

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

SERENA WESTAD

DECISION OF THE HEARING TRIBUNAL

December 11, 2014

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Serena Westad. In attendance on behalf of the Hearing Tribunal were Gillian Hansen, Chairperson and Pharmacist, Paulise Ly, Pharmacist, Tony Nickonchuk, Pharmacist and Peter Van Bostelen, Public Member. Independent counsel to the Hearing Tribunal was provided by Gregory Sim.

The hearing took place on October 14, 2014 at the offices of the Alberta College of Pharmacists. The hearing was held under the terms of Part 4 of the *Health Professions Act*.

In attendance at the hearing were James Krempien, Complaints Director for the College and David Jardine, legal counsel for the Complaints Director. Ms. Westad also attended with her legal counsel Mona Duckett.

There were no objections to the composition of the Hearing Tribunal, the timeliness of service of the Notice of Hearing or any other objections to the jurisdiction of the Hearing Tribunal to proceed with a hearing.

II. ALLEGATIONS

The Notice of Hearing was entered as Exhibit 1, and stated the following:

IT IS ALLEGED THAT:

During the period from August 2013 to February 2014, as a pharmacist at the Shoppers Drug Mart 2311 in Grande Prairie, you:

1. Diverted and misused Adderall and Dexedrine including diverting approximately 700 capsules of Adderall XR, and possibly more, and approximately 180 tablets of Dexedrine from the pharmacy including the following diversions:
 - i. 90 x Adderall XR 20 mg capsules on August 16, 2013 (JLG prescription);
 - ii. 90 x Adderall XR 25 mg capsules on September 28, 2013 (BM prescription);
 - iii. 90 x Adderall XR 25 mg capsules on October 10, 2013 (JLG prescription);
 - iv. 60 x Adderall XR 20 mg capsules on November 6, 2013 at 00:01 am (KM prescription);
 - v. 90 x Adderall XR 25 mg capsules on November 12, 2013 (PT prescription);
 - vi. 90 x Adderall XR 20 mg capsules on December 28, 2013 at close to midnight (TS prescription);
 - vii. 34 x Adderall XR 20 mg capsules on January 10, 2014 at midnight (AS prescription);
 - viii. 15 x Adderall XR 25 mg capsules on January 25, 2014 (BM prescription); and
 - ix. 180 x Dexedrine 5 mg tablets on January 28, 2014 (JLG prescription).

2. Abused your position of trust as a pharmacist by forging prescriptions and creating false patient records to conceal your diversion of the drugs you diverted from the pharmacy and specifically that you:
 - a. Forged:
 - i. Rx 9217771 for TS under Dr. Roux's signature;
 - ii. Rx 9200222 for JLG under Dr. Goso's signature;
 - iii. Rx 9222387 for JLG under Dr. Goso's signature and possibly;
 - iv. Rx 9211171 for [REDACTED] under Dr. Lindsay's signature although Dr. Lindsay is deceased, [REDACTED] cannot be located with the contact information at the pharmacy and her medical records from Dr. Lindsay are not readily accessible, and
 - b. Created false electronic dispensing transaction records for: [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].
3. Abused your position of trust as a pharmacist by billing, without authority or consent, false prescription fills to patients' third party insurers, thereby stealing from these patients and their insurers and that you billed:
 - a. [REDACTED]'s third party insurer \$317.58 on November 12, 2013 for 90 capsules of Adderall XR 25 mg that were reported as not being received by [REDACTED];
 - b. [REDACTED]'s third party insurer \$216.59 on November 5, 2013 for 60 capsules of Adderall XR 20 mg that were dispensed at 00:01 am on November 6, 2013;
 - c. XX's third party insurer for undetermined amounts on September 28, 2013 and January 25, 2014; and
 - d. [REDACTED]'s third party insurer for \$103.55 on January 6, 2014 for 34 capsules of Adderall XR 20 mg that were reported as not being received by [REDACTED].
4. Failed to cooperate with the Complaints Director of the Alberta College of Pharmacists in his role as the investigator and that this lack of cooperation is evident in the manner in which you provided contradictory information to the Complaints Director by initially fully admitting at multiple times both orally and in writing to the alleged conduct and by then subsequently completely recanting your admissions and by providing reasoning and explanations that were contrary to the evidence you knew, or ought to have known, would be considered by the Complaints Director.
5. Attempted to self-treat your health issues by diverting Adderall and other medications, in the absence of any legitimate/current physician involvement,

which created an environment that had the real potential to have created patient harm and to decrease the public's trust in the profession.

6. Created false dispensing records and forgeries for the aforementioned pharmacy patients that had the real potential to have disrupted their care and to have created harm.
7. Acted in a manner that impacted the integrity of the profession and the public's trust in the profession of pharmacy.
8. Failed to act ethically or honestly in your dealings with your employer and with the third party insurers of those patients who were billed for medications that were not dispensed to the patient.

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

- Standards 1, 2 and 18 and sub-standards 1.1, 1.2, 2.1(c), 18.1, and 18.6 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(vii)(B), and 1(1)(pp)(xii) of the *Health Professions Act*;
- Sections 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
- Section 4(1) of the *Controlled Drugs and Substances Act*; and
- Principles I (1, 9), X (1, 2, 10) and XI (5) 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), 1(1)(pp)(iii), 1(1)(pp)(vii)(B), and 1(1)(pp)(xii) of the *Health Professions Act*.

The Admission of Unprofessional Conduct document was submitted as Exhibit 3. In it, Ms. Westad admitted Allegations 6, 7, and 8 verbatim. Ms. Westad admitted to Allegations 1, 2, and 3 with the exception of items referring to patient [REDACTED]. Ms. Westad admitted she “provided contradictory information to the Complaints Director” in response to Allegation 4, but did not admit that her conduct constituted an independent failure to cooperate with the Complaints Director as defined by s. 1(1)(pp)(vii)(B) of the *Health Professions Act*. Ms. Westad admitted she “attempted to self-treat her health issues by diverting Adderall and other medications, in the absence of any current physician involvement” in response to Allegation 5, but she did not admit that her conduct created an environment that had the real potential to have created patient harm and to decrease the public trust in the profession, as alleged.

Ms. Westad further admits that her unprofessional conduct breached:

- Standards 1.1, 1.2, 18.1, and 18.6 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Sections 31(2)(a) of the *Pharmacy and Drug Act*;
- Section 4(1) of the *Controlled Drugs and Substances Act*; and
- Principles I (1, 9), X (1, 2, 10) and XI (5) of the ACP Code of Ethics

III. PRELIMINARY MATTERS

Neither of the parties applied to close the hearing, or any part of it, to the public. The Complaints Director did request on behalf of the parties that the Hearing Tribunal's written decision omit the names of any patients from the pharmacy where Ms. Westad practiced. The Hearing Tribunal has replaced patient names with initials in this decision.

IV. EVIDENCE

Mr. Jardine made a brief opening statement and stated he would be calling Mr. Krempien, the Complaints Director, as a witness to give evidence and provide background facts. Mr. Jardine indicated they would be proceeding in large part pursuant to s. 70 of the *Health Professions Act* and presenting an Admission of Unprofessional Conduct by Ms. Westad with no major disputes on facts.

Ms. Duckett made her opening statement and indicated Ms. Westad would testify regarding her background and character.

Mr. Jardine called Mr. Krempien, Complaints Director as his first and only witness. Mr. Krempien established the following key points in his direct evidence:

- A complaint was made against Ms. Westad by her former employer Mr. [REDACTED] that she diverted controlled substances, primarily Adderall, for her own use.
- At the commencement of his investigation, Mr. Krempien spoke with Ms. Westad and she gave a voluntary undertaking not to practice pharmacy pending the conclusion of the investigation. Ms. Westad ceased practicing as of February 28, 2014.
- While in university, Ms. Westad had Adderall prescribed and dispensed to her for a valid medical indication of [REDACTED].

- Upon leaving the Edmonton area and moving to Grande Prairie, Ms. Westad was unable to get back to her physician or have her care transferred to Grande Prairie and had subsequently run out of her Adderall prescription.
- Ms. Westad admitted to Mr. [REDACTED] both verbally and in writing that she had filled refills of real prescriptions and had at other times forged prescriptions for existing patients of the pharmacy. Ms. Westad admits to diverting these medications for personal use.
- Mr. Krempien obtained detailed pharmacy records from Mr. [REDACTED]. Upon review and verification with the relevant patients and prescribers, Mr. Krempien found:
 - On three occasions, the physicians confirmed they did not issue the prescriptions or even have those patients in their practices.
 - Three patients confirmed they had not received the medication that was indicated on their pharmacy patient profiles
- There was no suggestion in Mr. Krempien's investigation that Ms. Westad ever appeared impaired at work. By all accounts she was a very concerned and caring pharmacist.
- Ms. Westad denied diverting beyond personal use.
- Mr. Krempien concluded the allegations of diversion against Ms. Westad were not related to a substance abuse problem; rather they appeared to be more of a case of diversion for continuation of previously prescribed drug therapy.
- Mr. Krempien spoke with Ms. Westad to review the allegations against her and discuss rationale and the measures used to conceal the diversion. At some point during Mr. Krempien's investigation, Ms. Westad provided a response denying that she had diverted and that she had no reason to do so, thereby recanting her previous admissions.

Exhibit 4 was a binder of materials that Mr. Krempien referred to during his testimony. Set out below is a summary of the key documents entered at the hearing as part of Exhibit 4:

Exhibit 4

- Tab 1 Email from Mr. [REDACTED] to Mr. Krempien dated March 4, 2014. Statement from Mr. [REDACTED] dated March 2, 2014 outlining his complaint against Ms. Westad. Supporting documents attached.
- Tab 2 Email from Mr. [REDACTED] to Mr. Krempien dated March 5, 2014. This email contains supporting documents such as pharmacy patient profiles and inventory logs for Adderall dispensing.

Tab 3 Email chain between Mr. Krempien and Ms. Westad dated February 28, 2014 regarding Ms. Westad's voluntary undertaking not to practice pharmacy.

Tab 4 Letter from Mr. Krempien to Ms. Westad dated March 5, 2014 regarding the complaint, the investigation and requesting Ms. Westad's written response.

Tab 5 Letter from Mr. Krempien to Ms. Westad dated March 7, 2014. This document contains a list of patients who had their pharmacy profiles altered.

Tab 6 Email from Mr. [REDACTED] to Mr. Krempien dated March 27, 2014. This email contains within a handwritten statement of admission from Ms. Westad dated February 27, 2014.

Tab 7 Facsimile from Dr. [REDACTED] to Mr. Krempien dated March 27, 2014. This document outlines Ms. Westad's record of care at Dr. [REDACTED]'s medical office.

Mr. Krempien gave no further direct evidence. Ms. Duckett's questions for Mr. Krempien on cross examination pertained to the evidence submitted in Exhibit 4 Tab 2. Ms. Duckett asked if there were patient names and profiles provided for which diversions could not be proven or admitted. Mr. Krempien indicated yes, for two patients. The Hearing Tribunal then asked Mr. Krempien a question as to Ms. Westad's history of prescribed medication use for the treatment of [REDACTED]. Mr. Krempien was then excused.

Mr. Jardine did not call any other witnesses.

Ms. Duckett called Ms. Westad as a witness to testify. Ms. Westad gave the following key evidence:

- Ms. Westad grew up near Grande Prairie, Alberta and attended pharmacy school at the University of Alberta between 2009 and 2013.
- Ms. Westad adduced a number of pieces of evidence of her good character and promise as a young professional. These included "Leaders of Tomorrow" certificates for 2006 and 2008, the Alberta College of Pharmacists' "Citizenship Class Award" for 2011-2012, the Dean of Pharmacy and President of the Alberta Pharmacy Students' Association Award for Excellence in Community Service for 2011-2012 as well as several good character reference letters.
- In university Ms. Westad benefitted from a Shoppers Drug Mart scholarship program in which she received a \$40,000 scholarship in exchange for her agreement to work for the company after graduation.
- During her time at university Ms. Westad began taking Adderall and other medications to cope with her medical conditions, including [REDACTED]

██████████. These medications were effective and she thrived at university.

- After graduation she moved back to Grande Prairie but she lost her medications in transit.
- She began working at Shoppers Drug Mart but found the environment overwhelming and she began to feel depressed. She described how the pharmacy was open from 9 am to midnight each day and that the pharmacy could expect to process between 250 and 400 prescriptions each shift. She found it difficult to adapt to the pace and to the technology-intensive practice.
- She experienced difficulties arranging and keeping an appointment with a family doctor and she was unable to renew her prescriptions. Her ██████████ symptoms deteriorated and she became increasingly disorganized.
- She was 23 years old at the time of her conduct set out in the allegations.
- She began to divert medications for her personal use as it seemed easier than seeing a physician to obtain legitimate prescriptions.
- She admitted to processing some of the prescriptions through pharmacy patient's insurance providers. She did not attempt to pay for these prescriptions herself in order to avoid further scrutiny of the transactions.
- She was confronted about her misconduct in February 2014 and thereafter voluntarily ceased practicing.
- When her misconduct was discovered, Shoppers Drug Mart "called" her scholarship and she was required to repay the \$40,000 scholarship amount plus an additional \$15,000 in liquidated damages for a total of \$55,000.
- She described being ostracized from social connections she formed at Shoppers Drug Mart and feeling that others in her community were judging her for her actions. She relocated to Yellowknife for a new start.
- She admitted her misconduct but later provided contradictory information to the Complaints Director of the College. She did not obtain legal advice and she was confused about what she had said and should say. She described that she "quit" as it was easier to just recant her previous admissions than to write a sensibly composed explanation for her actions.

Ms. Duckett did not call any other witnesses.

V. SUBMISSIONS

The Hearing Tribunal heard submissions from Mr. Jardine. Mr. Jardine submitted there are two things that must be proven on the balance of probabilities. First, the college must prove the facts alleged in the allegations in the Notice of Hearing, and second, must then prove that these allegations constitute unprofessional conduct. Mr. Jardine submitted that Allegations 1, 2, 3, 6, 7, and 8 were proven and did indeed constitute unprofessional conduct based on the evidence before the Hearing Tribunal and based on the admissions that were provided by Ms. Westad.

Regarding Allegation 4, Mr. Jardine submitted unprofessional conduct was still clearly established even though Ms. Westad admitted only to the provision of contradictory information, not to the failure to cooperate. Mr. Jardine suggested that the provision of contradictory information is in itself a failure to cooperate.

Regarding Allegation 5, Mr. Jardine submitted that when a pharmacist self-manages their own medical conditions with medication it amounts to an abuse of the medication and demonstrates a lack of responsibility. Although in this case there was no evidence of patient harm from Ms. Westad's self-treatment, a potential for patient harm was created given the conduct.

Ms. Duckett then made her submissions. She first confirmed that all of the allegations have been admitted as advanced by the Complaints Director with the exception of Allegations 4 and 5.

Regarding Allegation 4, Ms. Duckett submitted that Ms. Westad had admitted she provided inconsistent information, but that providing contradictory information does not meet the threshold of an express failure to cooperate as defined in s. 1(1)(pp)(vii)(B) of the *Health Professions Act*. Ms. Duckett argued that the Hearing Tribunal must take into account Ms. Westad's ill state of mind at the time. Ms. Westad was confused, depressed and scattered. She was no longer taking the medications that she relied upon to function. She "threw up her hands" and gave what was, in retrospect, a careless response to the Complaints Director. Ms. Duckett emphasized that Ms. Westad is a very young woman and she found herself for the first time in a complicated regulatory framework. She did not think to obtain legal advice to assist her. Ms. Westad did not fail to cooperate because she did respond to the Complaints Director but did not give well-reasoned, careful and deliberate responses. These failings do not fit within the distinct head of unprofessional conduct resulting from a failure to cooperate with an investigator. Ms. Duckett acknowledged that Ms. Westad's provision of contradictory information to the Complaints Director during the investigation was unprofessional, but she argued it was unprofessional because it contravened the Code of Ethics, namely Principle X (2 and 9).

Regarding Allegation 5, Ms. Duckett submitted there is no evidence that Ms. Westad's self-treatment or misuse of prescription medications impacted actual patients. There was no evidence that Ms. Westad practiced while incapacitated, and the conduct that created the potential patient harm is addressed in Allegation 6.

VI. FINDINGS

The Hearing Tribunal carefully considered the evidence presented during the hearing and the submissions from both the Complaints Director and Ms. Westad. The Hearing Tribunal makes the following findings:

With respect to Allegations 1, 2, 3, 6, 7, 8 the Hearing Tribunal accepts the admissions and finds that Ms. Westad did commit unprofessional conduct as defined in Section 1(1)(pp) of the *Health Professions Act*. In his closing submissions, Mr. Jardine submitted that the conduct alleged in these allegations undercuts the basic duties and obligations of pharmacists - Ms. Westad used fraudulent prescriptions and real patients' prescriptions and profiles to divert medications for her personal use. Her admitted conduct contravened: ACP Standards of Practice for Pharmacists and Pharmacy Technicians, Standards 1.1, 18.1 and 18.6, the *Pharmacy and Drug Act* s. 31(2)(a), the CDSA s. 4(1) and ACP Code of Ethics principles 1(1,0) and X(1,2). These contraventions demonstrate conduct that undercuts the basic duties and obligations of pharmacists. This conduct harms the integrity of the pharmacy profession and it is clearly unprofessional.

With respect to Allegation 4, there is no question that regulated members of the College have a professional and legal duty to cooperate with the Complaints Director or any investigator appointed by the Complaints Director in accordance with the *Health Professions Act*. This duty to cooperate with the investigation and to comply with demands for information properly made in accordance with the investigator's statutory power applies regardless of the regulated member's personal circumstances.

In this case, both parties advised the Hearing Tribunal that Ms. Westad provided a large volume of extraneous information as well as contradictory information to the Complaints Director during the investigation. The majority of the information Ms. Westad provided during the investigation was not entered into evidence. The Tribunal was not in a position to review Ms. Westad's various statements to assess whether she was being uncooperative. The Tribunal was also not provided with evidence that Ms. Westad was ever warned that she was seen as being uncooperative and given an opportunity to remedy the failure to cooperate. The Tribunal was also mindful that during the investigation Ms. Westad was experiencing symptoms of an untreated medical condition, [REDACTED], the diagnosis of which is documented in Exhibit 8, and which provides context for her failure to give a well-reasoned, careful and deliberate response. The Hearing Tribunal was not satisfied on a balance of probabilities that Ms. Westad's conduct was a failure to cooperate with her regulatory college as defined in s. 1(1)(pp)(vii)(B) of the *Health Professions Act*.

That does not end the matter however. Allegation 4 does not only allege unprofessional conduct as defined by s. 1(1)(pp)(vii)(B) of the *Health Professions Act*. Ms. Duckett acknowledged that Ms. Westad's provision of contradictory information to the Complaints Director during the investigation was unprofessional because it contravened the Code of Ethics, namely Principle X (2 and 9). These provisions hold that pharmacists must act with honesty and integrity. To uphold the principle, pharmacists must be honest in their dealings with the College and they must

respond honestly, openly and courteously to complaints and criticism. While Ms. Westad explained that she became overwhelmed by the regulatory investigation and just “quit,” the Hearing Tribunal concluded that she provided inconsistent information that demonstrated a lack of candor and that her conduct breached the ACP Code of Ethics Principle 10. A contravention of a Code of Ethics falls within the definition of unprofessional conduct pursuant to s. 1(1)(pp)(ii) of the *Health Professions Act*. Ms. Westad’s breach of the Code of Ethics amounts to unprofessional conduct. The pharmacy profession in Alberta is self-regulating. It is essential that regulated members of the College be completely candid during the investigation of a complaint or the profession risks losing the public’s trust in its ability to self-regulate.

With respect to Allegation 5, the Hearing Tribunal has found unprofessional conduct and is satisfied on a balance of probabilities that Ms. Westad attempted to self-treat her health issues through the diversion of Adderall and other medications without physician involvement, and that this situation did create a real potential for patient harm and would decrease the public trust in the pharmacy profession. Ms. Westad was prescribing medications for herself, monitoring her own dosages and her own responses to the medications. This situation created a risk of harm as it would in any case of a pharmacist self-medicating with prescription medications. It is very fortunate that there is no evidence of any actual patient harm resulting from Ms. Westad’s self-treatment in this case, but proof of actual patient harm is not required and the absence of such proof does not render her conduct acceptable. The public are entitled to expect that pharmacists who use prescription medications for their health conditions do so responsibly, and under the care of a qualified physician, just like every other member of the public. The Hearing Tribunal has found that Ms. Westad’s conduct breached section 4(1) of the *Controlled Drugs and Substances Act* and Standard 1.1 of the Standards of Practice for Pharmacists and Pharmacy Technicians. Her conduct also harms the integrity of the pharmacy profession and is unprofessional conduct pursuant to s. 1(1)(pp)(ii), (iii) and (xii) of the *Health Professions Act*.

VI. ORDERS

After sharing its findings verbally with the parties, the Hearing Tribunal moved directly into the sanction phase of the hearing. Both the College and Ms. Westad were invited to make submissions on sanctions.

On behalf of the college, Mr. Jardine began by stating that the purposes of sanctions are:

- To protect the public,
- To preserve the integrity of the profession, and
- To be fair to the member

Mr. Jardine indicated in order to be fair the Hearing Tribunal should impose sanctions that are relatively proportionate to previous sanction decisions. Mr. Jardine then took the Hearing Tribunal through the factors reference in *Jaswal v. Newfoundland*

(*Medical Board*) (1996), 42 Admin. L.R. (2d) 233 and described the application of the factors in this case. Key points were:

- Nature and gravity of the conduct
Ms. Westad's actions are very serious and go to the root of what pharmacists do. Her behaviors involve forgery, fraud, improper insurance billing, diversion of medications, and altering patient records.
- Age and experience of the member
Ms. Westad is a very new grad and inexperienced as a professional. However Mr. Jardine argued it does not require a lot of experience to understand this was unprofessional conduct.
- Previous character of the offender
There were no previous findings of unprofessional conduct.
- Age and mental condition of offended patient
No evidence of any particular vulnerabilities or of any actual patient harm was presented.
- Number of times offense occurred
This was not a single event. Ms. Westad's diversion occurred multiple times over 7 months, and only stopped when she was discovered.
- Role of member in acknowledging what occurred
Ms. Westad has acknowledged her actions and cooperated with the Complaints Director during his investigation, despite providing inconsistent information at one point. Ms. Westad signed an admission of unprofessional conduct.
- Other serious or financial penalties
Ms. Westad did lose her employment and has had Shoppers Drug Mart recall her relocation scholarship, therefore Ms. Westad has suffered financial and professional penalties related to her actions.
- Impact on offended patient
There was no evidence presented to the Hearing Tribunal of direct patient harm, but the potential existed as real patients and their personal health records were involved.
- Mitigating circumstances
Not applicable.
- Need to promote deterrence
There is a need to ensure that Ms. Westad and other members of the profession are deterred from engaging in similar conduct of misusing medications, diverting, and altering patient records to conceal that diversion.

- Public confidence in the integrity of the profession
The Hearing Tribunal must ensure public confidence in the sanctioning process. It must be clear to the public that a pharmacist's diversion and misuse of medications for personal use will hold very serious consequences.
- Degree to which the conduct is clearly regarded, by consensus, as falling outside the range of permitted conduct
Ms. Westad's conduct of diversion and misuse of medications for personal use was well outside the permitted conduct of a licensed pharmacist.
- The range of penalties in similar cases
Mr. Jardine presented 7 prior cases with similar circumstances to Ms. Westad's case that may be of assistance in determining penalty: Leanne Rogalsky, Bassam Soufan, Leonard Johnson, un-named pharmacist, Calvin Boey, Thai Chau and Robin Small. The Hearing Tribunal reviewed and considered these cases in its assessment of the appropriate sanctions for Ms. Westad. While none of the cases is exactly comparable, the cases generally supported the imposition of a suspension ranging from 18 months to four years, conditions on reinstatement, fines and costs.

Mr. Jardine then submitted, on behalf of the Complaints Director, the Hearing Tribunal should impose the following sanctions:

1. Ms. Westad's practice permit shall be suspended for a period of 24 months; commencing on October 14, 2014.
2. Upon completion of the suspension, Ms. Westad's practice permit shall not be reinstated until the following condition is met:
 - a. Ms. Westad must satisfactorily complete all the requirements of the registration department of the Alberta College of Pharmacists required for her registration and practice when she applies for registration and a practice permit at the end of the suspension.
3. Any practice permit issued to Ms. Westad upon completion of her suspension and satisfaction of the condition in Order 2 above, shall be subject to the following conditions:
 - a. Ms. Westad must practice under direct supervision for a minimum of 12 months following her return to practice.
 - b. At the end of her year of direct supervision and prior to the removal of the condition requiring direct supervision, Ms. Westad must provide to the Complaints Director a favorable report from her supervisor that is satisfactory to the Complaints Director (the supervisor providing the

report must have directly observed the practice and performance for a minimum of 6 months).

- c. For a period of 5 years after her reinstatement, Ms. Westad must provide the Complaints Director with verification that she has advised the licensee and proprietor of any pharmacy at which she is employed of this decision and the orders made by the Hearing Tribunal and must provide such verification any time that she changes employment.
 - d. Ms. Westad cannot be a licensee for a period of 5 years after reinstatement.
4. Ms. Westad shall pay a fine of \$4,000.
 5. Ms. Westad shall pay the costs of the investigation and hearing but the total amount of the costs payable shall be reduced by the amount of the fine of \$4,000.
 6. The fine and costs shall be paid in equal monthly installments commencing when the suspension period ends or on such other terms as are satisfactory to the Complaints Director.

After Mr. Jardine finished his submissions, Ms. Duckett made her submissions on behalf of Ms. Westad. Ms. Duckett asked the Hearing Tribunal to consider the following points regarding Ms. Westad's character and background:

- Ms. Westad came from a small community and grew up in an environment where she was very well known and community-minded.
- She is genuinely a compassionate person seeking to help people, to which her reference letters have attested.
- Ms. Westad acknowledged taking medications and modifying records to conceal her activities. However, she was not in an average, normal frame of mind. She had a diagnosed mental condition that was affecting her judgment and ability to find a proper solution.
- She has suffered serious consequences from her actions to date. Ms. Westad is significantly in debt – her scholarship was cancelled and she has also paid a \$15,000 liquidated damages penalty despite her circumstances. Her student loans are significant and she is not currently employed or in a position to meet her debt burden.

Ms. Duckett then indicated Ms. Westad was in agreement with Sanctions 1 to 4 proposed by the Complaints Director. Ms. Westad conceded the period of suspension was appropriate, the conditions of reinstatement requirements are appropriate, the supervision requirements outlined are appropriate, and finally, she does not oppose the imposition of the fine in the amount requested. Ms. Duckett noted the imposition

of a fine was somewhat unusual; although it is not a typical sanction, Ms. Duckett conceded that it was warranted in this case.

Ms. Duckett then indicated Ms. Westad wished to contest, or address in some modified way, Items 5 and 6 from the Complaints Director's submitted sanctions. In regards to Sanction 5, Ms. Duckett submitted the costs be capped at \$10,000 as two previous cases involving members with financial constraints had capped costs. Respecting Sanction 6 Ms. Duckett asked for wording and terminology of the payment schedule to be similar to that written for the Leanne Rogalsky case, which ties the costs and fine payment to the timing of the reinstatement of the pharmacist.

Ms. Duckett then addressed the issue of publication. She asked the Hearing Tribunal to consider a recommendation to the Registrar to refrain from publication of this decision on a named basis, as online publications live on for perpetuity. She submitted that Ms. Westad made a wrong decision, not in keeping with her capacity or her character, and has already paid dearly for those decisions.

The Hearing Tribunal carefully considered the submissions from both the Complaints Director and Ms. Westad and made the decision to impose the sanctions proposed by the Complaints Director with no modifications. Ms. Duckett conceded that the 24 month suspension sought by the Complaints Director for Sanction 1 was appropriate. While the Hearing Tribunal found it difficult to reconcile this case with any of the precedent cases, the Tribunal deferred to the position of both parties on the term of suspension in Sanction 1. The Hearing Tribunal also felt Sanctions 2, 3 and 4 were reasonable and appropriate given its findings of unprofessional conduct. These sanctions were felt to adequately protect the public, preserve the integrity of the profession, and were fair to Ms. Westad in terms of being relatively proportionate to previous sanction decisions.

For Sanction 5, the Hearing Tribunal considered but ultimately rejected the request to cap the costs at \$10,000 as has been done in some cases. The Complaints Director argued that assessing costs against members found to have committed unprofessional conduct prevents the costs of investigations and discipline hearings being passed along to the College's membership to cover. The whole membership should not bear the costs of Ms. Westad's conduct. While a cap on costs may be imposed in an exceptional case, this case is not exceptional. The Complaints Director indicated that the costs in this case would not amount to a crushing financial burden for Ms. Westad. The Hearing Tribunal notes that Ms. Westad has a large pre-existing debt load but much of this consists of consumer debt and student debt (since Ms. Westad lost her scholarship and had to repay funds lent to her in lieu of obtaining additional student loans).

For Sanction 6, the Hearing Tribunal considered but ultimately rejected the request to tie the obligation and timing of payment of the fine and costs to Ms. Westad's reinstatement. While the Tribunal noted that this has been done before, the Tribunal considered the language in the sanction proposed by the Complaints Director to be sufficiently flexible. The language provides discretion to allow a reasonable grace period after Ms. Westad becomes reinstated before payments must commence.

In regards to a recommendation to the Registrar to refrain from publication with Ms. Westad's name, the Hearing Tribunal felt there was no compelling reason to make this recommendation. The decision was made not to make this recommendation.

Lastly, the Hearing Tribunal is of the view that there are reasonable and probable grounds to believe that Ms. Westad's conduct contravened the *Criminal Code of Canada* and the Hearing Tribunal therefore directs the Hearings Director to send a copy of this decision to the Minister of Justice and Solicitor General and on the request of the Minister of Justice and Solicitor General to also send a copy of the record of the hearing, pursuant to s. 80(2) of the *Health Professions Act*.

Signed on behalf of the Hearing Tribunal by
the Chair

Dated: _____
December 11, 2014

Per: _____
[Gillian Hansen]
Gillian Hansen