowledged that he received legal advice prior to entering into the Admission of Unprofessional Conduct and that he understood that if the Hearing Tribunal accepted his Admission

of Unprofessional Conduct, the Hearing Tribunal may proceed to issue one or more of the orders set out in section 82(1) of the Act.

Mr. Jardine noted that there were minor, non-substantive differences in wording between the allegations in the Notice of Hearing and the admissions in the Admission of Unprofessional Conduct. These changes in wording were acceptable to the Complaints Director.

Mr. Jardine called Mr. James Krempien, Complaints Director for the College as a witness to present Exhibit 9, which was Mr. Krempien's investigation report into Mr. Stadnyk. The following key points were presented:

- Mr. Joe Carroll, Pharmacy Operations and Marketing Manager for Federated Co-op Limited (FCL), contacted the College in November 2015 with concerns regarding the conduct of Ms. Kieser, Mr. King and Mr. Stadnyk, specifically related to generic pharmaceutical company rebates not being fully remitted back to Medicine Hat Co-op and its parent company, FCL.
- It was common industry practice for pharmacies to receive an incentive or "rebate", cash or otherwise, from generic pharmaceutical companies valued at a portion of the cost of drugs purchased, based on the volume of medications purchased from that particular company.
- Mr. Carroll had discovered that the amount of rebates remitted to Medicine Hat Co-Op and FCL at Mr. Stadnyk's pharmacy (Medicine Hat Co-op pharmacy located at 3030 13th Avenue SE in Medicine Hat, AB) was noticeably lower than other pharmacies. Around the same time, FCL had also been approached by the Canada Revenue Agency (CRA) regarding outstanding tax owing on rebates provided by generic pharmaceutical manufacturers but not declared as income to the CRA.
- In November 2015, the College received a formal complaint about the conduct of Mr. Stadnyk from Mr. Mike Clement, General Manager of Medicine Hat Co-op, specifically: diversion of revenue from Medicine Hat Co-op and FCL by personally using and profiting from generic pharmaceutical company rebates and incentives, which violated the company policy on business ethics and receipt of gifts.
- Mr. Stadnyk was manager and licensee of Medicine Hat Co-op pharmacy from 1995 to 2015. Throughout this time, Mr. Stadnyk provided management and pharmacy services to Medicine Hat Co-op as a contractor through his corporation, Pharmacy Relief Network. His contract was terminated by Medicine Hat Co-op on November 12, 2015.
- In 2014, the amount of rebates provided by generic pharmaceutical companies was drastically reduced, and by 2015, all rebates, as little as they were relative to previous years, were going directly to Medicine Hat Co-op and were not being provided to the pharmacy managers, including Mr. Stadnyk.
- Rebates that were provided directly to Medicine Hat Co-op were provided in the form of a cheque or electronic funds transfer. Rebates provided to Mr. Stadnyk were in the form of family vacations, gift cards, pre-paid credit cards, and event tickets. Gift cards and pre-paid credit cards were sent directly to Mr. Stadnyk's residence.

- Medicine Hat Co-op had received summaries of rebates provided to Mr. Stadnyk from Actavis-Cobalt, Pharmascience, Mylan, and Apotex from 2010-2014. The information provided by Apotex was a total amount of rebates provided, and the amount was not broken down as it was with the other companies. Based on this information, Medicine Hat Co-op alleged that Mr. Stadnyk had personally benefited from \$1,056,302.00 of rebates between 2010 and 2014.
- In Mr. Stadnyk's response to the complaint, he noted that all management and pharmacy services he had provided to Medicine Hat Co-op were provided as an independent contractor through his company, Pharmacy Relief Network. Mr. Stadnyk also noted that he was working with the Canada Revenue Agency to resolve allegations of potentially unreported income arising from the receipt of incentives or rebates from generic pharmaceutical companies. He claimed that Medicine Hat Co-op was aware that he was receiving the rebates and incentive payments in question for his personal benefit. He also claimed that there were a number of occasions over the years where senior management of Medicine Hat Co-op requested Mr. Stadnyk to obtain various incentives from generic pharmaceutical companies, such as trips, event tickets, computers, pharmacy equipment, and prizes for staff functions. He also suggested that any disputes between Mr. Clement, himself, Medicine Hat Co-op and Pharmacy Relief Network were more appropriately dealt with civil law remedies versus the College.
- At a meeting between Mr. Krempien, Mr. Stadnyk, and Mr. Day, Mr. Stadnyk indicated that he had never received the half-day orientation normally provided to new employees, and that he had never received the employee conduct policy manual and had never seen or received the Gift policy. Mr. Stadnyk noted that some of the rebates and incentives received were for his personal benefit and others were used to purchase equipment or supplies for the pharmacy and some were provided to staff and Medicine Hat Co-op senior management who had requested that he obtain them. Some of the rebates and incentives were received at his residence and others were received at the pharmacy. The rebates and incentives were in the form of pharmacy equipment, pre-paid credit cards, gift cards, travel vouchers, entertainment expenses and event tickets. Mr. Stadnyk could not identify who received which rebates, and he did not have any records or supporting documentation. While he admitted to receiving rebates or incentives for his personal benefit, he was not able to account for or estimate the value of the rebates and incentives he personally benefited from during the period in question. He indicated that during the period in question, he had not reported any of the rebates he received for his personal benefit to the CRA. At the conclusion of the meeting, Mr. Day suggested that the matter was more a civil matter rather than a professional conduct matter as it related to business practices rather than protection of the public or professional conduct.
- According to Mr. Clement, based on a meeting between Mr. Krempien and Mr. Clement, upon initial hire, pharmacy staff, including managers, were provided with a copy of the policies and procedures of Medicine Hat Co-op, including Policy and Procedure Number 13, related to Gifts and Incentive Programs. The policy clearly notes that: "any incentive received from a supplier will become the property of Medicine Hat Co-op." The policy further requires "any incentives offered over \$50 [to] be reported to the most senior management." Medicine Hat Co-op did not have any proof that Mr. Stadnyk had received a copy of the policy. Mr. Clement had very positive things to say about the operation of Mr. Stadnyk's pharmacy, and aside from the concerns regarding rebates, he was an excellent pharmacist in terms of patient care, and there were no specific pharmacy practice or patient care concerns. According to Mr. Clement, management was not aware of the

amounts of personal rebates provided to Mr. Stadnyk. They would likely have been aware of some of what he termed “nominal” gifts, such as hockey tickets.

- While not agreeing on a precise amount, Mr. Stadnyk agreed that he personally benefited from a substantial amount of rebates. From the College’s perspective, they had not attempted to do any sort of forensic accounting.
- There was no indication that receipt of rebates and incentives by Mr. Stadnyk influenced his professional judgment or caused any patient harm. The rebates were related to a specific brand of generic medication being purchased and used by the pharmacy; the different brands of generic medication are all approved by Health Canada and are therapeutically equivalent.

V. SUBMISSIONS ON ALLEGATIONS

Submissions of the Complaints Director

Based on the admissions of unprofessional conduct, Mr. Krempien’s testimony, the Investigation Report, and supporting documentation, Mr. Jardine asked the Hearing Tribunal to accept the admissions of unprofessional conduct. Mr. Jardine reminded the Hearing Tribunal that the Complaints Director bears the onus of 1) proving the factual allegations in the Notice of Hearing, based on the civil standard of proof, which is a balance of probabilities; and 2) establishing that the proven facts constitute unprofessional conduct under the *Health Professions Act*. In this case, there were allegations in the Notice of Hearing of breaches of each of the Act, Code of Ethics and Standards of Practice. A breach of any of these may constitute unprofessional conduct. In this case, there was an additional element of unprofessional conduct, namely conduct that harms the integrity of the regulated profession.

Section 70 of the Act allows an investigated member to submit a written admission of unprofessional conduct at any time before a Hearing Tribunal has made a decision. An admission was entered in this case, and it was acceptable to the Complaints Director. The admissions made by the investigated member were essentially full admissions on the allegations in the Notice of Hearing, as the allegations in the Notice of Hearing closely mirrored the admissions made by Mr. Stadnyk in Exhibit 6, with only a few changes. One notable difference was that Mr. Stadnyk did not accept the value of rebates alleged by Medicine Hat Co-op that he personally received, namely \$1,056,302.00. He did acknowledge that it was a substantial amount. The Complaints Director did not feel it necessary to quantify the exact amount, as the issue from the College’s perspective was one of ethics and personal use of substantial amounts of rebates on drugs that were purchased by Medicine Hat Co-op, and which were not reported to Medicine Hat Co-op or the CRA.

Mr. Jardine reiterated that Mr. Stadnyk had been fully cooperative with the College and had entered an admission of unprofessional conduct, which reduced costs, shortened the hearing proceedings, and benefited all parties.

Submissions of the Investigated Member

Mr. Day supported Mr. Jardine’s submission asking the Hearing Tribunal to accept the admission of unprofessional conduct.

VI. FINDINGS AND DECISION OF THE HEARING TRIBUNAL

The Hearing Tribunal considered and accepted the admission of unprofessional conduct by Mr. Stadnyk, based on the admissions made and the evidence presented. The Hearing Tribunal considered the Exhibits and the evidence of Mr. Krempien, and finds that the conduct in the Allegations has been proven on a balance of probabilities.

The Hearing Tribunal also considered whether the conduct that has been proven to occur is conduct that constitutes unprofessional conduct as defined in the *Health Professions Act*. The Act defines unprofessional conduct at section 1(1)(pp) and includes conduct that contravenes the Act, a code of ethics and standards of practice, and conduct that harms the integrity of the profession.

The conduct in this case raises serious ethical issues. Mr. Stadnyk received substantial personal benefits which he was not entitled to, and which were not reported to Medicine Hat Co-op or to the CRA. Furthermore, these personal benefits were received in a perceivably clandestine manner, specifically pre-paid family vacations and substantial values of gift cards and pre-paid credit cards delivered to his home. The ACP Code of Ethics requires that all members must act with honesty and integrity. Principle 10 (1 and 2) of the ACP Code of Ethics is directly relevant to the conduct and Mr. Stadnyk's conduct was in breach of this Principle. Principle 10 states, in part:

1. Comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies.
2. Am honest in dealings with
 - a. patients;
 - b. other pharmacists, pharmacy technicians, health professional and the college; and
 - c. contractors, suppliers and any others encountered in business dealings related to the practice of my profession or the operation of a pharmacy.

Honesty and integrity are core values of the profession of pharmacy and these principles are set out in the ACP Code of Ethics. All members must conduct themselves within both the spirit and letter of it. The Hearing Tribunal finds that the conduct in this case is serious. It is a breach of the ACP Code of Ethics and it undermines the integrity of the profession. The lack of transparency with Medicine Hat Co-op and the failure to report the substantial personal benefits or keep any records does not comply with the spirit of the Code as it relates to honesty and integrity. The breaches are sufficiently serious to constitute unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*.

Similarly, Standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians require members to practice in accordance with the laws that govern the practice of pharmacy, including the Act and Code of Ethics and additionally require that members comply with both the letter and spirit of the laws. As determined above, Mr. Stadnyk's conduct was in breach of both the letter and spirit of the Code as it relates to honesty and integrity. Standard 1.15 prohibits members from accepting gifts or other benefits or entering into association with a patient, regulated health professional or any other person that could have the effect of compromising his or her professional independence, judgement or integrity. While the personal benefits received by Mr. Stadnyk did not compromise his professional independence or judgement in terms of patient care, there is a significant issue, in the eye of the public, of potential and perceived compromise of professional independence, judgment or integrity, especially with the substantial values involved, and the perceivably clandestine manner of the rebates, and the fact that Mr. Stadnyk received these rebates on drug purchases that were paid by Medicine Hat Co-op. These breaches are sufficiently serious to constitute breach of Standards 1.1, 1.2, and 1.15 of the Standards of Practice and further constitute unprofessional conduct under section 1(1)(pp)(ii) of the *Health Professions Act*.

In addition, the conduct at issue undermines the integrity of the profession. All pharmacists are expected to conduct themselves honestly and with integrity. The lack of transparency and failure to report substantial personal benefits in this case undermines the integrity of the profession. As such, the conduct also constitutes unprofessional conduct on the basis that it harms the integrity of the profession under section 1(1)(pp)(xii) of the *Health Professions Act*.

VI. SUBMISSIONS ON SANCTION

Submissions of the Complaints Director

Mr. Jardine presented joint submissions on sanctions to the Hearing Tribunal. Joint Submission on Sanctions for Robert Stadnyk dated June 22, 2016 was entered as Exhibit 12.

The following sanctions were submitted:

1. A two month suspension of Mr. Stadnyk's practice permit to be imposed on the following basis:
 - a. One month of the suspension must be served in one or two periods of time over a one-year period starting from the date of this decision on a basis approved by the Complaints Director; and
 - b. One month of the suspension will be suspended on the condition that there are no further complaints regarding similar acceptances of inducements or rebates for a period of three years;
2. A fine of \$5,000 to be paid on terms satisfactory to the Alberta College of Pharmacists;
3. A condition will be placed on Mr. Stadnyk's practice permit requiring that he must disclose this decision to any pharmacy employer or licensee for a period of three years from the date of this decision;
4. An order that Mr. Stadnyk pay the costs of the investigation and hearing to a maximum of \$15,000 on a periodic basis satisfactory to the Alberta College of Pharmacists.

Mr. Jardine reminded the Hearing Tribunal that the complaints process is a very important part of a self-regulating profession. The complaints process has to address three key principles: protection of the public; protection of the integrity of the profession in the eyes of the public as well as in the eyes of fellow professionals; and fairness to the member. Following suit, sanctions imposed must provide a specific deterrent to the member, general deterrence to the broader membership, and must allow opportunity for rehabilitation of the member.

Mr. Jardine then went through the factors to be considered in determining appropriate sanctions based on *Jaswal v. Medical Board (Newfoundland)* (1996), 42 Admin L.R. (2d) 233:

The nature and gravity of the proven allegations

This case was on the serious end of the spectrum but not the extreme end. It is not a case of significant drug diversions by an ungovernable individual. However, there was a serious ethical

breach, with significant issues of integrity and personal benefit to the member, involving substantial dollar values.

Age and experience of the member

This factor is not particularly relevant as a mitigating factor, as Mr. Stadnyk is a very senior, experienced pharmacist and manager.

Previous character of the member and in particular the presence or absence of any prior complaints or convictions

Mr. Stadnyk does not have any similar complaints or findings. He is of good character.

Age and mental condition of the offended patient

There is no allegation or indication that patient care was affected.

Number of times the offence was proven to have occurred

It is an aggravating factor that this was not a single occurrence, but was a very regular occurrence over a period of three to four years

Role of the member in acknowledging what had occurred

This is a significant mitigating factor in this case. Mr. Stadnyk was very cooperative throughout. He has acknowledged the issue and cooperated in bringing it to a hearing in the most efficient manner, with admissions.

Whether the member has already suffered other serious financial or other penalties as a result of the conduct

Mr. Stadnyk was terminated from his position with FCL. There is also potential for other matters, whether related to the Canada Revenue Agency or civil matters.

Impact on the offended patient

This factor is not relevant.

Presence or absence of any mitigating circumstances

Mr. Stadnyk has acknowledged that what he did was wrong. Inducements in themselves are not new, but the manner in which they were personally received was an issue. Mr. Stadnyk has a long record of employment, as a good pharmacist and manager, aside from this issue.

The need to promote specific and general deterrence

It is unlikely that Mr. Stadnyk would re-offend and put himself through the same process again. This is one of the first cases of its kind in Alberta, so there is an important role for general deterrence and education.

The need to maintain the public's confidence in the integrity of the profession

Given the amounts involved and the length of time, there needs to be significant sanctions to show that this was taken seriously by the profession and that it was not acceptable conduct and has significant consequences.

The degree to which the offensive conduct is outside the range of permitted conduct

While it is not at the very outer ranges of permissible conduct, it is significant.

The range of sentence in other similar cases

There needs to be some level of consistency in sanctions between similar cases. Unfortunately, there are no good directly related cases. There is one case from 2003 from the Ontario Divisional Court. Pharmacists through their corporations were convicted of tax evasion in connection with undeclared volume rebates received from pharmaceutical companies. While different, in this case, the Discipline Committee suspended the members from practice for three weeks for their failure to report.

There are two more recent cases from Ontario, but they are related to specific legislation in Ontario that limits rebates and requires specific reporting. There was a deliberate breach of legislation and false reporting. These cases are therefore different than the case at hand.

Mr. Jardine made further submissions on the specific sanctions in the joint submission. A two-month suspension is significant but reasonable given that there is no concern about patient care. Any recorded suspension is a serious matter. However, it also recognizes the mitigating factors and the cooperation. The maximum fine for a particular finding is \$10,000 and \$5,000 was sought in this case. The Complaints Director feels this is appropriate as it indicates the conduct was inappropriate but recognizes the other costs to Mr. Stadnyk, specifically the costs of dismissal from his long term contract, the costs from the suspension, and the costs of the hearing. A condition requiring Mr. Stadnyk to provide the decision to any pharmacy employer for a period of three years was reasonable as this case involved not reporting to an employer. Finally, Mr. Stadnyk will be responsible for the costs of the investigation and hearing up to \$15,000. It is unlikely the costs will be greater than \$15,000 and it would be unfair to leave the amount open-ended, especially in light of his cooperation.

Mr. Jardine reminded the Hearing Tribunal, that while it was not bound by a joint submission on sanctions, it must give it serious consideration, and it should not depart from them unless there is something that is unreasonable in them.

Submissions of the Investigated Member

Mr. Day noted that Mr. Jardine had presented a very fair submission. One of the primary things to consider is the fact that patient care was not an issue. Mr. Stadnyk was an excellent pharmacist with a high regard for the profession. Mr. Day noted that Mr. Stadnyk was not an employee but rather that he was contracted to provide pharmacy management services through his corporation, Pharmacy Relief Network, an arrangement that had been in place for 15 years. The contract between Mr. Stadnyk, through his corporation, and Medicine Hat Co-op does not say anything about restrictions on incentive programs or how and when they would be paid. This contract was drafted by Medicine Hat Co-op. While not intending to take away from the admissions made by Mr. Stadnyk, he was not provided with the gift policy nor would he have been bound by that policy in his capacity as a contractor. He has admitted that he ought to have inquired further with Medicine Hat Co-op about the rebates and incentives, but there is no contractual breach in terms of the contractual relationship between Mr. Stadnyk and Medicine Hat Co-op.

Mr. Day also noted that Mr. Stadnyk disagrees with the amounts of rebates and incentives that Medicine Hat Co-op alleged that he personally benefited from. However, there is both evidence and an admission from Mr. Stadnyk that significant amounts of rebates and incentives were received for personal benefit, without reporting and without accounting, and this is where the serious misconduct occurs.

Mr. Day additionally noted that upon this becoming an issue with Medicine Hat Co-op, prior to the College's involvement, Mr. Stadnyk admitted to personally benefiting from rebates and incentives and immediately offered to pay \$100,000 to the Canada Revenue Agency to correct any potential unreported taxation issues. He is now in a very difficult position not only with the College, but with respect to the Canada Revenue Agency, and these will have serious financial consequences for him. He is in the process of working with the CRA to come to an agreement on the amount of taxable benefit he received.

Mr. Stadnyk has also always maintained that Medicine Hat Co-op was aware of the rebates and incentives, even if not aware of the extent or magnitude. He admits to failing to get written direction from Medicine Hat Co-op on where and how these rebates and incentives should have been directed. However, it should be taken into account that there was an awareness from Medicine Hat Co-op.

Mr. Day noted that it was difficult to find cases on point, however, he reviewed two additional cases. In a 2008 case with the College of Physicians and Surgeons in Ontario, a physician was convicted of a criminal tax offence for unlawfully and willfully evading payment of taxes, in the amount of \$500,000. In that case, the committee ordered a reprimand, completion of an ethics course, that the physician pay costs of \$1,825, and that it would be included in the register. There was no suspension.

In another College of Physicians and Surgeons case in Ontario, a physician was convicted on criminal charges under the Income Tax Act. This physician had a prior offence involving trafficking of narcotics. In that case, the panel ordered a reprimand, suspension of the physician's license for two months and costs of \$2,500.

Mr. Stadnyk is regretful and remorseful of the decisions that he made and he would change those decisions if he could go back in time. This is why he made the decision to cooperate with the College. He understands the consequences of this investigation and hearing will be with him for the rest of this career and he takes the repercussions very seriously.

Mr. Day asked the Hearing Tribunal to give serious considerations to the joint submissions. Mr. Day reminded the Hearing Tribunal that acceptance of joint submissions by Hearing Tribunals is a serious consideration for future investigated members in terms of making a decision to cooperate with the College to move a matter forward or to fight it out. Members who make admissions and joint submissions are taking a serious legal position and giving up the right to contest the allegations.

Additional Submissions of the Complaints Director

Mr. Jardine noted that there was a conscious decision to put forward the same joint submission on sanctions in each of the three related cases (Kieser, King, and Stadnyk). The idea of assessing degrees of fault, given the cooperation from all parties, and the close relationship between the parties did not seem appropriate. The College also did not want to play one member against another. Finally, these hearings all arose out of essentially the same complaint, over the same time period, the same employer, and the same city.

Mr. Jardine also noted that the College did not accept the College of Physician and Surgeons cases in Ontario as reasonable examples of what should happen for the kind of conduct at issue. The College

of Physicians and Surgeons in Ontario may have a different attitude towards it, but it was the College's position that the sanctions in the joint submissions are much more appropriate.

VII. ORDERS OF THE HEARING TRIBUNAL

Hearing Tribunal's Decision on Sanctions

The Hearing Tribunal carefully considered the joint submission on sanctions and accepts the joint submission as written.

The proposed sanctions meet the basic principles of protection of the public; protection of the integrity of the profession in the eyes of the public as well as in the eyes of fellow professionals; and fairness to the member. The Hearing Tribunal accepts the submissions as they relate to the factors in Jaswal, as outlined by Mr. Jardine.

The Hearing Tribunal recognizes that there were no prior decisions that were directly on point. The other cases involved proprietors who were evading tax. In this case, the rebates did not belong to Mr. Stadnyk in the first place. This decision therefore is important and significant in terms of general deterrence and education of the membership with respect to rebates. It must be mentioned that rebates in themselves are not illegal or unethical and previously, before being drastically reduced, were common and the normal part of commercial terms of pharmacy businesses. The distinction in this case is that rebates belonged to the owner of the pharmacy, Medicine Hat Co-op, not to Mr. Stadnyk as a contractor or as the pharmacy manager, but they were personally received and used by Mr. Stadnyk without reporting to his employer or to the Canada Revenue Agency as income.

Mr. Stadnyk did not appear to be trying to actively conceal his conduct from his employer, but rather he did not take the initiative to report the rebates, as he was ethically required to do, under the policy of his employer and under the spirit and letter of the ACP Code of Ethics.

Fundamentally, protection of the public is not the concern in this case; rather the integrity of the profession and confidence of the public is at the heart of this case. The ACP Code of Ethics, underpinned by honesty and integrity, is the foundation of the profession. All members must conduct themselves within both the spirit and letter of it. The Hearing Tribunal finds that the conduct in this case is serious. It is a breach of the ACP Code of Ethics, and it undermines the integrity of the profession. If the investigated member had not reached an agreement with the College on sanction, the Hearing Tribunal would have likely imposed a more severe penalty. However, the Hearing Tribunal recognizes that agreements between investigated members and the College are to be encouraged, as they give some certainty to the process and greatly reduce the length and cost of the hearing and eliminate the need to call witnesses, who must take time out of their schedules to attend the hearing. As such, the Hearing Tribunal recognizes the need for deference to be given to the negotiated agreement and that the agreement should be accepted unless it is unreasonable, unfit, or does not protect the public interest. The Hearing Tribunal finds that the proposed sanction is reasonable and protects the public interest and therefore accepts the proposed sanctions.

As such, the Hearing Tribunal orders:

1. A two month suspension of Mr. Stadnyk's practice permit to be imposed on the following basis:
 - a. One month of the suspension must be served in one or two periods of time over a one-year period starting from the date of this decision on a basis approved by the Complaints Director; and
 - b. One month of the suspension will be suspended on the condition that there are no further complaints regarding similar acceptances of inducements or rebates for a period of three years;
2. A fine of \$5,000 to be paid on terms satisfactory to the Alberta College of Pharmacists;
3. A condition will be placed on Mr. Stadnyk's practice permit requiring that he must disclose this decision to any pharmacy employer or licensee for a period of three years from the date of this decision;
4. An order that Mr. Stadnyk pay the costs of the investigation and hearing to a maximum of \$15,000 on a periodic basis satisfactory to the Alberta College of Pharmacists.

Signed on behalf of the Hearing Tribunal by the
Chair

Dated:

September 22, 2016

Per:

_____ [Naeem Ladhani] _____
Naeem Ladhani