

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE *HEALTH PROFESSIONS ACT*

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**ELO CYMBALUK**  
Registration number: 5213

**DECISION OF THE HEARING TRIBUNAL**

July 29, 2021

## **I. INTRODUCTION**

On April 30, 2021, the Hearing Tribunal held a hearing into the conduct of Elo Cymbaluk. In attendance on behalf of the Hearing Tribunal were Pat Matusko, public member; David Rolfe, public member; Naeem Ladhani, pharmacist; and Mary Gunther, pharmacist and chair.

The hearing took place via videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were: Mr. James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”); Ms. Paula Hale, legal counsel representing the Complaints Director; Mr. Elo Cymbaluk, Investigated Member; and Mr. Ed O’Neill, legal counsel representing Mr. Cymbaluk. Mr. Jason Kully was also in attendance, acting as independent counsel for the Hearing Tribunal.

Margaret Morley, Hearing Director, was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing.

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. Cymbaluk, as set out in the Notice of Hearing which was included in the Combined Exhibit Book that was marked as Exhibit 1:

IT IS ALLEGED THAT:

1. Between December 2019 and November 2020, while you were employed as both a registered Alberta pharmacist and an Alberta pharmacy licensee at Medical Pharmacy (ACP #2773), you diverted approximately 36 tablets of 20 mg tadalafil without a valid prescription.

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 a pharmacy licensee,
- b. Undermined the integrity of the profession,
- c. Decreased the public’s trust in the profession, and
- d. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and an Alberta pharmacy licensee.

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

with respect to your conduct as a registered Alberta pharmacist:

- Standard 1 and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians,
- Principle 10 (1, 2) of the Alberta College of Pharmacy's Code of Ethics,
- Section 31(2)(a) of the *Pharmacy and Drug Act* (which is an offence),

with respect to your conduct as an Alberta pharmacy licensee:

- Standard 1 and sub-standard 1.1 of the Standards for the Operation of Licensed Pharmacies, and
- Sections 10(1)(a), 10(1)(d)(i) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*.

and that your conduct set out above and the breach of some or all of these provisions constitutes unprofessional conduct pursuant to sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the *Health Professions Act* and constitutes misconduct under sections 1(1)(p)(i) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

### **III. EVIDENCE AND SUBMISSIONS**

The hearing proceeded with an Agreed Statement of Facts and an Admission of Unprofessional Conduct on the part of Investigated Member, Elo Cymbaluk. No witnesses were called to testify.

The following exhibits were entered by agreement of the parties:

Exhibit 1: April 30, 2021, Combined Exhibit Book, which included the Notice of Hearing, an Admission of Unprofessional Conduct, and an Agreed Statement of Facts & Exhibits

#### **Agreed Statement of Facts**

The Agreed Statement of Facts submitted states:

1. At all relevant times, Mr. Cymbaluk was a registered member of the Alberta College of Pharmacy on the clinical pharmacist register and a licensee of Medical Pharmacy (ACP# 2773).
2. On December 18, 2020, the Complaints Director received an email of complaint from [REDACTED], Medical Pharmacies Group Ltd. [REDACTED] email of complaint and enclosed attachments are attached as Exhibit "A" to the Agreed Statement of Facts.

3. Based on Mr. [REDACTED]'s letter of complaint, the Complaints Director commenced an investigation into the conduct of Mr. Cymbaluk. This investigation resulted in this complaint being referred to a hearing.

#### Facts Relevant to the Complaint

4. On December 21, 2020, the Complaints Director wrote to Mr. Cymbaluk and requested that he review the Complainant's concerns and provide him with a written response to the complaint, including any relevant materials. Specifically, the Complaints Director asked Mr. Cymbaluk to respond to the following allegations:
  - a. Your description of the methods you may have used in obtaining tadalafil and any other medications, for you without a valid prescription or in any manner contrary to the standards of practice;
  - b. A full accounting of the total quantities of tadalafil and other medications you may have obtained from the pharmacy without a valid prescription or in any manner contrary to the standards of practice;
  - c. An accounting of the date range over which any diversions of medication by you may have occurred; and
  - d. An accounting as to the extent of the user(s) of any diverted tadalafil and any other medications (i.e., Did you divert any medications for beyond personal use, whether or not you gained financially for any diversions beyond person use?).
5. Attached as Exhibit "B" to this Agreed Statement of Facts is the letter and enclosures provided by the Complaints Director to Mr. Cymbaluk.
6. On December 21, 2020, the Complaints Director had a phone conversation with Mr. Cymbaluk. A summary of the conversation is attached as Exhibit "C" to the Agreed Statement of Facts.
7. On January 4, 2021, the Complaints Director received Mr. Cymbaluk's written response to the complaint. In his written response to the complaint, Mr. Cymbaluk:
  - a. admitted to diverting a total of 36 tablets of tadalafil from the pharmacy between December 2019 to November 2020 on 5 occasions. He would order the molecule from McKesson Canada without a prescription and without paying for the product. He would change the min/max order parameters on the drug card in Kroll and when the product arrived at the pharmacy, he would reset the inventory and the min/max parameters on the drug card; and
  - b. indicated that this was the only time frame that he ever did this and tadalafil 20 mg is the only molecule that he diverted. He advised that

he never sold or gave the medication to anyone and it was for the sole purpose of personal use.

8. Mr. Cymbaluk's written response to the complaint is attached as Exhibit "D" to the Agreed Statement of Facts.
9. On January 19, 2021, the Complaints Director had a phone conversation with Mr. Cymbaluk. During the interview, Mr. Cymbaluk:
  - a. admitted to his diversion of tadalafil from Medical Pharmacies LTC,
  - b. did not dispute the pharmacy's records that indicated he diverted a total of 36 tadalafil tablets on 5 separate occasions,
  - c. indicated that all the tadalafil tablets he diverted from his pharmacy was for his personal use only,
  - d. admitted that he manipulated the drugs' electronic inventory records at his pharmacy to trigger an order for the drugs and to conceal his diversions,
  - e. indicated that no patient records were altered, and no false patient records were created by him as part of his diversions, and
  - f. advised that he has not been practicing pharmacy since his employment termination with Medical Pharmacies and indicated that his conduct has changed his life and he regrets his actions.
10. The Complaints Director's summary of the meeting is attached as Exhibit "E" to the Agreed Statement of Facts.

The exhibits referred to in the Agreed Statements of Facts or referred to in other parts of the decision have not been reproduced but are part of the record of proceedings.

#### Admission of Unprofessional Conduct

In the Admission of Unprofessional Conduct, Mr. Cymbaluk admitted that, between December 2019 and November 2020, while he was employed as a registered Alberta pharmacist at Medical Pharmacy, he diverted approximately 36 tablets of tadalafil 20mg from the Medical Pharmacy on five separate occasions without a valid prescription.

Mr. Cymbaluk also agreed and acknowledged that his conduct breached his statutory and regulatory obligations to the College as a pharmacist and as a pharmacy licensee, undermined the integrity of the profession, decreased the public's trust in the profession, and that he failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and an Alberta pharmacy licensee. Mr. Cymbaluk further agreed and acknowledged that his conduct breached Standard 1 and sub-sections 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians; Principles 10(1) and 10(2) of the Alberta College of Pharmacy Code of Ethics; Section 31(2)(a) of the *Pharmacy and Drug Act* which is an

offence; Standard 1 and sub-standard 1.1 of the Standards for the Operation of Licensed Pharmacies, and Sections 10(1)(a), 10(1)(d)(i) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*.

Mr. Cymbaluk admitted that his conduct constitutes “unprofessional conduct” as defined in sections 1(1)(pp)(ii), 1(1)(pp)(iii), and 1(1)(pp)(xii) of the HPA, as well misconduct pursuant to sections 1(1)(p)(i), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

### Submissions

Ms. Hale made submissions on behalf of the College.

Ms. Hale stated the Tribunal’s task was to determine whether the allegation in the Notice of Hearing had been factually proven on a balance of probabilities, and if so whether the proven allegation constituted unprofessional conduct under the HPA.

Ms. Hale reviewed the Notice of Hearing and advised the allegation before the Tribunal was that between December 2019 and November 2020, while Mr. Cymbaluk was acting as both a pharmacist and a licensee, diverted approximately 36 tablets of 20 mg tadalafil without a prescription.

Ms. Hale then reviewed the Agreed Statement of Facts, including the attached exhibits. She advised Mr. Cymbaluk was acting as a pharmacist and licensee and that, while acting in that capacity, over a period of approximately 11 months and across 5 different occasions, Mr. Cymbaluk diverted a total of 36 tablets of tadalafil 20mg. Ms. Hale went on to emphasize several facts about the transactions. First, she emphasized that Mr. Cymbaluk was the licensee at the time of the transactions, so the Complaints Director was of the view that there was an elevated expectation of a pharmacist that was acting as a licensee. Second, she stated the tablets were dispensed without a prescription and this was not a case where tablets were diverted for a documented diagnosed condition. There was no documented medical reason for the diversion. Third, Mr. Cymbaluk had to manipulate the drug inventory system and this suggested planning and intention. It was not a single compulsive decision. Finally, Mr. Cymbaluk did not pay for the drugs.

Ms. Hale stated there was sufficient compelling and cogent evidence that the conduct underlying the allegations occurred.

Ms. Hale recognized that when Mr. Cymbaluk was confronted by his employer, he was very honest and forthright and that he immediately acknowledged his conduct and accepted responsibility. She indicated the same could be said with respect to the College’s investigation.

Ms. Hale then turned to the issue of whether the conduct constituted unprofessional conduct. She submitted that Mr. Cymbaluk’s signed Admission of Unprofessional Conduct was compelling as it was a very clear admission on the part of Mr. Cymbaluk. She went on to state that a drug diversion is conduct that detracts from the integrity of the profession, is dishonest, and breaches the provisions of both the HPA and the *Pharmacy and Drug Act*.

Mr. O'Neill made submissions on behalf of Mr. Cymbaluk. Mr. O'Neill advised that Mr. Cymbaluk acknowledged that the conduct occurred and that it was unprofessional. Mr. O'Neill then provided clarification that the diversion was for a total of 36 tablets of tadalafil, occurring over 5 instances, not 5 instances of 36 tablets each. Ms. Hale agreed that Mr. O'Neill's characterization of the conduct was correct and that it was the intention of the document to indicate that the total number of 36 tablets was diverted over the 5 occasions.

#### **IV. FINDINGS**

The members of the Hearing Tribunal accepted Mr. Cymbaluk's admission of unprofessional conduct and concluded the allegations were proven on a balance of probabilities and that the conduct constituted unprofessional conduct as defined in the HPA and misconduct pursuant to the *Pharmacy and Drug Act*.

In determining that the allegations were proven, and that Mr. Cymbaluk's admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts & Exhibits submitted by the parties, as well as the Admission of Unprofessional Conduct.

The reasons for the Hearing Tribunal's findings that the allegations in the Notice of Hearing are factually proven on a balance of probabilities are as follows.

With respect to the single allegation, Mr. Cymbaluk acknowledged and admitted that he engaged in the conduct as alleged. In addition, the facts and evidence demonstrated that the allegation was factually proven.

The facts and evidence demonstrate that Mr. Cymbaluk diverted a total of 36 tablets of Tadalafil from the Medical Pharmacy (ACP #2773) between December 2019 to November 2020 on 5 occasions. Mr. Cymbaluk would order the tadalafil from McKesson Canada without a prescription and without paying for it. He would manipulate the Kroll on-hand quantity and change the minimum/maximum order parameters on the drug card in Kroll to trigger an order. When the product arrived at the pharmacy, he would take the quantity of tadalafil out of the inventory and then reset the inventory and the minimum/maximum parameters on the drug card. Purchase records showed a total of 36 tadalafil 20 mg tablets ordered but there were no corresponding prescriptions and zero inventory at the pharmacy. When Mr. Cymbaluk's employer discovered this issue, Mr. Cymbaluk admitted his actions and expressed extreme remorse and regret.

The facts and evidence also indicated that tadalafil was the only drug diverted and that Mr. Cymbaluk only diverted the drug for the sole purpose of personal use. It was never sold or given to anyone else.

The Hearing Tribunal's reasons for finding that the proven conduct amounts to unprofessional conduct are as follows.

Diversion of tadalafil, a Schedule 1 medication, from the pharmacy without a prescription is dishonest conduct that undermines the integrity of the profession. Such conduct decreases the public's trust in the profession. Mr. Cymbaluk's conduct also demonstrated that he allowed his

professional judgment to be impaired and compromised by his self-interest as he diverted the drug for his personal use. The public should be entitled to expect that pharmacists will not allow their own interests to take precedence over their professional obligations and judgment.

This case involves 5 occasions over approximately one year where Mr. Cymbaluk diverted tadalafil from the pharmacy for his personal use. In doing so, he abused his employer's trust in a manner that undermined his role as both a pharmacist and licensee. This was not an isolated incident or a single mistake. It was also not a spontaneous or impulsive decision. Mr. Cymbaluk repeated his conduct and the facts indicate that his actions were planned.

In addition, Mr. Cymbaluk was the licensee at the time of the transactions. The Tribunal agrees that there was an elevated expectation of Mr. Cymbaluk while he was acting as a licensee.

Mr. Cymbaluk engaged in conduct that harmed the integrity of the regulated profession. Accordingly, he engaged in unprofessional conduct as defined in section 1(1)(pp)(xii) of the HPA.

Standard 1 and sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians state that pharmacists and pharmacy technicians must act professionally, which includes practicing in accordance with both the letter and the spirit of the laws that govern their practice. This expectation is also set out in Principle 10 of the Alberta College of Pharmacy's Code of Ethics, to act with honesty and integrity. Section 30(2)(a) of the *Pharmacy and Drug Act* states that Schedule 1 medications may be dispensed only pursuant to a prescription. In diverting tablets of tadalafil, a Schedule 1 medication, for his personal use without a prescription, Mr. Cymbaluk failed to meet these requirements. Mr. Cymbaluk breached these standards repetitively over a lengthy period of time.

Standard 1 and sub-standard 1.1 of the Standards for the Operation of Licensed Pharmacies state that a licensee must ensure the licensed pharmacy operates in accordance with the laws governing pharmacy operations, drug distribution, and the practice of pharmacy. Sections 10(1)(a), 10(1)(d)(i) and 10(1)(d)(iv) of the *Pharmacy and Drug Act* states that a licensee must ensure the pharmacy operates in accordance with the law, with includes ensuring that all drugs dispensed to or for a patient are dispensed pursuant to a prescription that has been received by the pharmacy, and that appropriate patient records are created and maintained. In diverting tablets of tadalafil for personal use, without a valid prescription and without creating an appropriate patient record, Mr. Cymbaluk breached the above requirements that govern the operation of licensed pharmacies and engaged in misconduct under sections 1(1)(p)(i) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

A contravention of the HPA, a Code of Ethics, or a Standards of Practice is unprofessional conduct. As Mr. Cymbaluk breached the Standards of Practice for Pharmacists and Pharmacy Technicians and the Alberta College of Pharmacy Code of Ethics, he engaged in unprofessional conduct under s. 1(1)(pp)(ii) of the HPA.

Finally, the HPA states that contraventions of other legislation applicable to the practice of the profession constitutes unprofessional conduct. As Mr. Cymbaluk breached the *Pharmacy and Drug Act*, he engaged in unprofessional conduct under section 1(1)(pp)(iii) of the HPA.



## **VI. SUBMISSIONS ON ORDERS**

After the Hearing Tribunal deliberated, the Tribunal advised the parties that it accepted the Admission of Unprofessional Conduct by Mr. Cymbaluk and determined that the conduct admitted to constituted unprofessional conduct and misconduct. The Hearing Tribunal invited the parties to make submissions with respect to sanction.

The Hearing Tribunal was provided with a Joint Submission on Sanctions (Exhibit 2). The parties jointly proposed a number of sanctions, including:

1. Mr. Cymbaluk's practice permit would be suspended for a period of two months, with
  - a. One month to be served on dates acceptable to the Complaints Director and being no later than 6 months after the date of the Hearing Tribunal's written decision; and
  - b. One month to be held in abeyance pending Mr. Cymbaluk's compliance with the Hearing Tribunal's Orders and there being no similar complaints regarding diversion coming to the attention of the Complaints Director for a period of two years from the date the Hearing Tribunal issues its written decision.

If the Complaints Director received a new complaint related to diversion within two years from the date the Hearing Tribunal issued its written decision, the Complaints Director would be at liberty to impose the remaining one month suspension on Mr. Cymbaluk's practice permit. If no further diversion complaints came to the attention of the Complaints Director for a period of two years from the date the Hearing Tribunal issues its written decision, the remaining one month suspension would then expire.

2. Mr. Cymbaluk would provide a copy of the Hearing Tribunal's written decision to the proprietor and licensee of any pharmacy in which he applies to work or works as a pharmacist for a period of five years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
3. A condition would be placed on Mr. Cymbaluk's practice permit that states he would not be permitted to be an owner, proprietor or licensee of a pharmacy for a period of five years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
4. Mr. Cymbaluk would pay a fine of \$1,000 payable in accordance with a monthly payment schedule as directed by the Hearings Director. The fine would be paid in full within 180 days of the date Mr. Cymbaluk receives a copy of the Hearing Tribunal's written decision.
5. Mr. Cymbaluk would be responsible for payment of all costs of the investigation and hearing to a maximum of \$10,000. Payment would occur in accordance with a monthly payment schedule as directed by the Hearings Director. The costs would

be paid in full within 24 months of the date he receives a copy of the Hearing Tribunal's written decision.

Ms. Hale submitted the foundational purpose in the context of sanctions is public protection. She submitted the Tribunal's objective was to protect the public from the conduct found to be unprofessional and to protect the public from the conduct occurring again by Mr. Cymbaluk and from other members of the profession. She stated the sanction should protect the integrity of the profession and maintain the public confidence in the profession.

Ms. Hale stated the Tribunal should, in arriving at its decision on the appropriate sanctions, take into account the list of factors referenced in *Jaswal vs. Medical Board (Newfoundland) (1996)*, 42 Admin L.R. (2d) 233. Ms. Hale reviewed the factors and submitted:

- *Nature and gravity of proven allegations/degree to which the conduct was clearly regarded as unprofessional conduct:* Mr. Cymbaluk's conduct was serious as the manipulation of drug inventory records was a breach of trust and dishonest. Ms. Hale recognized the conduct was not the worst conduct to ever come before a Tribunal but the underlying nature of the conduct was still serious. Considering that the diverted medication was for his personal use, was a relatively small amount, and was not for a controlled substance, the conduct was on the lower end of the spectrum of unprofessional conduct but is nonetheless unacceptable.
- *Age and experience of the offender:* Mr. Cymbaluk was a long-standing member, an experienced pharmacist, and he was a licensee. His conduct cannot be explained by a lack of experience
- *Previous character of a member and prior findings of unprofessional conduct:* Mr. Cymbaluk had no previous history of complaints or findings.
- *Number of times the offence occurred:* Mr. Cymbaluk admitted to diverting medication in five different transactions. It was repeated conduct and stopped when Mr. Cymbaluk was confronted by his employer.
- *Role of the member in acknowledging what occurred:* This is a significant mitigating factor for Mr. Cymbaluk. When confronted by his employer he immediately acknowledged and took responsibility for the conduct. He did this clearly and without hesitation. He cooperated promptly and fully with the College's investigation, and expressed unwavering and sincere regret and remorse for his conduct from the outset. In addition, Mr. Cymbaluk admitted the conduct before the Tribunal allowing the matter to proceed by consent without the need to call any witnesses.
- *Whether the member has already suffered other serious financial or other penalty:* The complainant in this case was Mr. Cymbaluk's former employer, and Mr. Cymbaluk was terminated from that position.

- *The need to promote deterrence:* The sanctions should be such that Mr. Cymbaluk does not repeat his conduct, and that the sanctions send a message to others in the profession so that similar conduct does not arise.
- *The need to maintain public confidence in the integrity of the profession:* Mr. Cymbaluk's conduct detracts from the integrity of the profession. It is unacceptable for a pharmacist to divert drugs, even if only for personal use.
- *The range of sanctions in other similar cases:* Ms. Hale referred to a recent College Hearing Tribunal decision, *the Decision of the Hearing Tribunal of the Alberta College of Pharmacy in the Matter of Robert Stadnyk*, in which a pharmacist was sanctioned for diversion of the same drug. Ms. Hale noted that while Mr. Stadnyk diverted a larger number of tablets over more transactions, he was not a licensee at the time of his conduct. Ms. Hale also noted that Mr. Cymbaluk's cooperation with the College has been exemplary, which supported a lower fine amount than was determined in the Stadnyk decision.

Ms. Hale then made brief comments on joint submissions. She referenced the cases of *R v Anthony Cook*, 2016 SCC 43, and *Rault v Law Society of Saskatchewan*, 2009 SKCA 81, and stated that joint submissions on sanctions should be given deference by Hearing Tribunals unless it would bring the administration of justice into disrepute. She stated this was a public interest test and that the joint submission should be accepted unless the Tribunal thought the proposal was unjust, in the sense that it is overly lenient or overly harsh.

Mr. O'Neill advised that Mr. Cymbaluk was 54 years of age. He highlighted Mr. Cymbaluk's background as a licensed pharmacist in Alberta for the past 25 years, and stated that he was the father of two sons. Since being terminated for his conduct, Mr. Cymbaluk was unemployed for a period of three months but recently obtained employment, working approximately 32 hours per week for Alberta Health Services. He was working administering injections and serving as a vaccine monitor for Alberta Health Services' COVID Response Unit in Calgary.

Mr. O'Neill suggested that Mr. Cymbaluk's conduct arose from embarrassment over seeing a physician, obtaining a legal prescription, and having a record of this medication in a pharmacy and on Netcare. Mr. O'Neill was clear that Mr. Cymbaluk acknowledged that while it was an embarrassment, it was not an excuse for his conduct. Mr. O'Neill highlighted that the tablets were for personal use only and that Mr. Cymbaluk did not profit from the diversion, nor did he alter or falsify patient records.

Mr. O'Neill reiterated that Mr. Cymbaluk was fully cooperative with the investigators, and he was fully honest with his employer at the time. When confronted, he did not try to cover it up or deny it. Mr. Cymbaluk made admissions to his former employer and to the investigators prior to legal counsel being retained. He was sincerely remorseful and ashamed of his conduct. He was very earnest in wanting to accept responsibility. Mr. O'Neill then requested that the Tribunal review and consider a letter of reference, included in the Joint Submission on Sanctions, from Mr. Cymbaluk's former employer, [REDACTED] who served as the complainant in this matter. In the letter, [REDACTED] spoke to Mr. Cymbaluk's good character and commitment to patient care, and requested leniency from the Tribunal.

Mr. O'Neill stated the Stadnyk decision had some precedential value but that Stadnyk's conduct was more serious.

Mr. O'Neill concluded by stating that the joint submission had a valid and principled basis and the parties were asking the Tribunal to accept it. He stated it would not be contrary to the public interest and it would not bring the administration into disrepute if the Tribunal imposed the sanctions put before the Tribunal by way of the Joint Submission.

The Hearing Tribunal advised the parties that it heard Mr. Cymbaluk was participating in the COVID response in Calgary as a vaccinator for 32 hours a week and that the one month suspension to be served within a period of 6 months would mean that Mr. Cymbaluk would not be able to function in that role of a vaccinator during the time of his suspension. The Tribunal asked if Mr. Cymbaluk's role in participating in the COVID response was considered in the timing of the suspension.

Ms. Hale and Mr. O'Neill both advised that the Mr. Cymbaluk's role was not specifically considered.

The Tribunal asked the parties if they would be agreeable to amending the timeframe of when Mr. Cymbaluk's suspension would be served. The reason for the Hearing Tribunal's question was that Mr. Cymbaluk was currently working more than 30 hours per week for Alberta Health Services providing COVID vaccinations to the public. There are a limited number of health care professionals willing and able to fulfill this role to this extent, and it would not be in the public interest to prevent Mr. Cymbaluk from doing so at such a critical time in the pandemic.

Ms. Hale advised that the Complaints Director would be agreeable to an extension up to 12 months due to the exceptional circumstances related to the COVID-19 pandemic and Mr. Cymbaluk's role in responding to those exceptional circumstances. Mr. O'Neill agreed with this position as allowing the suspension to be served within the next 12 months, as opposed to 6 months, would provide latitude to assist in vaccinating while still addressing the issues of general and specific deterrence.

## **VI. ORDERS**

After carefully considering the Joint Submission on Sanctions, the facts of the case, the submissions, and the willingness of the parties to extend the timeframe of when Mr. Cymbaluk's suspension would be served, the Hearing Tribunal accepted the Joint Submission on Sanctions subject to the change that Mr. Cymbaluk's one month suspension would be served on dates acceptable to the Complaints Director and no later than 12 months after the time the Tribunal's written decision was provided.

The Hearing Tribunal acknowledged that deference should be provided to Joint Submissions on Sanctions and that the Hearing Tribunal ought not to depart from the joint submission unless the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

The Hearing Tribunal considered the orders that were jointly proposed, including the extension of the timeline for the serving of Mr. Cymbaluk's suspension, and found that the orders proposed in the Joint Submission on Sanctions were appropriate.

Specifically, with respect to the timeline of when Mr. Cymbaluk will serve a one month suspension, the Tribunal acknowledges that the COVID-19 pandemic and Mr. Cymbaluk's role as a vaccinator are exceptional circumstances that warranted further consideration by the parties. The willingness of the parties to extend the timeline to 12 months is not a precedent that will apply in every situation. It was a recognition by the parties of the urgent nature of vaccinations in Alberta in 2021. In addition, the Tribunal confirms that the one month suspension must be served on dates acceptable to the Complaints Director. While the Tribunal encourages the Complaints Director to consider Mr. Cymbaluk's role as a vaccinator, the Tribunal makes no direction as to when the suspension will be served.

The Tribunal took into account all of the factors discussed in the *Jaswal* decision and the submissions of the parties, including the sanctions previously ordered in a similar case. Mr. Cymbaluk's experience as a pharmacist, the repeated nature of the conduct, his position as a licensee, and the impact on the public's trust in the profession support the serious nature of the conduct. The Tribunal also considered that the diverted medication was for Mr. Cymbaluk's personal use and was not a controlled substance. While the diversion was on the lower end of the spectrum when it comes to drug diversions, it was nonetheless unacceptable. Mr. Cymbaluk's honesty and cooperation were significant mitigating factors to be considered against the serious and repeated conduct, as were the absence of aggravating factors such as a previous discipline history or a direct impact on patients.

The sanctions proposed were consistent with a recent decision with very similar facts. However, as Mr. Cymbaluk's conduct occurred while he was not only a practicing pharmacist but also a licensee, additional sanctions pertaining to his ability to be the owner, proprietor or licensee of a pharmacy were appropriate.

There is a need to ensure that Mr. Cymbaluk, as well as other members of the profession, are aware drug diversions of any sort will not be tolerated. The sanctions imposed must deter future conduct of this nature and maintain the public's confidence in the integrity of the profession.

In this case, the Tribunal is of the view that the orders and the requirements imposed on Mr. Cymbaluk will serve as an appropriate deterrent to Mr. Cymbaluk. It will also demonstrate to other members of the profession and the public that the College will take appropriate action if a member fails to demonstrate competency in the profession.

The reprimand, suspension and fine will all serve as an appropriate punishment and deterrent for both Mr. Cymbaluk and other members of the profession. These financial consequences will ensure Mr. Cymbaluk recognizes that his conduct was serious and demonstrates that appropriate action will be taken against members when they engage in drug diversions. The restriction on Mr. Cymbaluk's ability to be an owner, proprietor, or licensee of a pharmacy for five years serves a similar purpose.

The requirement to provide a copy of the Tribunal's decision to the proprietor and licensee of any pharmacy in which Mr. Cymbaluk applies to work or works as a pharmacist will promote transparency and minimize the possibility of a recurrence of the actions, thereby protecting the public. Mr. Cymbaluk's employers will be aware of his previous actions and will be put on notice to ensure Mr. Cymbaluk does not engage in the same conduct.

It is appropriate that Mr. Cymbaluk be responsible for costs of the hearing and investigation, as it was his conduct that necessitated the proceedings. Nonetheless, the cap on the total costs payable is appropriate given the circumstances, including his cooperation and the fact that he was previously terminated from his employment.

In conclusion, the Hearing Tribunal agreed that the proposed orders were appropriate having regard to the *Jaswal* factors and the principles that are relevant in assessing sanction in the professional discipline context.

In light of the above, the Hearing Tribunal made the following orders pursuant to s. 66(3) of the HPA:

1. Mr. Cymbaluk's practice permit shall be suspended for a period of two months, with:
  - a. One month to be served on dates acceptable to the Complaints Director and being no later than 12 months after the date of the Hearing Tribunal's written decision; and
  - b. One month to be held in abeyance pending Mr. Cymbaluk's compliance with the Hearing Tribunal's Orders and there being no similar complaints regarding diversion coming to the attention of the Complaints Director for a period of two years from the date the Hearing Tribunal issues its written decision

If the Complaints Director receives a new complaint about Mr. Cymbaluk related to diversion of drugs within two years from the date the Hearing Tribunal issues its written decision, the Complaints Director shall then be at liberty to impose the remaining one month suspension on Mr. Cymbaluk's practice permit. If no further diversion complaints come to the attention of the Complaints Director for a period of two years from the date the Hearing Tribunal issues its written decision, the remaining one-month suspension shall then expire.

2. Mr. Cymbaluk shall provide a copy of the Hearing Tribunal's written decision to the proprietor and licensee of any pharmacy in which he applies to work or works as a pharmacist for a period of five years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
3. A condition shall be placed on Mr. Cymbaluk's practice permit that states he shall not be permitted to be an owner, proprietor or licensee of a pharmacy for a period of five years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.

4. Mr. Cymbaluk shall pay a fine of \$1,000 payable in accordance with a monthly payment schedule as directed by the Hearings Director. The fine shall be paid in full within 180 days of the date Mr. Cymbaluk receives a copy of the Hearing Tribunal's written decision.
5. Mr. Cymbaluk shall be responsible for payment of all costs of the investigation and hearing to a maximum of \$10,000. Payment shall occur in accordance with a monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 24 months of the date he receives a copy of the Hearing Tribunal's written decision.

Signed on behalf of the hearing tribunal by the Chair on the 29<sup>th</sup> day of July 2021

*Mary Gunther*  
Per: [Mary Gunther \(Jul 29, 2021 14:35 MDT\)](#)  
\_\_\_\_\_  
Mary Gunther