

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **KHAN QAISAR**

DECISION OF THE HEARING TRIBUNAL

June 20, 2014

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Mr. Khan Qaisar on November 13, 2013. In attendance on behalf of the Hearing Tribunal was:

- Ms. Catherine McCann, Pharmacist, Chair,
- Mr. Lane Casement, Pharmacist,
- Ms. Sherilyn Houle, Pharmacist, and
- Mr. Trevor Liskowich, Public Member.

Mr. James T. Casey, Q.C. independent legal counsel for the Hearing Tribunal was also in attendance.

The hearing started at 9:30 am at the offices of the Alberta College of Pharmacists (the “College”) at 1100-8215 112 Street NW, Edmonton, Alberta, T6G 2C8. The hearing was held under the terms of Part 4 of the *Health Professions Act*, R.S.A. 2000, c. H-7.

In attendance at the hearing, representing the College, were:

- Mr. James Krempien, Complaints Director,
- Mr. David N. Jardine, legal counsel for the Complaints Director,

And

- Mr. Khan Qaisar, Registrant
- Mr. Satnam S. Aujla, legal counsel for the Registrant

Ms. T. L. Reid of Snow’s Court Reporting was in attendance to record the proceedings.

In order to protect the privacy of the child and his mother, in this decision the child will be referred to as “AB” and his mother will be referred to as “CD”. The cousin of the mother will be referred to as “EF”.

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following complaints or matters as outlined in the Notice of Hearing, dated June 27, 2013:

IT IS ALLEGED THAT:

1. On March 14, 2011 while on duty as a pharmacist at [REDACTED] you touched the groin area of a three-year old boy,

AB, over top of the boy's clothing as shown in the pharmacy surveillance video; and

2. Your touching of a very young member of the public in the groin area was inappropriate and was a serious personal boundary violation.

The Notice of Hearing alleges that the conduct breaches the *Health Professions Act*, Standards of Practice and the Code of Ethics.

Mr. Qaisar did not admit to unprofessional conduct with respect to these allegations nor did Mr. Qaisar admit to the factual allegations as charged. The hearing proceeded to hearing witness testimony and accepting evidence in the case from both parties.

III. PRELIMINARY MATTERS

Request to Adjourn Hearing on September 18, 2013

A Notice of Hearing dated June 27, 2013 was sent to Mr. Qaisar to notify him of the hearing scheduled for September 18, 2013. A letter from Mr. Satnam Aujla, legal counsel for Mr. Qaisar dated September 9, 2013 was received by the Alberta College of Pharmacists requesting an adjournment of this hearing.

The Hearing Tribunal met by teleconference on September 12, 2013 at 8:30 pm. In attendance were the members of the Hearing Tribunal:

- Ms. Catherine McCann, Chair,
- Mr. Lane Casement,
- Ms. Sherilyn Houle, and
- Mr. Trevor Liskowich.

Ms. Margaret Morley, Hearings Director, listened in to the teleconference as an observer.

The Hearing Tribunal decided to grant the request for adjournment. The Hearing Tribunal's decision was provided in writing on September 16, 2013 to Mr. Jardine and Mr. Aujla. While the Hearing Tribunal granted the adjournment, it also directed that the hearing be held no later than November 30, 2013.

The hearing was adjourned until November 13, 2013 at 9:30 am. On November 13, 2013 Ms. McCann asked at that time if there were any further objections to the timeliness or the service of the Notice of Hearing. There were no objections raised regarding the Notice of Hearing.

Objections to the Composition of the Hearing Tribunal

There were no objections to the membership composition of the Hearing Tribunal.

Objections to the Jurisdiction of the Hearing Tribunal

There were no objections to the jurisdiction of the Hearing Tribunal to proceed with a hearing.

Application to Close the Hearing

There were no submissions to have the hearing closed; therefore, an open hearing was conducted.

IV. EVIDENCE

As Ms. T. L. Reid recorded the evidence presented verbatim and a transcript of the actual evidence and witness testimony exists, only a summary of the evidence presented will be provided in this decision document.

Opening Statements

For the Alberta College of Pharmacists, Mr. Jardine's opening statement included the following points:

- The incident in question that resulted in the allegations in the Notice of Hearing occurred on March 14, 2011.
- A significant piece of evidence to be presented is a video surveillance tape from the pharmacy where the incident took place.
- Mr. James Krempien's investigation, documentation and description of the events in the video will be reviewed and described.
- The mother of the child, CD, will provide testimony about the incident by videoconference.
- The College anticipates that there will be some debate about the intention of the member at the time of the incident.
- The College acknowledges that while the complainant alleges that the incident involved a sexual boundary violation, the College alleges a personal boundary violation and that there are no allegations of sexual intent on the part of Mr. Qaisar.
- Mr. Jardine intends to call Mr. Qaisar as a compellable witness if Mr. Aujla does not call Mr. Qaisar as part of his presentation of evidence.

For Mr. Qaisar, Mr. Aujla's opening statement included the following points:

- Mr. Aujla intends to call Mr. Qaisar to testify.
- Mr. Aujla objects to the use of videoconferencing technology to hear testimony from the mother of the child for the following reasons:

- It will be important for the Hearing Tribunal to determine the credibility of CD as a witness; however, the medium of videoconferencing makes it difficult to assess the credibility of a witness.
- Since the medium of videoconferencing will make it difficult for the Hearing Tribunal to assess the credibility of CD, it is potentially detrimental to Mr. Qaisar's case.
- If the Hearing Tribunal determines that it will hear testimony from CD by videoconference, Mr. Aujla will submit that the evidence be given less weight.

Objection to the use of videoconference technology to hear witness testimony

In his opening statement, Mr. Aujla raised an objection about the use of video conferencing to hear a witness' testimony on the grounds that it would be detrimental to Mr. Qaisar. Mr. Aujla's objection is based on the need for the Hearing Tribunal to be able to gauge the creditability of the witness and her testimony.

Mr. Jardine offered the following points:

- Admittedly, videoconferencing is not an ideal medium for hearing witness testimony; however, the witness is unable to travel due to medical reasons.
- Permitting the use of videoconferencing is better than adjourning the hearing until such time as the witness can make the journey.
- There is a video of the incident in question which means the Hearing Tribunal can see the incident for itself. The case does not weigh entirely on CD's testimony of what happened that day.
- It is the College that is bringing the matter to a hearing, not the complainant.

Mr. Aujla's responses to Mr. Jardine's arguments included:

- The complainant is a College witness and therefore, her testimony is important to the College's case and so is an assessment by the panel of her credibility.
- The video does not include any audio, so the evidence presented in the video is incomplete.

The Hearing Tribunal asked if it was possible to see a demonstration of the quality of videoconferencing technology in advance of ruling whether to hear the testimony from the witness via Skype. Mr. Krempien indicated that a demonstration could be arranged.

The Hearing Tribunal went into caucus to deliberate.

The Hearing Tribunal elected to reserve their decision on the use of video conferencing to hear CD's testimony until such time as they could see a

demonstration of the quality of the videoconferencing to be used. In addition, if the Hearing Tribunal ultimately decided to hear the evidence of the witness under Skype, then the following conditions would need to be met:

- The witness would be sworn in as would be the normal procedure for hearing witness testimony.
- The witness would be alone in the room while she is testifying so that she cannot be prompted or influenced by someone who may be off camera.
- The witness would not have notes or documentation off camera to which she might refer that have not already been entered into evidence.

Witness Testimony: Mr. James Krempien

Mr. Krempien was sworn. Mr. Krempien's investigation is detailed thoroughly in the transcript and within the evidence and only select details are included here.

Mr. Krempien, under questioning from Mr. Jardine, provided the following information:

- Mr. Krempien received the initial complaint, which is the subject of this hearing.
- Mr. Krempien was the only investigator of the complaint even though a second investigator had been appointed.
- Mr. Krempien, following his investigation of the complaint, determined that it should go to a hearing as outlined in the Record of Decision dated June 3, 2013, which was entered into evidence [Exhibit 2].
- Sequence of Events Report in a binder including 52 tabs was entered into evidence [Exhibit 3].
- The complaint was provided to Mr. Krempien by way of an email on November 9, 2011 even though the letter written by CD was dated May 26, 2011. Mr. [REDACTED] sent the email on behalf of CD. There was no evidence as to why the letter was received five months after it was written.
- Mr. Qaisar was the respondent to the complaint.
- The incident occurred in the pharmacy located in [REDACTED] Alberta.
- Mr. Krempien's investigation included the following significant items:
 - An interview with Sergeant [REDACTED] of the [REDACTED] RCMP as CD had also registered a complaint about Mr. Qaisar's conduct with the RCMP. Mr. Krempien wished to understand the progress on the RCMP investigation and to avoid interfering in their investigation. The RCMP's investigation was ongoing at the time of Mr. Krempien's investigation.
 - Obtaining a copy of a security surveillance video that recorded the incident in question (video only, no audio).
 - Obtaining a copy of an incident report recorded by [REDACTED] (security guard at [REDACTED]), a supplemental incident report, and a written statement from Mr. Qaisar, all dated on March 14, 2011 (the date of the incident).

- Interviews with Mr. [REDACTED], with CD, the complainant, and Mr. K. Qaisar, the respondent to the complaint.
- Mr. Krempien also interviewed others in relation to the incident including EF, a cousin of CD's who worked in the pharmacy with Mr. Qaisar. Although EF was present during the incident, EF did not witness the incident due to being behind the pharmacy counter. The child was below EF's line of sight when the incident happened.

During Mr. Krempien's interview with CD, CD indicated that on March 14, 2011 the following occurred:

- CD is employed as a [REDACTED].
- CD and her three-year old son AB entered the pharmacy to purchase chips at approximately 4:30pm.
- Mr. Qaisar greeted them from behind the counter. ED, pharmacy employee and cousin of CD was also present behind the counter.
- Mr. Qaisar came from behind the counter and asked to hug AB. CD gave permission to Mr. Qaisar to hug AB. Mr. Qaisar hugged AB.
- Mr. Qaisar then grabbed AB's groin overtop of his pants and in a teasing manner asked "what's this?"
- When CD witnessed this form of touching, she immediately took AB from the pharmacy and went to the reception area and to the security desk where Mr. [REDACTED] was seated.
- Mr. [REDACTED] took CD and AB to an office and CD met with Mr. [REDACTED] and described the events that just occurred.

During Mr. Krempien's initial meeting with Mr. Qaisar, Mr. Qaisar admitted to touching and tickling AB, but denied any type of sexual contact or intent.

Video Evidence

The Hearing Tribunal viewed the surveillance video provided in evidence by Mr. Krempien. The camera for the video focuses on the front of the dispensary counter of the pharmacy. The following is a brief summary of events only.

- CD and AB enter the pharmacy. CD selects a bag of chips from a rack. CD takes the bag to the pharmacy counter to purchase the chips.
- Another patient is at the counter, finishes their transaction and leaves the pharmacy.
- CD and AB approach the counter. Mr. Qaisar and EF can be seen in behind the counter.
- Mr. Qaisar reaches over the counter and motions to AB to shake his hand. AB shakes Mr. Qaisar's hand timidly.
- Mr. Qaisar comes around the counter to the front and is seen squatting down and motioning with his arms to AB to come to him for a hug. AB regards CD

first and then CD appears to nod consent and AB moves towards Mr. Qaisar for a hug.

- After the hug, AB steps back a bit. Mr. Qaisar appears to reach for AB at the waistline with his right hand (open) then withdraws it again.
- Mr. Qaisar reaches out again towards AB with his right hand (open) and touches AB below his pant's waistline in what appears to be AB's groin area.
- Immediately upon witnessing this touch, CD's expression changes to alarm, CD swats Mr. Qaisar's hand away, says something to Mr. Qaisar, and quickly grabs AB's left hand and exits the pharmacy.
- Mr. Qaisar stands up, looking shocked and surprised at CD's reaction. He then says something to EF who raises her hand to her mouth in a shocked or surprised reaction to what is said.
- Mr. Qaisar follows CD out of the pharmacy but returns moments later and appears to speak to EF.

The Hearing Tribunal reviewed the video tape on a couple of more occasions, focusing on the segment at 16:25:41 and 16:25:42 – the time of the touch and CD's reaction to the touch.

Witness Testimony: Mr. James Krempien (continued)

During the course of the investigation, Mr. Krempien became aware of a lease dispute between Mr. Qaisar and Mr. [REDACTED] at the [REDACTED]. Following the events of March 14, 2011, Mr. [REDACTED] wrote a letter to Mr. Qaisar citing this incident in the pharmacy as the reason for cancelling the lease contract [REDACTED]. Mr. Qaisar moved his pharmacy practice into the [REDACTED] town site. EF is still an employee of Mr. Qaisar.

Mr. Krempien also became aware during the course of his investigation of a second video surveillance camera in the pharmacy; however, that camera was outside of the pharmacy and would not have recorded the incident.

The criminal investigation in this matter, conducted by the RCMP, resulted in a trial date being set in [REDACTED], Alberta. Subsequently, the charges were stayed. The interpretation of this development is that the Crown Prosecutor chose to neither drop the charges nor move forward to a trial. The matter was left in limbo for a period of time.

Based on the video evidence, the interviews with CD and Mr. Qaisar, Mr. Krempien, concluded that there had been a breach of a professional boundary and that it was inappropriate conduct on behalf of Mr. Qaisar.

Witness Testimony: CD

CD provided testimony via Skype technology. A video link was established in the [REDACTED] office. CD was seated in front of a computer screen.

Ruling on Use of Skype Technology for Witness Testimony

During the course of the hearing, Mr. Aujla raised an objection regarding the use of Skype technology to allow examination of this witness. Mr. Jardine made the request as this witness was unable to attend in person due to having recent emergency surgery, was not permitted to drive, and could not get a ride into Edmonton, Alberta from [REDACTED], Alberta to attend the hearing.

Mr. Aujla's objection went to credibility of the witness. His concern was that a video conference link did not permit the panel to view the subtleties of the witness's testimony, her demeanor and her body language. The quality of the video conferencing was questioned.

The Hearing Tribunal was able to view a demonstration of the quality of the video conferencing within the hearing room. The audio and visual quality was deemed acceptable for the purposes of hearing testimony from this witness.

Upon deliberation, the Hearing Tribunal determined that they would overrule Mr. Aujla's objection to the use of Skype to hear CD's testimony. The Hearing Tribunal was not convinced that video conferencing would interfere with its ability to gauge the credibility of this witness. The Hearing Tribunal could see and hear the witness. They felt they could assess her demeanor and reliability. The Hearing Tribunal did reserve the right to stop examination if there were any quality issues with the video at any time. The Hearing Tribunal also indicated they would assess the weight that would be given to this witness's testimony within their findings.

CD was affirmed. Her testimony is detailed within the transcript. Some of the key points raised in CD's testimony:

- CD had known Mr. Qaisar for about three years starting when CD started working as a [REDACTED] at [REDACTED] and was pregnant with AB.
- CD characterized Mr. Qaisar as an acquaintance.
- CD described the incident on March 14, 2011:
 - Mr. Qaisar acknowledged AB and said hello. AB greeted him back.
 - Mr. Qaisar then wanted to give AB a hug and came around the counter to the front. CD was standing right beside AB, by the counter.
 - Mr. Qaisar then crouched down to AB's level and hugged him.
 - AB backed away slightly from Mr. Qaisar, CD was speaking to EF.
 - Mr. Qaisar then reached in front of AB's sweats and he grabbed his penis, and said what is this, and he shook it.
 - CD then grabbed AB, shouted at Mr. Qaisar not to ever touch her son, and started crying. CD ran with AB from the pharmacy back to the reception area.
- As a result of the incident, CD had sessions with a psychologist.
- As a result of the incident, AB appeared to be afraid of tall men for six or eight months after the incident.
- Mr. Qaisar had loaned CD \$400 for a payment on a car loan.

- Mr. Qaisar had given CD \$50 as a gift when AB was born.

Based on the evidence of CD and the cross-examination by Mr. Aujla, the Hearing Tribunal is satisfied that allowing the evidence of CD to be provided by Skype did not affect its ability to assess the credibility of CD and did not affect Mr. Aujla's ability to challenge CD's evidence.

Witness Testimony: Mr. Khan Qaisar

Mr. Qaisar was sworn. His testimony is detailed within the transcript. Some of the key points raised during his testimony included:

- Mr. Qaisar had known CD about 3 or 4 years. CD was pregnant with AB when they first met.
- CD only occasionally had prescriptions filled by Mr. Qaisar, perhaps three prescriptions over the time that they knew each other.
- Mr. Qaisar characterized CD as "like a family member."
- Mr. Qaisar described the incident on March 14, 2011:
 - Mr. Qaisar came around the counter to give some appreciation to AB.
 - Mr. Qaisar hugged AB.
 - As Mr. Qaisar was hugging AB, he was speaking; praying for AB. Mr. Qaisar had just returned from Hajj (Mecca) and wanted to give AB a blessing.
 - Mr. Qaisar started to tickle AB to make him laugh. Mr. Qaisar demonstrated by indicating tickling with his fingers on his own thigh, in the two sides of the thigh, outside then inside, further clarified as the mid, inner thigh.
 - Then CD got upset and started shouting, you touched my boy's penis. Mr. Qaisar said no, I did not touch it.
 - Mr. Qaisar tried to apologize but CD would not talk to him.
 - Mr. Qaisar spoke to Mr. [REDACTED] about the incident. Mr. [REDACTED] encouraged Mr. Qaisar to write an apology letter. (This letter was part of the evidence binder: Tab 11B.)
 - Mr. Qaisar was asked to move his pharmacy from [REDACTED].
 - Mr. Qaisar believes the reason that the complaint came to the College's attention eight months after the incident, was because Mr. [REDACTED] needed patient files from Mr. Qaisar as part of their ongoing lease dispute.
 - Mr. Qaisar admits that he may have made a mistake in tickling AB that day and that it was bad judgment on his part.

There were no further witnesses or evidence, or rebuttal evidence to be heard.

V. SUBMISSIONS

Closing submissions by Mr. Jardine:

Mr. Jardine's closing submissions are detailed in the transcript. Mr. Jardine raised the following key points in his closing oral submissions:

- The Hearing Tribunal must be convinced on the balance of probabilities, is it more probable than not, that the allegations have been proven.
- If the allegations are proven, are they serious enough to constitute unprofessional conduct as it is defined under the *Health Professions Act*?
- Given the video evidence, Mr. Qaisar's testimony, and CD's testimony there is agreement that Mr. Qaisar did touch AB in the upper, inner, thigh area.
- CD, the mother, reacted immediately when she saw the touch.
- The child is three years old and would be considered to be a vulnerable member of the public.
- Mr. Qaisar's behaviour should be considered conduct that harms the integrity of the profession.
- Unprofessional conduct has a specific meaning in the *Health Professions Act* and does not have to be disgraceful or dishonorable.
- The intent of Mr. Qaisar is not the issue, but was what happened in this incident serious enough to fall within unprofessional conduct.
- That based on the evidence and on the standards expected of a pharmacist, the mother's reaction was not unreasonable. Mr. Qaisar's conduct was not what one would normally expect of a pharmacist.
- A pharmacist is expected to maintain a professional relationship with each patient and maintain professional boundaries and take special care when dealing with a vulnerable individual.
- Was AB a patient of the pharmacy? It could be argued that no, he was not, but he was a member of the public and given his age would be considered a vulnerable individual.
- If the cultural situation is different [REDACTED] than Mr. Qaisar's cultural understanding, it was noted that Mr. Qaisar has practiced in Canada since 2002 and had been at [REDACTED] for four or five years, a reasonable amount of time for Mr. Qaisar to be exposed to the cultural norms of the Canadian pharmacy profession and to [REDACTED] culture. It should not excuse the behaviour.
- Mr. Qaisar admitted to making an error in judgment.
- As a professional, Mr. Qaisar should have erred on the side of caution in dealing with a vulnerable individual such as this child.

Closing submissions by Mr. Aujla

Mr. Aujla's closing submissions are detailed in the transcript. Mr. Aujla raised the following key points in his closing oral submissions:

- Based on the Standards of Practice, the mother and son should not be considered patients of Mr. Qaisar's. There is no evidence that they were

patients of Mr. Qaisar. On this basis, the complaint should be dismissed. If there was no relationship as patients, there should be no complaint.

- Mr. Aujla raised concerns about the credibility of CD and the impact of the videoconference on the ability of the panel to assess credibility of the witness. In contrast, Mr. Qaisar is present in the room and you can easily assess his credibility. Mr. Aujla submits that Mr. Qaisar is very credible.
- The relationship is important. They were friends. Mr. Qaisar loaned CD money.
- The intent of the touch is important. Assessing a boundary violation cannot be done without assessing the intent of the individual.
- The mother's reaction was an overreaction to the incident. The Hearing Tribunal should apply common sense to her reaction and see it as an overreaction.
- Mr. Qaisar had known both the mother and child for over four years. He believed that he had a different relationship with the mother and child than with a stranger in the pharmacy.
- Mr. Qaisar touched the child in a public space in front of witnesses. He did not intend to harm the child.
- The criminal court did not pursue the case because they believed the complaint was frivolous.
- Mr. Qaisar understood that he upset the mother and he wrote a letter of apology immediately afterward. It should not be viewed as an admission of guilt in these proceedings.
- The Hearing Tribunal should also consider why the complaint came to the attention of the Alberta College of Pharmacists in the first place. Why did Mr. ██████ finally forward this complaint so long after it happened?
- The Hearing Tribunal should not find that Mr. Qaisar's conduct was unprofessional.

Final Submissions: Mr. Jardine

Mr. Jardine's final submissions are detailed in the transcript. Mr. Jardine raised the following key points in response to Mr. Aujla's submissions:

- There is some evidence that the mother and child were patients of Mr. Qaisar in that they occasionally had prescriptions filled at his pharmacy. Mr. Qaisar has a duty to the public. Even if they were not patients of his pharmacy, it does not mean that Mr. Qaisar could do whatever he wants with respect to conduct with them. Registrants under the *Health Professions Act* must comply with the letter and the spirit of the Act to ensure that the public and each patient receive the full protection of the law.
- Mr. Aujla states that the charges on the criminal case were withdrawn, but in fact they were stayed. In any case, Mr. Qaisar is not charged with a criminal offence in this proceeding so the point is moot.
- Mr. Aujla comes back to a conspiracy around bringing the complaint to the attention of the College. The Complaints Director determines, at his discretion, if a complaint will go to a hearing and that is what happened in this case.

- In terms of creditability of the witnesses, that is for the Hearing Tribunal to assess and determine the weight assigned to their testimony.

Supplementary Written Submissions

At the request of Mr. Aujla, the Hearing Tribunal agreed to accept a written supplementary submission on argument by November 20, 2013. Following receipt of the supplementary submission from Mr. Aujla, the Hearing Tribunal agreed to allow Mr. Jardine time to respond to the supplementary submission with the response to be submitted by November 27, 2013. A date of December 5, 2013 was set for the Hearing Tribunal to reconvene to consider the submissions and to render a decision on this matter.

Supplementary written submissions were provided by both parties and considered during the deliberations on the findings.

Supplementary Written Submission: Mr. Aujla

Mr. Aujla repeated a number of his arguments from his final submission, but also added the following:

- If CD had to attend to a psychologist to seek counseling and if her son was afraid of tall men after this incident, then a report for the psychologist should have been submitted to support her statements.
- Mr. Aujla provided two cases for the Hearing Tribunal to consider in its deliberations.

Response to Supplementary Written Submission: Mr. Jardine

Mr. Jardine responded only to the new information provided in the letter:

- The two cases provided by Mr. Aujla do not provide assistance to the Hearing Tribunal in this case as they differ on matters of fact and this case must be decided on the basis of its own facts.
- The suggestion that allegations of violations of boundaries must be sexual in nature to be unprofessional is not correct.
- The decision to be made in this matter does not rely on whether CD attended a psychologist or not, or on the impact of the incident.

VI. FINDINGS

The Hearing Tribunal met via videoconference on December 5, 2013 to determine if the allegations of unprofessional conduct by Mr. Khan Qaisar are well founded.

Allegations

As outlined in the Notice of Hearing to Mr. Khan Qaisar (Exhibit 1), the Hearing Tribunal considered the following allegations:

IT IS ALLEGED THAT:

1. On March 14, 2011 while on duty as a pharmacist at the [REDACTED] Pharmacy at the [REDACTED] facility you touched the groin area of a three-year old boy, AB, over top of the boy's clothing as shown in the pharmacy surveillance video; and
2. Your touching of a very young member of the public in the groin area was inappropriate and was a serious personal boundary violation.

Decision of the Hearing Tribunal

1. With regards to the first allegation:

THAT: on March 14, 2011 while on duty as a pharmacist at the [REDACTED] Pharmacy at the [REDACTED] facility you touched the groin area of a three-year old boy, AB, over top of the boy's clothing as shown in the pharmacy surveillance video,

The Hearing Tribunal finds that the allegation has been proven.

2. With regards to the second allegation:

THAT: your touching of a very young member of the public in the groin area was inappropriate and was a serious personal boundary violation,

The Hearing Tribunal finds that the allegation has been proven.

Analysis of the Evidence with regard to Allegation 1:

It was established in evidence that Mr. Khan Qaisar was the pharmacist and former pharmacy licensee of [REDACTED] Pharmacy in [REDACTED] facility on March 14, 2011. Mr. Qaisar testified that he had been a pharmacist for 23 years, the last 11 or 12 years, in Canada. Mr. Qaisar also testified that he had the pharmacy in the [REDACTED] facility for almost 5 years. Mr. Qaisar was registered with the Alberta College of Pharmacists at the time of this incident.

Mr. Qaisar was alleged to have touched the groin area of a three-year old boy, AB, over top of the boy's clothing as shown in the pharmacy surveillance video.

The Hearing Tribunal viewed and reviewed several times a pharmacy surveillance video entered into evidence that showed that Mr. Qaisar did indeed touch the groin

area of AB over top of the boy's clothing. Mr. Qaisar during his own testimony and upon questioning by the Hearing Tribunal admitted that he touched the three year old boy on the inside of the mid-thigh of the child, in the fleshy part of the thigh. The Hearing Tribunal determined that given the size of the child and the area in which Mr. Qaisar touched, this would be interpreted as part of the groin area. The touch was viewed in the video to be done over top of the boy's sweat pants.

Additional Considerations in Making this Finding

In reaching the conclusion that this allegation was proven, the Hearing Tribunal considered a number of points.

As described by Mr. Jardine, this case is exceptional from most cases of this nature as there is video evidence of the incident. Most cases that allege inappropriate touching come down to weighing the credibility of the witnesses involved and in many cases the complainant and the respondent are the only witnesses to the incident. In this case, video surveillance evidence was provided that clearly showed the series of events. While the video was black and white and had no audio, it was clear enough to see and identify all the participants in the incident. It was also clear enough to discern expressions and body language.

Both Mr. Qaisar and CD provided testimony about the incident. Mr. Qaisar's recollection of the incident during testimony was consistent with his recollection of events during an interview with Mr. Krempien on November 16, 2011 with one or two minor differences from what was seen on the video. CD's testimony was also consistent with the series of events from the video, with her initial complaint to Mr. Krempien and with her recollection of events when interviewed by Mr. Krempien on November 16, 2011. The Hearing Tribunal finds that when observing Mr. Qaisar touch her son in the groin area, CD misinterpreted the touch in that Mr. Qaisar did not grab her son's penis. Instead, Mr. Qaisar touched her son in the groin area. Given that the touch was very quick and in the groin area, it is understandable how CD could misinterpret the precise area of the touching.

Mr. Aujla raised an objection to the use of video conferencing to obtain testimony from CD. His objection was based on the concern that the Hearing Tribunal would not be able to assess the credibility of her as a witness if she was not present in person to provide testimony.

The Hearing Tribunal deliberated on the objection and determined that given the quality of the video conferencing as demonstrated to them the day of the hearing, they could hear CD's testimony in this way and it would not impact their ability to determine the credibility of the witness. Mr. Aujla's objection was overruled.

The Hearing Tribunal reserved the right to stop the proceedings at any time, if the quality was deemed too poor. The Hearing Tribunal determined that CD was alone in the room while giving testimony and that she did not have notes or other aids with her at the time. CD was affirmed. The Hearing Tribunal had no difficulty seeing or

hearing CD during the video conference call. On one or two occasions when the call broke up or there was background noise that distorted the audio, CD was asked to repeat some of her testimony and to speak slowly. The Hearing Tribunal did not need to stop proceedings because the overall quality of the video conference was good. The Hearing Tribunal concluded that her testimony by this means did not create any issues or problems for the Hearing Tribunal in considering her testimony.

Mr. Qaisar's provided testimony in person. At times, he spoke too fast and would occasionally become animated. Mr. Qaisar was also cautioned to slow down his speech and to speak clearly for the record. When Mr. Qaisar was demonstrating some aspect of his behaviour during his recollection of the incident, the chair described what she saw him demonstrate for the record. Despite these issues, the Hearing Tribunal found his testimony credible.

In weighing the evidence provided about this allegation, the Hearing Tribunal placed the most weight on the evidence in the video. While the Hearing Tribunal heard and considered the testimony of both CD and Mr. Qaisar, the Hearing Tribunal treated their testimony as a supplement to the video evidence. Their evidence, in both cases, was mostly consistent with what was seen on the video. The video is the key evidence in this case and the events shown on the video are corroborated by the testimony of both CD and Mr. Qaisar. The Hearing Tribunal could see the touch in the video and determined that the location was in the groin area as alleged. Mr. Qaisar's testimony further confirmed what could be seen in the video by way of his demonstration of the touch to the Hearing Tribunal.

Mr. Aujla argued in his closing submissions that the Hearing Tribunal should consider that Mr. Qaisar was mired in a disagreement about his pharmacy lease at the time this complaint came to the attention of the Complaints Director. Mr. Aujla suggested there was a conspiracy led by Mr. [REDACTED] in driving Mr. Qaisar out of the lease agreement. The Hearing Tribunal accepts that the Complaints Director is required to investigate serious allegations. It does not matter how those allegations came to the Complaints Director's attention. The Complaints Director has the duty and power under the act to launch an investigation at his own discretion as Mr. Krempien did in this case. The Hearing Tribunal rejects Mr. Aujla's argument on this basis.

Analysis of the Evidence with Regard to Allegation 2:

THAT: your touching of a very young member of the public in the groin area was inappropriate and was a serious personal boundary violation.

In reaching the conclusion that this allegation was proven, the Hearing Tribunal considered a number of points.

The first consideration was the age of the child. AB was three years old at the time. The Hearing Tribunal accepts Mr. Jardine's characterization of the child as a member of a vulnerable population, someone who deserves special consideration, care and protection.

As seen in the video, Mr. Qaisar initiates all of the contact with AB during the incident. Mr. Qaisar at first reaches over the counter and extends his hand to the child as an invitation to shake his hand. The child hesitates and then does shake his hand. Next Mr. Qaisar comes around the counter into the front of the pharmacy, squats down and holds his arms open wide towards the child, inviting the child to come to him for a hug. The child hesitates again, looks at his mother, and with a nod from her, moves towards Mr. Qaisar for a short hug. Following the hug, Mr. Qaisar continues to touch the child, first at the waist and then with the second touch below the waist of the child. At that moment, the mother reacts quickly to swat Mr. Qaisar's hand away and proceeds to take her child out the pharmacy.

The Hearing Tribunal finds it discomfoting that Mr. Qaisar did not read the body language and acknowledge the hesitation of the child in escalating his advances towards the child. The child hesitates with every advance that Mr. Qaisar makes. Mr. Qaisar should have known that he was causing the child some discomfort with his advances, but in his enthusiasm to bless the child, in his words, he continued to impose himself upon the child.

The Hearing Tribunal would expect that Mr. Qaisar, while acting in the role of a pharmacist and healthcare professional, should have acted not on his impulses but on what would be best for the child. The child did not return Mr. Qaisar's enthusiasm for the interaction. As a professional, Mr. Qaisar should have paused and considered how the child would see and feel his interaction with him. Finally, given the mother's reaction after the last touch, Mr. Qaisar is seen to have gone too far.

Communication skills are competencies expected of a pharmacist. These skills include assessing an individual's body language, assessing how the interaction is proceeding, and determining the comfort level of the individual. The child was a vulnerable individual and Mr. Qaisar should have known and behaved accordingly. Mr. Qaisar should have erred on the side of caution in his interaction with the child.

The Hearing Tribunal agrees with the College that touching of a very young member of the public in the groin area was inappropriate and was a serious personal boundary violation. As there was video evidence and an admission from Mr. Qaisar that he did touch the child on the upper, inner thigh, the standard of proof, on the balance of probabilities, is met.

Mr. Aujla argued that since the criminal charges were stayed in the criminal courts, the Hearing Tribunal should dismiss these allegations. The Hearing Tribunal did not accept Mr. Aujla's argument. The criminal charges arose from the same incident, but the issue before this Hearing Tribunal is about whether Mr. Qaisar was derelict in his duty as a pharmacist not whether he committed a crime. The Hearing Tribunal assessed this incident through a different lens and with a different burden of proof. The Hearing Tribunal holds that it must fulfill its duty as outlined under the Act and hear the allegations in this case.

Finding of Unprofessional Conduct

The Hearing Tribunal, in finding that the allegations have been proven, further deliberated and determined that the allegations are serious enough to constitute unprofessional conduct as defined in the *Health Professions Act*, R.S.A. 2000, c. H-7.

Mr. Aujla argued that Mr. Qaisar's intentions were not to harm the child but rather to bless the child. Mr. Qaisar had no sexual intentions towards the child. The Hearing Tribunal accepts Mr. Aujla's argument that Mr. Qaisar's advances were not sexual. In addition, the incident took place in a public pharmacy with the mother standing beside the child. However, the College did not allege that the incident was a sexual boundary violation, but rather a personal boundary violation.

Mr. Jardine argued that the allegations did not hinge on Mr. Qaisar's intentions, only that he did touch the child inappropriately. The intention of Mr. Qaisar is not the issue. His actual behaviour during the incident as can be seen in the video and the lack of insight into why the situation was serious, as demonstrated in his testimony during the hearing, is the issue. The mother's reaction as clearly seen in the video strongly suggests that Mr. Qaisar touched the child inappropriately.

Mr. Aujla, during his closing summation, took great care to highlight the nature of the relationship that Mr. Qaisar had with CD and AB. While less was said about how familiar AB was with Mr. Qaisar, there was a difference between how CD and Mr. Qaisar characterized their relationship. Mr. Aujla asserted that CD and AB were like family to Mr. Qaisar. CD did not see the relationship in that way and characterized it as an acquaintance.

The Hearing Tribunal considered the nature of the relationship in weighing its decision. The Hearing Tribunal determined that while in the pharmacy, Mr. Qaisar was acting as a pharmacist with all the rights and responsibilities that come with that role. CD had come into the pharmacy to purchase chips for her child, she was a customer in that moment and she was a member of the public, as was her child. She had a right to expect that Mr. Qaisar would act friendly but professionally in the interaction with her and her son. Given the expectations of a pharmacist, in this role, in this setting, the nature of the relationship was given less weight.

Mr. Aujla asserts that as Mr. Qaisar gave money as gifts and as a loan to CD that it establishes that they were more than work colleagues and were indeed friends. The Hearing Tribunal sees this admission as further evidence that Mr. Qaisar is not clear about professional or personal boundaries. The Hearing Tribunal believes Mr. Qaisar requires education about what would be appropriate behaviour as a pharmacist in this professional environment and how to set strong professional boundaries with employees, with work colleagues, and most importantly with members of the public and patients.

Mr. Aujla asserts that the mother overreacted to what she saw when Mr. Qaisar touched her son. From the video, and from the time stamps in the video, it is unlikely that Mr. Qaisar would have grabbed AB's penis and shook it as alleged by CD, in the

short time frame seen in the video. Mr. Qaisar however, could be seen to touch AB in what would be considered a private area. Given his own testimony about touching the upper, inside thigh of the child, the Hearing Tribunal concludes that it would be considered a touch to the groin area of the child as alleged.

Much in the same way that different people witnessing a car accident will “see” and report different events, we accept what the mother believes she saw. Her reaction was swift in slapping away Mr. Qaisar’s hand. She grabbed her child and fled the pharmacy. Whatever she saw resulted in the swift defense of her child in that moment.

What is also clear in the video is that Mr. Qaisar is surprised and startled by her reaction. When he tells EF, the assistant behind the counter what happened, EF reacts by putting her hand to her mouth and her expression is one of surprise and astonishment. This behaviour as witnessed in the video suggests that something extraordinary occurred.

Whatever the mother believed she saw led to her reaction. Her reaction is not surprising given that Mr. Qaisar touched her 3-year son in the groin area. The touch crossed a line, a boundary, as defined by the mother and her reaction was swift.

While cultural differences were raised as a defense for Mr. Qaisar’s misunderstanding and for his behaviour, the Hearing Tribunal rejects the argument that the incident was a result of a misunderstanding of [REDACTED]’ cultural norms. Mr. Qaisar at the time of the incident had practiced for 11 or 12 years in Canada and five years in the [REDACTED] [REDACTED] Mr. Qaisar should have been attuned to the cultural differences in this community, an environment where he practiced full time.

The Hearing Tribunal regrets the consequences of this lapse of judgment on the child, the mother, and on Mr. Qaisar himself. However, Mr. Qaisar’s behaviour on the day of this incident was a serious lapse of judgment and caused the negative consequences for everyone. The Hearing Tribunal could not ignore the behaviour of the pharmacist in this incident. In choosing to touch a three year old child in his pharmacy through tickling him in the groin area, Mr. Qaisar engaged in conduct that harms the integrity of the pharmacy profession.

VI. ORDERS

Submissions on Appropriate Form of Order

With the notice of the Hearing Tribunal’s decision that the allegations of unprofessional conduct were proven, the Hearing Tribunal invited the parties to provide submissions pertaining the appropriate form of orders under s. 82 of the *Health Professions Act*. The Hearing Tribunal requested that Mr. Jardine and Mr. Aujla attempt to agree on whether the submissions would be in writing or in person and on the timing of the submissions. Mr. Jardine and Mr. Aujla provided written submissions on the appropriate form of orders.

The Hearing Tribunal met on March 19, 2014 to consider orders.

Orders

On behalf of the College Mr. Jardine submitted that: Mr. Qaisar should be given a reprimand; be required to take a course on professional boundaries; pay the costs of the investigation and hearing by equal monthly payments over 12 months; be required to provide a copy of the decision of the Hearing Tribunal to the Ontario College of Pharmacists, given that Mr. Qaisar is practicing in Ontario; his practice permit be suspended if he does not comply with the orders; and that a copy of the decision be given to pharmacy governing bodies in other Canadian and territorial jurisdictions.

On behalf of Mr. Qaisar, Mr. Aujla submitted that the orders should be: a caution, a requirement to take a course on professional boundaries, and an order to pay \$2,500 in costs.

Upon consideration of the submissions on appropriate form of order from both Mr. Jardine and Mr. Aujla, the Hearing Tribunal imposes the following on Mr. Qaisar:

1. An order that Mr. Qaisar receives a caution as a result of the decision of the Hearing Tribunal;
2. An order that Mr. Qaisar, at his own cost, will take and successfully complete the Professional Problem-Based Ethics (ProBE) Program offered by The Center for Personalized Education for Physicians within one year from the date that Mr. Qaisar receives the written decision and orders of this Hearing Tribunal, and that Mr. Qaisar is to provide the Complaints Director written evidence of successful completion of the ProBE Program.
3. An order that Mr. Qaisar will pay the costs of the investigation and hearing within two years from the date that Mr. Qaisar receives the written decision and orders of the Hearing Tribunal by equal monthly payments for 24 months;
4. An order that Mr. Qaisar provides evidence satisfactory to the Complaints Director within 45 days from the date that Mr. Qaisar receives the written decision and orders of the Hearing Tribunal, demonstrating that he has provided the Ontario College of Pharmacists with a copy of the Hearing Tribunal's decision and orders;
5. An order that if Mr. Qaisar fails to comply with orders 2 and 4 above within the time periods provided, Mr. Qaisar's practice permit will be suspended until he has complied with the orders.

In imposing a caution upon Mr. Qaisar, the Hearing Tribunal acknowledges that the incident only occurred once. While the incident that gave rise to the complaint is disturbing to the Hearing Tribunal, the Hearing Tribunal acknowledges that there is only evidence of the one incident and that Mr. Qaisar demonstrated appropriate

acknowledgement of the incident and apologized quickly, in writing, to the complainant. It is also important to note that while the inappropriate touching was serious, there was no sexual intent by Mr. Qaisar.

The Hearing Tribunal believes that Mr. Qaisar would benefit from education in appropriate professional boundary setting. While Mr. Qaisar admitted that he touched AB, he did not seem to fully grasp why such a gesture in the groin region of the child was inappropriate. During his testimony, the Hearing Tribunal could not determine if Mr. Qaisar understood the gravity of this incident or how his actions had contributed to the reaction of the child's mother. Mr. Qaisar failed to understand that as an adult and a healthcare professional, he has a duty to approach a vulnerable individual, in this case a three year old child, with care. He failed in his duty to put the needs of the child and, by extension, the child's mother, above his own needs to impose himself upon the child.

The Hearing Tribunal has imposed the costs of the investigation and hearing as requested by the Complaints Director, but given the request from Mr. Aujla to consider Mr. Qaisar's financial circumstances, the Hearing Tribunal has given Mr. Qaisar 24 months to pay all costs, rather than the 12 month time frame requested by the Alberta College of Pharmacists.

As Mr. Qaisar is currently licensed with the Ontario College of Pharmacists, the Hearing Tribunal believes that it is reasonable to notify this college of the outcome of this hearing. The Hearing Tribunal has not ordered that the Hearing Tribunal's decision be distributed to other jurisdictions. The Hearing Tribunal expects the decisions and orders of this hearing will be published and therefore publically available. Further, should Mr. Qaisar seek licensure with other jurisdictions, it is the Hearing Tribunal's understanding that jurisdictions customarily seek letters of good standing with previous licensing bodies. It is expected that the Alberta College of Pharmacists would disclose the decision and orders of this Hearing Tribunal if such a request is made of the College.

Signed on behalf of the Hearing Tribunal by
the Chair

Dated: June 20, 2014

Per:
[Catherine McCann]

Catherine McCann