

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT
being Chapter H-7 of the Revised Statutes of Alberta, 2000

AND IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF

Kevin Charles Zapf
Registration No. 12544

DECISION OF THE HEARING TRIBUNAL ON SANCTION

June 15, 2020

I. INTRODUCTION

[1] In a decision dated February 10, 2020, the Hearing Tribunal made findings of unprofessional conduct against Kevin Charles Zapf (“Dr. Zapf”) on the four Allegations referred to hearing (the “Decision on Merits”). On April 23, 2020, the Hearing Tribunal met by telephone conference to consider the matter of sanctions in relation to the conduct of Dr. Zapf.

[2] The following members of the Hearing Tribunal were in attendance:

Hearing Tribunal:
Kelly Olstad, pharmacist and chair
Anil Goorachurn, pharmacist
Pat Matusko, public member

The following person was also in attendance:
Julie Gagnon, independent legal counsel for the Hearing Tribunal

[3] In the Hearing Tribunal’s written Decision on Merits dated February 10, 2020, the Hearing Tribunal found that the following Allegations had been factually proven and constituted unprofessional conduct:

1. Between March 3, 2018 and July 8, 2018, Dr. Zapf forged prescriptions from Dr. [BF] and fraudulently obtained drugs based on those prescriptions as follows:
 - a) March 29, 2018, prescription for drugs Dexedrine Spansule 15 mg capsules and Tecta 40 mg tablet;
 - b) April 12, 2018, prescription for drugs Propranolol 40 mg tablet, Tegretol 200 mg tablet, Dexedrine Spansule 15 mg capsule and Tecta 40 mg tablet;
 - c) April 27, 2018, prescription for drugs Vyvanse 50 mg tablet and Ventolin HFA 100 mcg;
 - d) April 30, 2018 prescription for drugs Vyvanse 50 gm capsules, Ventolin HFA 100 mcg Inhaler, and Dexedrine Spansule 15 mg capsule; and
 - e) May 15, 2018 prescription for the drug Dexedrine Spansule 15 mg capsules;
2. Between March 23, 2018 and July 8, 2018 Dr. Zapf forged a prescription from Dr. [DM], and fraudulently obtained drugs based on a prescription dated March 23, 2018, for the drugs Dexedrine Spansule 15 mg and Tecta 40 mg;
3. Between March 23, 2018 and July 8, 2018 Dr. Zapf forged prescriptions from Dr. [OS] and fraudulently obtained drugs based on those prescriptions as follows:
 - a) June 20, 2018, for the drugs Dexedrine Spansule 15 mg capsule and Tegretol 200 mg tablet;

- b) July 6, 2018, for the drugs Adderall XR 30 mg capsules, Apo-Propranolol 40 mg tablet, Apo-Zopiclone 7.5 mg tablet and Mylan-Pantoprazole 40 mg tablet.
4. Between March 23, 2018 and July 8, 2018, Dr. Zapf forged prescriptions from Dr. [KG] and fraudulently obtained drugs based on those prescriptions as follows:
- a) May 2, 2018, prescription for Vyvanse 50 mg capsules and Apozopiclone 7.5 mg tablets; and
- b) June 8, 2018, prescription for the drugs Dexedrine Spansule 15 mg capsules, Apo-Propranolol 40 mg tablet, Ventolin HFA 100 mcg inhaler, Mylan pantoprazole 40 mg tablets;
- [4] The Hearing Tribunal found that Dr. Zapf's conduct in these matters:
- Breached the statutory and regulatory obligations of an ACP registrant;
 - Undermined the integrity of the profession;
 - Decreased the public's trust in the profession; and
 - Failed to exercise the professional and ethical judgement expected and required of an ACP registrant.
- [5] The Hearing Tribunal further found that Dr. Zapf's conduct constitutes a breach of the following statutes, regulations, and standards governing the practice of pharmacy:
- Standards 1 and 2 and sub-standards 1.1, 1.2, and 2.1(e) of the Standards of Practice for Pharmacist and Pharmacy Technicians;
 - Principles 1(1), 10 (1 and 2), and 11 (4 and 5) of the Alberta College of Pharmacy's Code of Ethics;
 - Sections 4(1) of the Controlled Drugs and Substances Act.
- [6] The Hearing Tribunal found that Dr. Zapf's 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* (the "HPA").
- II. PRELIMINARY MATTERS**
- [7] In its Decision on Merits, the Hearing Tribunal directed the parties to consult each other regarding providing written or oral submissions and timing of submissions. The Complaints Director suggested providing written submissions to the Hearing Tribunal for its deliberation and consideration on the orders to be made under section 82 of the HPA. No response was received from Dr. Zapf regarding a preference for providing written submissions or having an in-person hearing. Further to this, no submissions were received from Dr. Zapf for the Hearing Tribunal's consideration on the matter of sanction.
- [8] When the Hearing Tribunal met on April 23, 2020 the first matter considered was whether the Hearing should move forward given that no written submissions on sanction were received from Dr. Zapf.

- [9] The Hearing Tribunal received, and entered into evidence, 2 items:
- a. Hearing Director's Communication Summary with Dr. Zapf dated April 22, 2020 (entered as Exhibit 4);
 - b. Ms. Hale's letter to the Hearing Tribunal dated April 22, 2020 (entered as Exhibit 5).
- [10] The Hearing Tribunal considered the information from Ms. Morley, Hearings Director, dated April 22, 2020 (Exhibit 4) and the letter from Ms. Hale dated April 22, 2020 (Exhibit 5). The position of Ms. Hale was that Dr. Zapf was aware of the Decision on Merits from February 10, 2020 and that he was aware of the dates for his submission on sanction and that the Hearing should move forward.
- [11] Ms. Hale's letter to the Hearing Tribunal on April 22, 2020 stated that Dr. Zapf did not respond to her communications with him seeking an agreement on how to proceed with sanction submissions. On March 17, 2020, Ms. Hale emailed Dr. Zapf again in an effort to agree on a joint submission on sanction and did not receive a response. She said that she emailed two email addresses that she had on file for Dr. Zapf and at no point did she receive any emails or phone calls from Dr. Zapf.
- [12] Ms. Morley's documentation showed the following:
- a. On February 10, 2020, Ms. Morley emailed Dr. Zapf and Ms. Hale with a link to the Hearing Tribunal's Decision on Merits;
 - b. On February 11, 2020, Dr. Zapf downloaded the Hearing Tribunal's Decision on Merits from Sharefile;
 - c. On February 25, 2020, Ms. Morley emailed Ms. Hale and Dr. Zapf providing a secure link to a letter from Ms. Morley outlining the submission schedule and reminding Dr. Zapf that registered mail awaits for him at the post office;
 - d. On February 25, 2020, Dr. Zapf again downloaded the Decision on Merits (using the link from the February 10, 2020 email from Ms. Morley);
 - e. On February 27, 2020, the registered letter containing the Decision on Merits was picked up by William Tomkins;
 - f. On March 20, 2020, Ms. Morley emailed Ms. Hale and Dr. Zapf acknowledging her receipt of the Complaint Director's submission on sanction and asking Dr. Zapf to provide his reply by April 17, 2020;
 - g. On April 6, 2020, Ms. Morley emailed Dr. Zapf asking him to confirm by email or phone that he has read the Complaint Director's submission on sanction and that he is aware of the April 17, 2020 deadline to provide his response. She further advised him of a voicemail she left him on the phone number he provided to ACP in October of 2019;
 - h. On April 17, 2020, Ms. Morley emailed Dr. Zapf a final reminder about the submission deadline of April 17, 2020.
- [13] Ms. Morley received no response from Dr. Zapf.
- [14] The Hearing Tribunal weighed the evidence and considered whether Dr. Zapf had received sufficient notice regarding the process for submissions on sanction and whether the communications were clear. The Hearing Tribunal considered whether Dr. Zapf was given a fair opportunity to provide submissions on his own behalf. The Hearing Tribunal finds the Dr. Zapf has been given ample opportunity to provide submissions on sanction. The Hearing Tribunal determined that the hearing should proceed.

- [15] Ms. Hale pointed out in her letter of April 22, 2020 that the Hearing Tribunal asked the parties to “consult each other to determine whether submissions will be made in writing or in person, and the timing of such matters” in the Decision on Merits. Both Ms. Morley and Ms. Hale attempted to communicate with Dr. Zapf through various means over a ten-week period from the time the Decision on Merits was communicated (February 10, 2020) until the date of the Hearing on sanction (April 23, 2020). The evidence establishes that Dr. Zapf downloaded the Hearing Tribunal’s Decision on Merits twice and received the registered mail containing the Decision on Merits. This demonstrates that Dr. Zapf received the information regarding the outcome of the first phase of the Hearing and was aware he needed to respond on the process for submissions on sanction.

III. SUBMISSIONS ON PENALTY

- [16] The Hearing Tribunal received the following written submissions on sanction:

- a. Complaints Director’s Written Submissions on Sanction dated March 20, 2020.

Submissions on behalf of the Complaints Director

- [17] Ms. Hale made submissions on behalf of the Complaints Director. In her submission, Ms. Hale identified that discipline proceedings are an important part of a self-regulating profession such as pharmacy. They serve to regulate the members of the profession through a process where complaints can be made against a member of the profession and dealt with by a Hearing Tribunal comprised of registered pharmacists and a public member. These proceedings have a number of important purposes which include protection of the public, maintaining the integrity of the profession, fairness to the member, and deterrence (both general and specific).
- [18] Ms. Hale identified that there are various factors that should be taken into consideration in imposing appropriate sanctions. She used the factors in the case of *Jaswal vs. Newfoundland Medical Board* to outline them as they apply to Dr. Zapf’s specific case.
- a. The Nature and Gravity of the Proven Allegations – Ms. Hale argued that all four of the Allegations that were proven against Dr. Zapf are serious. She pointed out that, in its Decision on Merits, the Hearing Tribunal stated that, “the forging of prescription drugs by a regulated member and obtaining drugs through fraudulent means strike at the fundamental principles of the profession of pharmacy.”
- b. The Age and Experience of the Member – Ms. Hale stated that for the entire relevant time period Dr. Zapf was a regulated member of the College. She said that although Dr. Zapf is at the beginning of his professional career, the unprofessional conduct cannot be explained by a lack of experience as he failed to meet fundamental ethical obligations. She further cited that the Decision on Merits found that his experience as a pharmacy student made it easier for him to understand pharmacy and physician processes which made it easier for him to forge prescriptions.
- c. The Presence or Absence of Prior Complaints and Convictions – Ms. Hale argued that there have been no prior complaints against Dr. Zapf but this is a neutral factor.
- d. The Age and Mental Condition of the Offended Patient(s) – Ms. Hale stated that although there is no evidence patients were harmed, there was a potential for patient harm due to Dr. Zapf’s reliance on amphetamines when he was providing pharmacy services both as a student and a provisional pharmacist.

- e. The Number of Times the Offences Were Proven to Have Occurred – Ms. Hale argued that this is an aggravating factor as there were 10 forged prescriptions over a 4-month period and that Dr. Zapf’s actions were intentional and repeated.
- f. The Role of the Member in Acknowledging What Has Occurred – Ms. Hale said that Dr. Zapf admitted the underlying conduct and was forthcoming about the prescriptions he forged. Her concern is that, although Dr. Zapf admitted to the conduct, he failed, through his testimony and arguments, to understand the serious nature of the conduct and how it harms the integrity of the profession. Ms. Hale cited excerpts from the Decision on Merits where the Hearing Tribunal raises concerns about several arguments Dr. Zapf made. The Hearing Tribunal expressed concern that he did not have insight into the amount of amphetamines he was using and dismissed the concern as an “absurd notion.” He said that the fact that he passed the OSCE and PEBC examinations, when using amphetamine, was proof that he was competent. He attempted to mitigate the concern over using amphetamines while practicing pharmacy by saying that a passenger (patient) would be better off with the driver (pharmacist) using amphetamines as opposed to being on a drug like fentanyl which could make you drowsy. The Hearing Tribunal further stated that the argument he was competent because he was doing a good job forging prescriptions to be egregious. The Hearing Tribunal also stated that the fact that Dr. Zapf did not understand he could put patients in harm’s way by abusing amphetamines while providing pharmacy services was alarming. He also stated that having another regulated member supervise him was a type of safety net and that, because of this, he should not be held responsible for the conduct. This argument was not accepted by the Hearing Tribunal. Ms. Hale also pointed out that Dr. Zapf failed to self-report the behavior and only reported to the College that there was a warrant for his arrest. Ms. Hale summarized her argument by stating that Dr. Zapf failed to take any responsibility for his actions and that his lack of insight is a significant factor in favor of substantial sanctions.
- g. Whether the Offending Member Has Already Suffered Other Serious Financial or Other Penalties as a Result of the Allegations Having Been Made – Dr. Zapf has an ongoing criminal matter. Ms. Hale said that the Complaints Director is unaware of any other serious penalties, financial or otherwise, as a result of the Allegations.
- h. The Impact of the Incident on the Offended Patient – Ms. Hale said there was no offended patient in this case, but it is the Complaint Director’s view that providing pharmacy services while misusing amphetamines creates an unacceptable risk to patients.
- i. The Presence or Absence of Any Mitigating Circumstances – Ms. Hale said that she is unaware of any mitigating factors that should be weighed in Dr. Zapf’s favour.
- j. The Need to Impose Specific or General Deterrence – Ms. Hale identified that there is a clear need for specific deterrence for Dr. Zapf given that he has shown a significant lack of insight into his behavior through his testimony, including; how it may affect patients and how far he has strayed from the standard of conduct acceptable by a regulated member. Ms. Hale also argued there is a need for general deterrence to make it clear to the profession that forging prescriptions for drugs strikes at the very heart of the pharmacy profession and is contrary to the vision of the College which is “Healthy Albertans through excellence in pharmacy practice.”

- k. The Need to Maintain the Public's Confidence in the Integrity of the Profession of Pharmacy in Alberta – Ms. Hale said that it is the College's responsibility to regulate the profession. To maintain confidence in the College's integrity as a self-governing profession, the public must be able to see that steps have been taken to sanction Dr. Zapf's conduct to ensure this type of conduct does not occur in the future.
- l. The Degree to Which the Conduct is Clearly Outside the Range of Permitted Conduct – Ms. Hale cited that Dr. Zapf's conduct in the case is clearly outside the range of permitted conduct. She cited the Decision on Merits which found that Dr. Zapf's conduct was unprofessional and that he undermined the integrity of the profession, decreased the public's trust in the profession, and failed to exercise the professional and ethical behavior expected of a regulated member.
- m. The Range of Sentences in Similar Cases – Ms. Hale put forward the cases of Saeed Sattari and Serena Westad as similar cases.

[19] In the 2014 case of Serena Westad, she was found guilty of diverting and misusing Adderall and Dexedrine. She diverted approximately 700 capsules of Adderall XL and 180 tablets of Dexedrine from a pharmacy she worked at. She forged prescriptions, falsified patient records, billed false prescriptions to third parties, failed to cooperate with the investigator, and attempted to self-treat her health issues through diversion without any physician involvement. The Hearing Tribunal ordered Ms. Westad's practice permit be suspending for 24 months; that her practice permit not be reinstated until she satisfactorily completed all the requirements of the registration department of the College required for registration and practice; that she be subject to direct supervision for 12 months following her return to practice; that she advise any licensee or proprietor of any pharmacy at which she is employed of the decision for a period of 5 years; that she cannot be a licensee for a period of 5 years after reinstatement; that she pay a fine of \$40,000 and that she pay the costs of the investigation and hearing less \$4,000.

[20] In the 2016 case of Saeed Sattari, he was found to have diverted 450 Viagra 100 mg tablets and 575 Cialis 20 mg tablets worth an approximate value of \$13,500 for reasons beyond his personal use. Although Mr. Sattari did not appear at the hearing, he advised the Hearing Tribunal of his absence ahead of time and admitted to the bulk of the allegations. In addition to the fine of \$2,300 at the criminal proceedings, the Hearing Tribunal ordered the following sanctions: a \$5,000 fine; one year suspension; payment of the costs of the hearing capped at \$20,000; disclosure of the Hearing Tribunal's decision to any pharmacy employer for 5 years; 5-year prohibition on being an owner, proprietor, or licensee of a licensed pharmacy.

[21] The Complaints Director requested the Hearing Tribunal impose the following orders under section 82 of the HPA:

- 1) Dr. Zapf's practice permit shall be suspended for a period of 30 months, beginning on a date to be determined by the Complaints Director but no later than 30 days after the Hearing Tribunal's written decision on sanction is received by Dr. Zapf.
- 2) Upon completion of the suspension, Dr. Zapf's practice permit shall not be reinstated until the following conditions are met:
 - a. Dr. Zapf must satisfactorily complete all the requirements of the registration department of the Alberta College of Pharmacy when he applies for registration and a practice permit at the end of the suspension in Order 1.
 - b. Dr. Zapf must provide proof to the Complaints Director that he has satisfactorily completed the Center of Personalized Education for Professional's PROBE course within 6 months of reinstatement.

- 3) Upon reinstatement, Dr. Zapf's practice permit shall be subject to the following conditions:
 - a. Dr. Zapf must practice under direct supervision for a minimum of 12 months following his return to practice, with satisfactory report to be provided by his supervisor to the Complaints Director on a monthly basis.
 - b. For a period of 5 years after his reinstatement, Dr. Zapf must provide the Complaints Director with verification that he has advised the licensee and proprietor of any pharmacy in which he is employed of the Hearing Tribunal's written decisions in this matter.
 - c. Dr. Zapf shall not be permitted to be an owner or proprietor during the period of his suspension.
 - d. Dr. Zapf shall not be permitted to be a licensee, owner or proprietor of a pharmacy for a period of 5 years following his reinstatement.
- 4) Dr. Zapf shall provide the College with evidence of the disposition of his related criminal charges within 30 days of their disposition or 30 days within the date of receipt of the Hearing Tribunal's written decision on sanction, whichever is later.
- 5) Dr. Zapf shall pay a fine of \$500 for each of the Allegations 1 (a) to (e), Allegation 2, Allegation 3 (a) to (b), and Allegation 4 for a total fine of \$5,000 payable within 180 days of the date of receipt of the Hearing Tribunal's written decision on sanctions and on a payment schedule acceptable to the Hearings Director.
- 6) Dr. Zapf shall be responsible for the payment of all costs of the hearing and investigation. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 36 months of the date of receipt of the Hearing Tribunal's written decision on sanction.

[22] Ms. Hale provided additional rationale for requesting the sanctions. In regards to the 30-month suspension, Ms. Hale pointed to the case of Ms. Westad. She said that the Hearing Tribunal raised concerns that Dr. Zapf did not have insight into the significant issues created by his conduct. She contrasted this against Ms. Westad who admitted to her conduct, admitted that her conduct was unprofessional at the hearing, and did not attempt to minimize the seriousness of it. She further said that the Westad decision has been available on the College's website since 2014 and it was clearly not a significant enough deterrent for Dr. Zapf, thus he requires a longer suspension of 30 months.

[23] Ms. Hale further said that the requirements for him to take the PROBE course will help the College understand that Dr. Zapf has acquired insight into his behavior. Further, reporting to the College about the outcome of the criminal matter will help satisfy the test for good character that is required of all registrants.

[24] Ms. Hale submitted that the direct supervision of 12 months is being requested due to concerns the Hearing Tribunal raised in its Decision on Merits. Specifically, the Hearing Tribunal found it alarming that "Dr. Zapf does not feel that he could put patients in harm's way by misusing amphetamines" and he has not taken "any responsibility for the role he plays in providing patient care under the supervision of another regulated member."

[25] With respect to the fines, Ms. Hale said that the Complaints Director feels the conduct is serious enough to warrant a fine and has suggested a fine for each forged prescription in the amount of \$500, for a total of \$5,000. She notes that the fine is more than what was imposed in the Westad matter but is the same as the fine ordered in the Sattari decision.

- [26] Ms. Hale said that the Hearing Tribunal has specific authority under section 82(1)(j) of the HPA to direct that Dr. Zapf pay all or part of the expenses, costs, and fees related to the investigation or hearing or both. She argued that the College and its members should not be forced to bear the expense of the investigation and hearing when the need for it arose as a result of Dr. Zapf's conduct, which was proven and found to constitute unprofessional conduct. She cited that the Alberta Court of Appeal has confirmed that "requiring a professional to pay all or a portion of the hearing and investigation costs is a common part of the professional disciplinary sanctions." Ms. Hale also cited that the Complaints Director had to be called as a witness at the Hearing to review the evidence he collected over the course of his investigation.

IV. DECISION AND REASONS FOR DECISION

- [27] The Hearing Tribunal carefully considered the submission of the Complaints Director. The Hearing Tribunal finds the proposed orders to be reasonable and appropriate.
- [28] The Hearing Tribunal specifically considered the submission of Ms. Hale with respect to the factors referred to in *Jaswal*. The Hearing Tribunal had no submission from Dr. Zapf to consider as part of their deliberations on appropriate sanction. Dr. Zapf did not communicate with the College or Ms. Hale, despite the efforts of both Ms. Morley and Ms. Hale to engage him in the second phase of the process. The Hearing Tribunal finds that the proven allegations are very serious issues and accepts all the arguments that Ms. Hale has put forward in regards to the *Jaswal* factors. The Hearing Tribunal finds that forging prescriptions by a regulated member and obtaining drugs through fraudulent means strike at the fundamental principles of the profession of pharmacy.
- [29] The Hearing Tribunal accepts Ms. Hale's arguments that Dr. Zapf's unprofessional conduct cannot be explained by a lack of experience. The Hearing Tribunal agrees that he completely failed to meet basic and fundamental ethical obligations. Learning that forging prescriptions and obtaining drugs by fraudulent means is wrong is not something that is learned through gaining experience as a regulated member and thus his lack of experience cannot be a mitigating factor in this case.
- [30] The Hearing Tribunal accepts Ms. Hale's arguments that although Dr. Zapf admitted to forging prescriptions, he has not accepted responsibility for his actions and does not have insight into how his actions could have affected patients. The Hearing Tribunal finds that Dr. Zapf's failure to understand the seriousness of his conduct is a significant aggravating factor that needs to be considered with respect to sanctions.
- [31] The Hearing Tribunal accepts Ms. Hale's arguments that both specific and general deterrence is required in considering the sanctions in this case. Because of Dr. Zapf's lack of ownership of the seriousness of the conduct he does require significant sanctions to deter him specifically. The Hearing Tribunal is very concerned that Dr. Zapf may reoffend, in particular because of the pride he took in forging the prescriptions and citing that he was very competently making the forgeries despite misusing amphetamines. He demonstrated to the Hearing Tribunal, in great detail during the hearing, how he made the forgeries using computer programs. General deterrence is also a factor that must be considered as the membership must have a clear message that the College takes these types of issues very seriously. A regulated member forging prescriptions to obtain amphetamines fraudulently is an assault on the very reason pharmacy exists in the health care system and requires a strong message sent by the College to the membership about this type of misconduct.
- [32] Ms. Hale made submissions with respect to a Hearing Tribunal's decisions in the cases of Serena Westad and Saeed Sattari as comparators. Both cases illustrate serious unprofessional conduct that will attract serious consequences. The Hearing Tribunal found the case of Ms. Westad most similar and agreed with Ms. Hale's arguments that Dr. Zapf requires a 30-month suspension. Ms. Westad

took responsibility for her actions at the hearing. The Westad decision was available on the College website since 2014 and was not a deterrent to Dr. Zapf. He showed a total disregard for his responsibility in his actions and provided various arguments during the hearing why he should not be subjected to any sanctioning by the College. His reasons included, but were not limited to; that he was a student and should not be held accountable and that the ownership rests with the preceptor; that he was under a great deal of personal and financial stress; and that he passed his PEBCs and OSCEs while misusing amphetamines demonstrating his competency and thus, was not a danger to patients.

- [33] The Hearing Tribunal agreed with the sanctions put forth by Ms. Hale regarding reinstatement of Dr. Zapf's practice permit. The Hearing Tribunal supports that Dr. Zapf must provide proof to the Complaints Director that he has satisfactorily completed the Center of Personalized Education for Professional's PROBE course within 6 months of reinstatement. Due to Dr. Zapf's lack of ownership and insight into his actions we agree that this course is critical to ensure a successful reintegration into professional practice and rehabilitating himself within the professional landscape.
- [34] The Hearing Tribunal supports Dr. Zapf being ordered to work under the direct supervision of a pharmacist for a minimum of 12 months with satisfactory reports to the Complaints Director by his supervisor. The Hearing Tribunal accepts Ms. Hale's arguments where she cites the Decision on Merits where the Hearing Tribunal states that Dr. Zapf has not taken "any responsibility for the role he plays in providing patient care under the supervision of another regulated member." This order will help the College feel secure he is capable of carrying out the responsibilities of a pharmacist before he is allowed to practice independently.
- [35] The Hearing Tribunal considered whether to add a requirement in Order 2 that Dr. Zapf be required to obtain an assessment and medical report confirming that he is fit to practice prior to the reinstatement of his registration. As noted in its Decision on Merits, the Hearing Tribunal had concerns with respect to some of Dr. Zapf's submissions and evidence in the hearing. In addition, the Hearing Tribunal considered certain admissions by Dr. Zapf during the hearing regarding struggles that he had, including with his health, and with his misuse of amphetamines. The purpose of this would not be punitive, but to ensure that Dr. Zapf was receiving all the supports available to him as he reentered practice, increasing the likelihood of his success. However, the Hearing Tribunal decided against adding this requirement to Order 2. In reaching this decision, the Hearing Tribunal noted that the Complaints Director has not asked for an assessment prior to reinstatement of registration. In addition, the Hearing Tribunal considered that, should the Complaints Director have concerns with Dr. Zapf's fitness to practice in the future, the Complaints Director has the ability to take steps to ensure Dr. Zapf's fitness to practice under section 118 of the HPA.
- [36] With respect to the fines, the Hearing Tribunal accepts the argument on fines put forward by Ms. Hale as they are in line with the other two similar cases put forward. The overall amount of fines totals \$5,000 (\$500 per forgery). The Hearing Tribunal finds the overall financial impact of the fines appropriate. They address the seriousness of the conduct along with the principles of deterrence and penalty. The time to pay of 180 days from the receipt of the decision on sanction was determined to be within a reasonable timeframe.
- [37] On behalf of the Complaints Director, Ms. Hale submitted that Dr. Zapf not serve as a pharmacy licensee, proprietor, or own all or part of a pharmacy for 5 years following his reinstatement. The Hearing Tribunal agrees with Ms. Hale's arguments that he abused the trust placed in him as a pharmacist and he cannot be trusted to uphold the statutory and regulatory obligations that would be bestowed upon him in these roles. The Hearing Tribunal finds that a 5-year prohibition from his date of reinstatement balances the need to satisfy specific and general deterrence with fairness to the member in this case.

- [38] The Hearing Tribunal considered the costs to be awarded in this case. The Hearing Tribunal finds that this is an appropriate case to order full costs of the investigation and hearing, to be payable within thirty-six (36) months of the date of the receipt of the Hearing Tribunal's written decision on sanction. The Complaints Director was successful on all charges. In addition, the witnesses called were necessary. The Complaints Director had to be called as a witness to bring forward evidence as there was no admission to the allegations prior to the start of the hearing and no admission that the allegations constituted unprofessional conduct. The burden of costs should not be placed on the membership of the College as it is Dr. Zapf's proven unprofessional conduct that is the reason for the hearing and the associated costs. Although Dr. Zapf admitted he forged prescriptions to fraudulently obtain amphetamines he did not take responsibility for his actions and had many excuses and reasons as to why he should not be held accountable as a regulated member of Alberta College of Pharmacy during the hearing. He also failed to engage in the second phase, or penalty phase, of the Hearing, and the Hearing proceeded without his submissions. Not having submissions from Dr. Zapf increases the burden on the College to ensure he has been given every opportunity to provide submissions. It also places an additional burden on the Hearing Tribunal to make a decision on whether or not to proceed in the absence of information from Dr. Zapf.
- [39] The Hearing Tribunal has ordered Dr. Zapf to have thirty-six (36) months to pay the costs of the Hearing Tribunal. In the absence of any submissions from Dr. Zapf the Hearing Tribunal felt that 36 months for repayment was a reasonable submission from the Complaints Director.
- [40] The Hearing Tribunal finds that the orders properly reflect the seriousness of the conduct. The orders are appropriate in that they help to ensure the public is protected from future misconduct of a similar nature by applying the principles of specific and general deterrence and that the integrity of the profession is maintained in the eyes of the public and the profession. Further, the orders are consistent with prior decisions of the Hearing Tribunal.

V. ORDERS

- [41] The Hearing Tribunal makes the following orders pursuant to s. 82 of the HPA:
- 1) Dr. Zapf's practice permit shall be suspended for a period of 30 months, beginning on a date to be determined by the Complaints Director but no later than 30 days after the Hearing Tribunal's written decision on sanction is received by Dr. Zapf.
 - 2) Upon completion of the suspension, Dr. Zapf's practice permit shall not be reinstated until the following conditions are met:
 - a. Dr. Zapf must satisfactorily complete all the requirements of the registration department of the Alberta College of Pharmacy when he applies for registration and a practice permit at the end of the suspension in Order 1; and
 - b. Dr. Zapf must provide proof to the Complaints Director that he has satisfactorily completed the Center of Personalized Education for Professional's PROBE course within 6 months of reinstatement.
 - 3) Upon reinstatement, Dr. Zapf's practice permit shall be subject to the following conditions:
 - a. Dr. Zapf must practice under direct supervision for a minimum of 12 months following his return to practice, with satisfactory report to be provided by his supervisor to the Complaints Director on a monthly basis;
 - b. For a period of 5 years after his reinstatement, Dr. Zapf must provide the Complaints Director with verification that he has advised the licensee and proprietor of any pharmacy in which he is employed of the Hearing Tribunal's written decisions in this matter;

- c. Dr. Zapf shall not be permitted to be an owner or proprietor of a pharmacy during the period of his suspension; and
 - d. Dr. Zapf shall not be permitted to be a licensee, owner or proprietor of a pharmacy for a period of 5 years following his reinstatement.
- 4) Dr. Zapf shall provide the College with evidence of the disposition of his related criminal charges within 30 days of their disposition or 30 days within the date of receipt of the Hearing Tribunal's written decision on sanction, whichever is later.
 - 5) Dr. Zapf shall pay a fine of \$500 for each of the Allegations 1 (a) to (e), Allegation 2, Allegation 3 (a) to (b), and Allegation 4 (a) to (b), for a total fine of \$5,000 payable within 180 days of the date of receipt of the Hearing Tribunal's written decision on sanctions and on a payment schedule acceptable to the Hearings Director.
 - 6) Dr. Zapf shall be responsible for the payment of all costs of the hearing and investigation. Payment will occur in accordance with a reasonable monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 36 months of the date of receipt of the Hearing Tribunal's written decision on sanction.
- [42] The Hearing Tribunal is of the opinion that there are reasonable and probable grounds to believe that Dr. Zapf has committed a criminal offence. In accordance with section 80(2) of the HPA, the Hearing Tribunal directs the Hearings Director to provide a written copy of its Decision on Merits and a copy of this decision on sanction to the Minister of Justice and Solicitor General.

Signed on behalf of the Hearing Tribunal this 15th day of June 2020.

[Kelly Olstad]

KELLY OLSTAD, CHAIR