

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

SHANIF BHIMJI

Registration number: 14845

DECISION OF THE HEARING TRIBUNAL

November 9, 2023

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Shanif Bhimji (“Mr. Bhimji”) on October 24, 2023. In attendance on behalf of the Hearing Tribunal were Kevin Kowalchuk (pharmacist and chair), Dana Lyons (pharmacy technician), Sarita Dighe-Bramwell (public member) and Vince Paniak (public member). Maya Gordon acted as independent counsel to the Hearing Tribunal.

The hearing was conducted on October 24, 2023 by way of videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act*, RSA 2000, c. H-7 (“the HPA”).

In attendance at the hearing were Annabritt Chisholm (“Ms. Chisholm”) representing the Complaints Director of the Alberta College of Pharmacy (“College”), James Krempien, Complaints Director for the College, Mr. Bhimji, and his counsel, Jeff Phipps (“Mr. Phipps”)

Margaret Morley (“Ms. Morley”), Hearings Director for the College, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing. There was also a Court Reporter, Jessica Young, who was present.

There were no objections to the composition of the hearing tribunal or the jurisdiction of the hearing tribunal to proceed with a hearing.

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Mr. Bhimji (“the Allegations”), as set out in the Notice of Hearing, which was entered as Exhibit 1, at Tab 1:

IT IS ALLEGED THAT, between June 1, 2022 to September 19, 2022 while you were a registered Alberta pharmacist and the licensee of Script Central Compounding (ACP Licence #4224) (the “Pharmacy”), you:

1. Failed to comply with a condition on the Pharmacy licence that prohibited the Pharmacy from procuring, compounding, repackaging, or selling any narcotic or controlled substance for resale to any community or institutional pharmacy, or any other professional or provider when you arranged or knew about arrangements for the Pharmacy to:
 - a. re-distribute approximately 170 narcotics and controlled substances received from Strathcona Compounding Ltd. through more than 113 deliveries from the Pharmacy to more than 20 community pharmacies.

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and licensee;
- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession;
- d. Failed to fulfill professional and ethical judgement expected and required of an Alberta pharmacy licensee.

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

- Section 10(1)(c) of the *Pharmacy and Drug Act*;
- Standards 1.1 and 2.2 of the Standards for the Operation of Licensed Pharmacies; and
- Principle 7(2) and 10(1) of the ACP's 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 sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the Health Professions Act and misconduct under sections 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the Pharmacy and Drug Act.

The hearing proceeded by way of an Admission of Unprofessional Conduct, an Agreed Statement of Facts, and a Joint Submission on Sanction.

III. PRELIMINARY MATTERS

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

There was no application to close the hearing to the public.

IV. EVIDENCE

Agreed Statement of Facts

No witnesses were called to give testimony and evidence was entered by way of an Agreed Statement of Facts ("2023-10-23 Exhibit Book - Merits.pdf"), which was entered as Exhibit 1. Therefore, the allegations were not contested.

Admission of Unprofessional Conduct

In Exhibit 1, Tab 2, Mr. Bhimji has provided an Admission of Unprofessional Conduct (“the Admission”). Section 70(2) of the HPA states that it cannot be acted upon unless it is accepted in part or in whole by the Hearing Tribunal.

V. SUBMISSIONS REGARDING MERIT

Opening Statements

Ms. Chisholm began with her opening statement of the College. She advised that in Exhibit 1, there is the Notice of Hearing, an Admission of Unprofessional Conduct, and an Agreed Statement of Facts. There is only one charge – which is set out in full above.

She noted that the Hearing Tribunal has two tasks – first, to determine whether the Complaints Director has satisfied the Hearing Tribunal that the facts occurred, on a balance of probabilities. Second, if facts are in fact found, the Hearing Tribunal will need to consider whether those facts are unprofessional conduct under the HPA. If unprofessional conduct is found, sanctions can be spoken to by the parties.

Mr. Phipps was provided an opportunity to make an opening statement as well. He noted that the issue in this case was what really happened. In his view, the present case is very unique. When the Hearing Tribunal reviews previous cases, many of those cases had fact patterns that were very self-evident – there was greed, personal addiction, poor practice. Those are often the issues that come before the Hearing Tribunal. However, in this particular case, it is quite unique, and he asks the members of the Hearing Tribunal to listen to what brings Mr. Bhimji before them today.

Submissions on Behalf of the Complaints Director as to Merit

Ms. Chisholm then went through the Admission of Unprofessional Conduct (Exhibit 1, Tab 2).

She also went through the Agreed Statement of Facts (Exhibit 1, Tab 3). She summarized the facts that were admitted to by Mr. Bhimji and provided the Hearing Tribunal with the facts and background to this matter.

Submissions on Behalf of Mr. Bhimji as to Merit

Mr. Phipps added that facts are presented, in a way, as a “snowstorm”. He suggested that the Hearing Tribunal view the individual snowflake, Mr. Bhimji. The college imposed a condition, prohibiting the pharmacy from procuring, compounding, repackaging, or selling any narcotic or controlled substance for resale to any community or institutional pharmacy or any other professional or provider.

When the communication from Script Central Compounding Pharmacy to the community pharmacies occurred, at the direction of the College, there was communication from the community pharmacies needing information on where they could go for the products. This caused concern. Through those conversations, it led to the option for the community pharmacies to obtain their product through Strathcona Compounding Pharmacy in Edmonton. It had been providing these products to another, associated pharmacy. Since the courier system was already in place with Script Central Compounding Pharmacy for these community pharmacies, the products prepared by Strathcona Compounding Pharmacy for these community pharmacies would be distributed by Script Central Compounding Pharmacy.

Importantly, there was no money being made on these transactions, by Script Central Compounding Pharmacy, and this is not a case that involves an abuse of narcotics – they did not disappear, were not improperly obtained, and were ordered by community pharmacies. Mr. Phipps stated that Mr. Bhimji’s pharmacy was simply a conduit to redistribute drugs, properly ordered by community pharmacists, from Strathcona Compounding to the community pharmacies.

He noted that the issue was with the technical definition of ‘sell’, which brings us to the hearing of Mr. Bhimji. He concluded by noting that unlike many of the other cases which are often before the Hearing Tribunal, there was nothing nefarious here - drugs did not disappear, nobody made money on the side.

Reply Submissions by Ms. Chisholm

Ms. Chisholm noted that there was no agreement between the parties with respect to the submissions that Mr. Phipps had made. She said that the Registrar used a full spectrum verse to promote and make clear that the pharmacy was not permitted to engage in conduct containing narcotics and controlled substances while the condition was in place.

Ms. Chisholm continued that it is the Complaints Director position that Mr. Bhimji had a positive obligation to understand the breadth of that condition, and to refrain from dealing with narcotics and controlled substances while the condition was in place.

Ms. Chisholm impressed that when an agreed statements of facts are entered, Mr. Phipps may make submissions but cannot lead evidence in his submissions. and she confirmed that the only facts that are before the Hearing Tribunal are those that are contained in the Agreed Statement of Facts.

VI. FINDINGS REGARDING MERIT

Facts

After hearing from both parties and being given time to review the Agreed Statement of Facts, the Admission, and the documents contained in Exhibit 1, the Hearing Tribunal accepts the following facts, on a balance of probabilities, which were admitted by Mr. Bhimji:

1. At all relevant times, Mr. Shanif Bhimji (“Mr. Bhimji”) was a registered member of the Alberta College of Pharmacy on the clinical pharmacist register and the licensee of Script Central Compounding (ACP Licence #4224) (the “Pharmacy”).
2. On December 1, 2022, the Complaints Director received an email of complaint from Mr. Greg Eberhart, Registrar, Alberta College of Pharmacy (“Mr. Eberhart”). Mr. Eberhart’s written complaint is attached as Exhibit “A” to this Agreed Statement of Facts.
3. Mr. Eberhart’s complaint expressed his concern that Mr. Bhimji did not comply with a condition on the Pharmacy licence prescribed May 17, 2022, which required that:

The pharmacy may not procure, compound, repackage or sell any narcotic or controlled substance for resale to any community or institutional pharmacy, or any other professional or provider (the “Condition”).

4. In his complaint, Mr. Eberhart indicated that the basis for his complaint was information he received from field officers of the Alberta College of Pharmacy that suggested Mr. Bhimji arranged for the Pharmacy to act as a third-party intermediary in the distribution of narcotics and controlled compounds between another compounding pharmacy and community pharmacies while the Condition was in place.
5. Based on Mr. Eberhart’s complaint, the Complaints Director commenced an investigation into the conduct of Mr. Bhimji.
6. At the end of the investigation, the Complaints Director referred this matter to a hearing. The Complaints Director’s Record of Decision is attached as Exhibit “B” to this Agreed Statement of Facts.

The Investigation

7. On December 2, 2022, the Complaints Director provided Mr. Bhimji with written and verbal notification of the complaint. The Complaints Director’s written notice of complaint and summary of their telephone call are attached as Exhibit “C” and “D” to this Agreed Statement of Facts.
8. On January 2, 2023, Mr. Bhimji provided his written response to the complaint. In his response, Mr. Bhimji stated:
 - i) He took the complaint against him very seriously.
 - ii) He believed he had been complying with the Condition.

- iii) When he was advised of the Condition, the Pharmacy notified community pharmacies that it would be unable to compound narcotics or controlled substances until further notice. The Pharmacy recommended that community pharmacies contact Strathcona Compounding Limited (SCL) or other compounding pharmacies with a Health Canada dealer's licence to obtain compounds containing narcotics or controlled substances.
- iv) The re-distribution process followed by the Pharmacy was:
 - i. SCL would receive a compound request for a narcotic and/or controlled substance.
 - ii. SCL would contact the Pharmacy if it required any formula information.
 - iii. SCL would compound, dispense and invoice the respective pharmacy for its desired product.
 - iv. SCL would have the order sent to the Pharmacy's compounding distribution center in its final compounded form with its packaging, label and Health Canada documentation.
 - v. The Pharmacy would receive the final product and ensure it was sent to the correct location.
 - vi. The Pharmacy did not open, re-label or tamper with the compounds it received from SCL.
 - vii. The Pharmacy used its couriers to distribute the compounds it received from SCL to the requesting community pharmacies.
 - viii. The compounds received by the Pharmacy from SCL were not entered into the Pharmacy's database.
- v) The re-distribution process above was followed by the Pharmacy between June 1, 2022 and September 19, 2022.
- vi) During this time, the Pharmacy re-distributed 170 narcotics and controlled substances to 24 community pharmacies, with the majority of the re-distributions (97/170) going to four pharmacies.
- vii) The Pharmacy ceased re-distributing items on behalf of SCL following a phone call between Mr. Bhimji and field officers of the Alberta College of Pharmacy on September 19, 2022.
- viii) Health Canada granted the Pharmacy a dealer's licence for narcotics and controlled substances on November 1, 2022.
- ix) The Condition was lifted from the pharmacy licence on December 1, 2022.

Attached as Exhibit "E" to this Agreed Statement of Facts is the written response and enclosures provided by Mr. Bhimji to the Complaints Director.

9. An analysis of the re-distributed items is provided as Exhibit “F” to this Agreed Statement of Facts.
10. Between May 17, 2022 and September 19, 2022 Mr. Bhimji did not communicate with anyone at the Alberta College of Pharmacy to confirm whether the re-distribution process being followed by the Pharmacy was allowed under the Condition.
11. Section 1(1)(cc) of the *Pharmacy and Drug Act* defines “sell” as including:
 - i) to distribute, trade or barter in exchange for money or other valuable consideration.
 - ii) to distribute or give away without expectation or hope of compensation or reward,
 - iii) to keep for sale, and
 - iv) to advertise or offer for sale;

Mr. Bhimji was not aware of the definition of sell as it is defined in section 1(1)(cc)(ii) in the *Pharmacy and Drug Act*.

Registration History

12. Mr. Bhimji has been registered with the Alberta College of Pharmacy on the clinical pharmacist register since January 2, 2020.
13. Mr. Bhimji has served as the licensee of the Pharmacy since March 14, 2022.
14. There have been no prior complaints or findings of unprofessional conduct against Mr. Bhimji.

Acknowledgment of Right to Legal Advice

15. Mr. Bhimji acknowledges that he has received legal advice prior to entering this Agreed Statement of Facts and that he understands that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing and in considering appropriate sanctions.

Unprofessional Conduct

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the HPA, which includes the following:

- (pp) unprofessional conduct” means one or more of the following, whether it is disgraceful or dishonourable:
 - (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
 - (ii) contravention of this Act, a code of ethics or standards of practice;

- (iii) contravention of another enactment that applies to the profession;
- ...
- (xii) conduct that harms the integrity of the regulated profession;

The Hearing Tribunal finds that the facts found, as expressed above, do constitute unprofessional conduct.

In his signed Admission of Unprofessional Conduct, Mr. Bhimji agreed and acknowledged that his conduct in these matters:

- Breached his statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and licensee;
- Undermined the integrity of the profession;
- Decreased the public's trust in the profession; and
- Failed to fulfill professional and ethical obligations expected and required of an Alberta pharmacy licensee.

Mr. Bhimji demonstrated a lack of knowledge, skill, and judgment in the provision of professional services. A pharmacy licensee has the responsibility and obligation to be knowledgeable of all the regulations that govern the practice of pharmacy. The pharmacy licensee also has the responsibility and obligation to seek clarity if they do not understand the intent and/or the spirit of a particular regulation. The essential behaviors of a pharmacy licensee described above was not demonstrated by Mr. Bhimji.

In addition, the Hearing Tribunal agrees with both parties that that the conduct constitutes breaches of the following statutes and standards governing the profession of pharmacy, which were expressly acknowledged as breached by Mr. Bhimji in his signed Admission of Unprofessional Conduct:

- Section 10(1)(c) of the *Pharmacy and Drug Act*;
- Standards 1.1 and 2.2 of the Standards for the Operation of Licensed Pharmacies; and
- Principles 7(2) and 10(1) of the ACP Code of Ethics.

Mr. Bhimji displayed a lack of knowledge and awareness of the regulations and exhibited poor judgement by applying his own interpretation, without consultation of the college, of the regulations even though the regulations clearly provide the definition of "sell" which includes the circumstance "to distribute or give away without expectation or hope of compensation or reward."

Finally, Mr. Bhimji's conduct also undermined the integrity of the profession because his decisions undermined both the intent and spirit of the regulations that are established to protect the public and as a consequence erodes the trust that the public places in the profession.

As such, the Hearing Tribunal finds that Mr. Bhimji is guilty of unprofessional conduct as his conduct demonstrated a lack of knowledge, skill, and judgment in the provision of professional services, it was a contravention of the codes and standards applicable to his profession and it undermined the integrity of the profession.

VII. SUBMISSIONS ON SANCTIONS

Submissions on Behalf of the Complaints Director as to Sanction

As an initial matter, the parties submitted a document entitled "2023-10-23 Exhibit Book - Sanctions.pdf" as Exhibit 2. The Hearing Tribunal admitted that document as Exhibit 2, and it was reviewed by the Hearing Tribunal after submission.

Ms. Chisholm went over the sentencing principles applicable to this case. She pointed to a text on the Regulation of Professions in Canada (excerpt included in Exhibit 2) on the four purposes of sanctions:

- i. Protection of public;
- ii. Maintaining the integrity of the profession;
- iii. Fairness to the member; and
- iv. Specific and general deterrence.

In ensuring that its decision meets these purposes, the Hearing Tribunal can review the decision of *Jaswal v. Medical Board of Newfoundland* (1996) 42 Admin L.R. (2d) 233 (Nfld. T.D.) (Exhibit 2, Tab 2).

Ms. Chisholm made the following submissions on each of the *Jaswal* factors:

1. **The nature and gravity of the proven allegations:** These allegations are not the most serious allegations. There was no patient harm, and no money earned. However, he did not confirm with the College – it is problematic when a licensee is not aware of the definition of 'sell' and he took no steps to confirm his pharmacy was in compliance. The College is tasked with ensuring the integrity of the distribution system and must ensure that all licensees know and follow the requirements.
2. **Age and experience of the offending member:** Mr. Bhimji has been a licensee since March 2022. This is not a long time but given his position of trust and his obligations as a licensee, his short tenure is not a mitigating factor.
3. **Previous character of the member (presence or absence of any prior complaints or convictions):** There are no other findings or complaints against Mr. Bhimji. This is a factor that weighs in Mr. Bhimji's favour.

4. **Age and mental condition of the offended patient:** Not relevant.
5. **The number of times the offence was proven to have occurred:** This occurred, the Pharmacy re-distributed 170 narcotics and controlled substances to 24 community pharmacies.
6. **Role of the factor in acknowledging what had occurred:** Mr. Bhimji admitted his conduct; he entered into an Agreed Statement of Facts. This demonstrated an understanding that his conduct was misconduct, and he has allowed this procedure to proceed in an agreed manner.
7. **Whether member has suffered financial or other serious penalties:** The Complaints Director was not aware of any other financial or serious penalties.
8. **Impact on offended patient:** Not relevant.
9. **The presence or absence of any mitigating circumstances:** As already noted, Mr. Bhimji has admitted and acknowledged his unprofessional conduct, which was appropriate accountability on his part.
10. **The need to promote specific and general deterrence and, thereby, to protect the public and ensure the safe and proper practice of medicine:** In short, the sanctions should ensure that Mr. Bhimji does not repeat this conduct and should send a message to other members of the profession to not engage in the same conduct. The deterrent effect of the sanctions will remind Mr. Bhimji and other licensees of the importance of upholding their obligations and that the failure to do so will create consequences.
11. **Need to maintain the public confidence and integrity of the profession:** It is important to send a clear message to legislators and the public that the College takes its role seriously.
12. **Degree to which the conduct falls outside the range of permitted conduct:** As noted above, this conduct is on the lower end of the spectrum.
13. **Range of sentences in other similar cases:** The Joint Exhibit Book on Sanction included two cases with similar complaints where the sanctions are comparable to the ones being proposed here, although the Hearing Tribunal is not bound by these, but submissions should be comparable for similar conduct:
 - a. In the case of Kevin Hill, dated May 15, 2019, the pharmacist was the licensee of a pharmacy where there was a failure to protect and secure the pharmacy's narcotic inventory. The failure by the pharmacy licensee to implement and maintain proper records, consistent tracking and the performance of regular audits resulted in substantial narcotic loss, theft, and diversion. In this case, the individual received an order for monitoring by a college field officer conducting three visits a year for a period of two years

where the pharmacist would be responsible for the costs of each visit, a fine of \$5,000, and payment of costs of the hearing to a maximum of \$8,000.

- b. In the case of O. Edomwonyi, dated March 21, 2022, the pharmacist was an owner and proprietor of a pharmacy that was failing to provide appropriate supervision on an unregulated employee, who was, among other things, administering injections without authorization, failed to provide required clinical assessments of the patients impacted and also did not maintain the required record keeping. In this case, the individual received a 3-month suspension, fine of \$2,500, had to provide the decision to any employer or licensee for a period of three years, and payment of costs of the hearing to a maximum of \$10,000.

It is the Complaint's Director's submission that that the following orders, which form the Joint Submission on Sanction, meet the purposes of sentencing, and the public interest test set out below:

1. Mr. Bhimji shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Script Central Compounding (ACP Licence #4224) shall be monitored by a field officer of the College for a period of three years, commencing from the date of the Hearing Tribunal's written decision. The monitoring shall consist of a field officer conducting two visits of the Pharmacy over the three-year period. Mr. Bhimji shall be responsible for the costs of each visit, which shall be the Re-inspection Fee in the College's Schedule of Fees as amended from time to time. Mr. Bhimji shall also be responsible for any costs associated with complying with any directions issued by the field officer.
3. If, within three years from the date of the Hearing Tribunal's written decision, the Complaints Director receives a report from
 - a. a field officer under Order 2 above, or
 - b. a representative of Health Canada

that identifies a failure of the Pharmacy or Mr. Bhimji to comply with any legal or regulatory requirements related to the Pharmacy's provision of narcotics to other pharmacies, then the Complaints Director may prohibit Mr. Bhimji from serving as a licensee of a pharmacy until such time as the reported compliance issues are investigated and fully resolved or the Complaints Director is satisfied that the reported compliance issues have been corrected.

4. Mr. Bhimji shall provide all regulated members employed at the Pharmacy with a copy of the Hearing Tribunal's decision for a period of three years, commencing from the date of the Hearing Tribunal's written decision.

5. Mr. Bhimji shall pay for the costs of the investigation and hearing to a maximum of \$15,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months from the date Mr. Bhimji receives a copy of the Hearing Tribunal's written decision.

Ms. Chisholm then advised that when it comes to joint submissions on sanction, the Supreme Court of Canada's decision in *R. v. Anthony Cook*, 2016 SCC 43 ("*Anthony-Cook*"), confirmed that the correct test "is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest." If neither of those tests are met, the Hearing Tribunal must exercise a very high level of deference to the joint submission of the parties.

If the Hearing Tribunal wishes to alter the joint submission on sanction in any way, the *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 case suggests that the Hearing Tribunal would be required to come back to the parties with the proposed alteration, to allow both parties to make submissions on it, prior to making such an order.

To conclude, in the submission of the Complaints Director, the proposed sanction meets the four purposes of sentencing, and it also meets the public interest test. The sanctions are serious enough to create deterrence, to protect the public, and to maintain the integrity of the profession, going forward.

Submissions on Behalf of Mr. Bhimji as to Sanction

Mr. Phipps was given an opportunity to reply. He noted that there was a Joint Submission on Sanction which had been agreed upon by the parties.

This was Mr. Bhimji's first appearance before the Hearing Tribunal. He had dealt with this in the most efficient and accountable way possible, and the Joint Submission on Sanction is appropriate in this case and is designed to meet the requirements of deterrence referenced by Ms. Chisholm.

Inquiries from the Hearing Tribunal

After reviewing the submissions on the Joint Sanction, the Hearing Tribunal noted that the decision of *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 ("*Jinnah*") changed the law in November 2022.

The Court of Appeal wrote in *Jinnah* that professions should bear most, if not all costs associated with the privilege and responsibility of self-regulation in cases when there is a request to impose a significant portion of the costs of an investigation into and hearing of a complaint unless:

1. A member has committed serious unprofessional conduct,
2. Is a serial offender,
3. Has failed to cooperate with investigators, or

4. Has engaged in hearing misconduct.

The Hearing Tribunal asked the parties for submissions on the *Jinnah* decision.

Ms. Chisholm started by noting that costs of the investigation and hearing were slightly less than \$7,000 by September, but that did not consider the lead-up to the hearing, the preparation, and the hearing itself, and therefore the \$15,000 would likely provide full indemnification of the costs of the investigation and the hearing in this case.

In *Jinnah*, it was not a matter that proceeded by agreement, and it was fully contested. That is not the case here today and it can be distinguished from matters reached by agreement. After receiving legal advice, it was determined by Mr. Bhimji that the costs were appropriate in this case.

The Hearing Tribunal also asked for submissions on why a fine was not included in the proposed sanction. Both parties were aware of and discussed the range of permitted orders. Unlike the Hill matter, it does not deal with a fact pattern where narcotics are not accounted for, and unlike the Edomwonyi matter, patient care was not affected in this case.

Mr. Phipps agreed with Ms. Chisholm in terms of the distinguishing factors in the cases provided to the Hearing Tribunal and the current case. In Hill, there were missing morphine tablets, some suspect record-keeping, and he ended up with a \$5,000 fine. In the Edomwonyi case, the public was put into harm's way with unauthorized injections, and other concerns that go beyond the material aspects of this case. Mr. Bhimji was caught by the unusual definition of "sale". The joint submission was worked out between counsel over an extended period of time and after a long discussion between both parties, with the benefit of legal advice.

In terms of costs, Mr. Phipps noted that the proposed sanction was a "maximum of \$15,000". He assumes that there would be some consideration to the actual number, and that simply put a cap on the maximum.

VIII. ORDERS

Order of the Hearing Tribunal

After a consideration of the joint submission on sanction, the Hearing Tribunal orders the following, in accordance with the joint submission:

1. Mr. Bhimji shall receive a reprimand, which the Hearing Tribunal's written decision shall serve as.
2. Script Central Compounding (ACP Licence #4224) (the "Pharmacy") shall be monitored by a field officer of the College for a period of three years, commencing from the date of the Hearing Tribunal's written decision. The monitoring shall consist of a field officer conducting two visits of the Pharmacy over the three-year period. Mr. Bhimji shall be responsible for

the costs of each visit, which shall be the Re-inspection Fee in the College's Schedule of Fees as amended from time to time. Mr. Bhimji shall also be responsible for any costs associated with complying with any directions issued by the field officer.

3. If, within three years from the date of the Hearing Tribunal's written decision, the Complaints Director receives a report from
 - a. a field officer under Order 2 above, or
 - b. a representative of Health Canada

that identifies a failure of the Pharmacy or Mr. Bhimji to comply with any legal or regulatory requirements related to the Pharmacy's provision of narcotics to other pharmacies, then the Complaints Director may prohibit Mr. Bhimji from serving as a licensee of a pharmacy until such time as the reported compliance issues are investigated and fully resolved or the Complaints Director is satisfied that the reported compliance issues have been corrected.

4. Mr. Bhimji shall provide all regulated members employed at the Pharmacy with a copy of the Hearing Tribunal's decision for a period of three years, commencing from the date of the Hearing Tribunal's written decision.
5. Mr. Bhimji shall pay for the costs of the investigation and hearing to a maximum of \$15,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months from the date Mr. Bhimji receives a copy of the Hearing Tribunal's written decision.

Reasoning of the Hearing Tribunal

It is the opinion of Hearing Tribunal that this sanction is fair and appropriate in the circumstances.

It protects the public by ensuring that Mr. Bhimji is being educated about proper practices for licensees, which is being supported by the issuance of this decision and the hearing process. The Hearing Tribunal is satisfied that by his participation in the process, Mr. Bhimji is now aware and better educated about the importance of ensuring his practice meets the requirements established in the legislation, the Standards, and the Codes of Ethics applicable to him. By ensuring this, the threat to the public caused by this conduct is significantly reduced.

In addition, these sanctions maintain the integrity of the profession. Mr. Bhimji shall be monitored by a field officer of the College for a period of three years. Mr. Bhimji will be responsible for the costs of each visit and also having the responsibility to pay the costs of the hearing, is a significant financial sanction which demonstrates that the College takes this conduct seriously and that other members of the profession and the public are assured that this conduct shall not be taken lightly.

It is also a sanction which is fair to Mr. Bhimji. It was developed, ultimately, with his agreement, with the consultation of his lawyer.

And finally, it establishes both general and specific deterrence as per the sanctions expressed above, which will show other members of the profession that this conduct will not be tolerated. It also specifically deters Mr. Bhimji, as given his involvement in the investigation and hearing of this matter, he is being deterred from this conduct occurring again.

In addition, the Hearing Tribunal has considered the factors in a *Jaswal* decision and the parties' submissions on those factors and has concluded that this is a fair and appropriate sanction in this case.

Specific Reasoning on Costs

The Hearing Tribunal wishes to make it clear that it considered the direction in *Jinnah* carefully and made efforts to ensure that the costs award in this case aligns with the principles set out in that decision.

In this case, the parties' submissions were essentially that because they agreed upon costs, those costs should be respected by the Hearing Tribunal. Neither party really addressed the Hearing Tribunal's questions as to which category of costs this case fell into pursuant to the *Jinnah* decision, even though there was some suggestion that once all the costs were tallied, it may end up being full indemnification.

The Hearing Tribunal does not read the *Jinnah* decision as having preconditions to *any* cost award, and it takes the positions of the parties that in this case that *Jinnah* may be distinguishable because in this case, the parties came to an agreement on costs.

The Hearing Tribunal is cognizant of the *Anthony-Cook* decision and does not feel that the sanction in this case goes beyond the public interest test, as set out in that decision at para. 34:


Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold - and for good reason, as I shall explain.

After consideration of the proposed joint submission on sanction in this case, the Hearing Tribunal did not feel that it raises to the level that the proper functioning of the justice system had broken down. And it acknowledges the "undeniably high threshold" of deference owed to joint submissions, like the one reached in this case.

That being said, the Hearing Tribunal wishes the parties to be aware that following the *Jinnah* decision, any request for costs, even in a joint submission, should engage with

and address the *Jinnah* decision in the submissions. This would be especially so in a case like this where it may be possible (although the Hearing Tribunal does not have evidence on this point) that the costs award may result in a high or full indemnification of the costs of the investigation and the hearing.

Signed on behalf of the Hearing Tribunal by the Chair on the 9th day of November, 2023.

Per: 
[Kevin Kowalchuk \(Nov 9, 2023 18:53 MST\)](#)

Kevin Kowalchuk, Chair