

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING  
THE CONDUCT OF

**JEFF T. LUONG**  
Registration number 5888

**DECISION OF THE HEARING TRIBUNAL ON SANCTIONS**

May 8, 2024

## **I. INTRODUCTION**

The Hearing Tribunal comprised of Anjali Acharya, Pharmacist and Chair; Yasir Iqbal, Pharmacist; Barbara Rocchio, Public Member; and Doug Dawson, Public Member held a hearing into the conduct of Mr. Jeff Luong on November 2, 2023. Mr. Luong did not attend the hearing.

On March 1, 2024, the Hearing Tribunal issued its decision on the merits of the allegations. The Hearing Tribunal found Allegations 1, 2, 4 and 5 in the Notice of Hearing issued against Mr. Luong had been proven on a balance of probabilities and that the proven allegations constituted unprofessional conduct. The Hearing Tribunal's merits decision requested the parties' submissions on sanction.

As directed by the Hearing Tribunal, the Hearings Director made reasonable attempts to serve the Tribunal's merits decision on Mr. Luong. The decision was sent by registered mail and regular mail to the Northeast Address, as defined in the merits decision. Attempts were also made to send it by email but the email address on record of [nhan\\_luong2002@yahoo.com](mailto:nhan_luong2002@yahoo.com) was no longer active. The phone number of record for Mr. Luong was also no longer in service.

On March 19, 2024, counsel for the Complaints Director provided written submissions on sanction to the Hearings Director by email. The written submissions were also sent by registered mail to the Northeast Address and a document server attempted to hand deliver the written submissions to Mr. Luong at the Northeast Address. Three attempts were made at personal service, all of which were unsuccessful, and the written submissions were left at the front door of the Northeast Address on March 30, 2024.

No submissions on sanctions were received from Mr. Luong. Nonetheless, the Hearing Tribunal is satisfied that the Hearings Director and counsel for the Complaints Director have taken all reasonable steps to serve the merits decision on Mr. Luong and to provide him with an opportunity to make submissions on sanction.

The Hearing Tribunal met on April 22, 2024 and considered the record of the hearing, its findings of unprofessional conduct against Mr. Luong and the Complaints Director's written submissions on sanction.

Mr. Jason Kully attended with the Hearing Tribunal as its independent legal counsel.

## **II. ALLEGATIONS**

In the merits decision, the Hearing Tribunal found Allegations 1, 2, 4, and 5 in the Notice of Hearing to have been proven and to constitute unprofessional conduct pursuant to the *Health Professions Act*, RSA 2000, c. H-7 ("HPA"). These allegations were:

IT IS ALLEGED THAT as a registered clinical pharmacist and the licensee of JL Pharmicare Pharmacy (ACP Licence #3146) (the "Pharmacy"), you:

1. Failed to cooperate with an investigator appointed by the Complaints Director of the Alberta College of Pharmacy, when you refused:
  - a. to provide prescription and transaction records to Jennifer Mosher related to SunLife's audit of the Pharmacy and the subject claims;
  - b. to confirm your relationship with [REDACTED] NL, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] all of whom were patients of the Pharmacy;
  - c. to confirm patient information regarding the need for diabetic supplies for NL and [REDACTED]
  - d. to confirm your relationship with Dr. [REDACTED]
  - e. to confirm a complete list of pharmacies that the Pharmacy has a compounding and repackaging agreement with;
  - f. to answer questions about your practice of prescribing and dispensing medications and medical devices for yourself and your immediate family members.
2. Failed to cooperate with SunLife's audit of the Pharmacy, including when you refused to provide SunLife with requested information and documentation for approximately 61 of 72 audited claims.  
  
...
4. Dispensed medications and medical devices for yourself and your immediate family members for conditions for conditions that were not considered minor, emergent or where another practitioner was not available.
5. Dispensed diabetic supplies for yourself and your spouse in the absence of a documented history of diabetes.

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:

- Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 and 8 (sub-standards 1.1, 1.2 and 8.1) of the Standards for the Operation of Licensed Pharmacies;
- Principle 3(4), 10(1), 10(2b), 10(2c) and 10(10) of the ACP's Code of Ethics; and
- Sections 10(1)(a) 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 the provisions of sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii), 1(1)(pp)(vii)(B) and 1(1)(pp)(xii) of the *HPA* and misconduct under sections 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

### **III. SUBMISSIONS OF THE COMPLAINTS DIRECTOR**

The Complaints Director referred to the Hearing Tribunal's powers to impose sanctions in Section 82 of the HPA. The Complaints Director described the purposes of sanctions orders in professional discipline proceedings as: the protection of the public, maintaining the integrity of the pharmacy profession, fairness to the investigated member of the profession, and deterrence of similar conduct by the investigated member and of the profession as a whole.

The Complaints Director then reviewed factors relevant to the assessment of sanctions for Mr. Loung, referring to Casey, *The Regulation of Professions in Canada* and to *Jaswal v. Newfoundland Medical Board* (1996), 42 Admin L.R. (2d) 233 ("*Jaswal*").

The first relevant factor described in the *Jaswal* case is the nature and gravity of the proven allegations. The Complaints Director submitted that the proven allegations reflected a failure to adhere to fundamental responsibilities of pharmacists and pharmacy licensees.

The second relevant factor is the investigated member's age and experience. The Complaints Director submitted that inexperience was not a mitigating factor in the case and that Mr. Loung should have been aware of the expectation that he meet his statutory and regulatory obligations as a pharmacist and licensee and that he act ethically and honestly with third-party insurance providers.

The third relevant factor is the presence or absence of prior complaints or findings of unprofessional conduct. There were no prior findings of unprofessional conduct. While a previous complaint had been brought against Mr. Loung, it was dismissed and was not related to the subject matter of the allegations.

The fourth relevant factor is the age and mental condition of the offended patients. The Complaints Director submitted that two of the patients identified in the audit were Mr. Loung's children, meaning Mr. Luong had a personal relationship with the individuals he was providing professional services to and that one of the children was a minor during the relevant time. It was submitted this was an aggravating factor.

The fifth relevant factor was the number of times the unprofessional conduct was proven to have occurred. The Complaints Director submitted that Mr. Loung's conduct involved a repeated pattern of conduct that occurred over an extended period of time, between January 7, 2021 and September 14, 2022. This was not a case of a single instance of unprofessional conduct and the pattern of conduct should be viewed as an aggravating factor.

The sixth relevant factor was Mr. Loung's role in acknowledging what had occurred. Acknowledging that conduct was unprofessional can be a mitigating factor. Mr. Luong did not acknowledge that his conduct was unprofessional, or demonstrate any self-reflection or understanding of the seriousness of his conduct, but the Complaints Director noted that he was not required to do so. The Hearing Tribunal considered this to be a neutral factor.

The seventh relevant factor was whether Mr. Loung had suffered other serious financial or other penalties as a result of the allegations having been made. The Complaints Director stated that it was not aware of any evidence that Mr. Loung suffered other consequences so this was a neutral factor.

The eighth relevant factor was the impact of the proven unprofessional conduct on Mr. Luong's patients. The Complaints Director was not aware of any evidence of patient harm but submitted that by dispensing for himself and other immediately family members on numerous occasions, Mr. Luong created an environment in which there was greater risk of harm for himself and his spouse and children.

The ninth factor described in the *Jaswal* case is the presence or absence of mitigating circumstances. The Complaints Director submitted that he was not aware of any mitigating circumstances in this case.

The tenth relevant factor was the need for specific deterrence of similar future unprofessional conduct by Mr. Loung and general deterrence of the profession as a whole.

The Complaints Director submitted that sanctions should be imposed to make Mr. Luong understand that his conduct was unprofessional and unacceptable. The sanctions should reflect the importance of upholding the obligations expected and required of an Alberta pharmacist and licensee and instill that there are consequences for failing to do so. The Complaints Director submitted specific deterrence was more important in this case as the College, the public and insurers trust that pharmacists are complying with the laws and standards of practice and that insurers pay out millions of dollars in insurance claims trusting the integrity of pharmacists and that those pharmacists are dispensing what is submitted. In terms of general deterrence, the Complaints Director submitted that it was vital that other members of the profession see that the College will not tolerate the proven conduct and that the sanctions imposed for such conduct would be necessarily appropriate.

The eleventh relevant factor was the need to maintain public confidence in the integrity of the pharmacy profession in Alberta. The Complaints Director submitted that the College must be able to demonstrate to the public that it is willing and able to regulate and govern the conduct of each member of the profession. This means the public must be able to see that the College takes this conduct very seriously and that such conduct will not be tolerated. The public must also be able to see that steps have been taken to sanction conduct that does not meet their expectations and to ensure that it does not recur in the future. It was submitted that the public will not maintain confidence in the College's integrity as a self-regulating profession if the College tolerated or permitted Mr. Luong to continue to act dishonestly with third-party insurers.

The twelfth relevant factor was the degree to which Mr. Luong's conduct was clearly outside the range of permitted conduct. The Complaints Director argued that the proven allegations were clearly beyond the range of conduct and that the allegations demonstrated Mr. Luong's unwillingness to comply with the fundamental duties of a pharmacist and licensee.

The final relevant factor was the range of sanctions imposed in other, similar cases. The Complaints Director submitted that there were no perfectly factually similar cases but that the cases of Dr. Brendan Ihejirika, Shereen Elbayomy, Si Huu Nguyen, Dr. Pierre Rizk, and Ahmed Atique, demonstrated the requested orders were consistent with previous cases.

The Complaints Director proposed the following sanctions orders for Mr. Luong pursuant to section 82 of the HPA:

1. Mr. Luong's registration with the College should be cancelled.
2. Mr. Luong should pay a fine of \$10,000 for each of Allegation 1 and 2, and a fine of \$5,000 for each of Allegation 4 and 5, for a cumulative total fine of \$30,000 to be paid in full within 90 days from date of the Hearing Tribunal's written decision on sanctions pursuant to a payment schedule acceptable to the Hearings Director.
3. Mr. Luong should be prohibited from serving as a pharmacy licensee, proprietor or owner for a period of 10 years from the date of the Tribunal's written decision on sanctions.
4. Mr. Luong should pay 100% of the costs of the investigation and hearing of these matters within 24 months of the date of the Hearing Tribunal's written decision on sanctions pursuant to a payment schedule acceptable to the Hearings Director.

In relation to the cancellation order, the Complaints Director submitted that there was no evidence that Mr. Luong grasped the seriousness of his conduct, which involved fundamental breaches of the statutory and regulatory obligations of an Alberta pharmacist and licensee and threatened the public's perception of the integrity of the profession as it exists within the province's health care system. In failing to cooperate with the investigation, Mr. Luong had further demonstrated a blatant disregard for the self-regulatory nature of the profession. The Complaints Director submitted that members of the public rely on insurance to pay for their

prescriptions and the health care system relies on the honesty and integrity of the self-regulated professionals within it to submit claims on their behalf.

The Complaints Director submitted that the evidence suggested Mr. Luong could not be trusted to act with honesty and integrity in the performance of duties required of a pharmacist or a licensee or to address his conduct when it is called into question. In that sense, he could not be regulated. The Complaints Director submitted that a member who attempts to subvert the discipline process cannot remain as a registered member of the College, and that Mr. Luong's case was similar to that of Dr. Rizk, who was also cancelled. In such situations, cancellation of the member's registration and practice permit is necessary to protect the public and to preserve the integrity of the profession.

The Complaints Director submitted that a member who cannot be trusted to comply with the fundamental legal and ethical requirements of a pharmacist must be removed from practice and this is the only way the Tribunal can make it clear to the other members of the profession and the public that such conduct cannot and will not be tolerated and will result in the most severe sanction available under the HPA.

In relation to the fines, the Complaints Director submitted that each of the proven allegations was serious enough to warrant a substantial fine. Allegations 1 and 2 were very serious as the conduct displayed a level of dishonesty and a lack of integrity that threatens the operation of the health care system. In view of the unacceptable conduct and the substantial improper claims submitted, it was appropriate to impose the maximum fine of \$10,000 for each allegation. Allegations 4 and 5 demonstrated a lack of integrity and stewardship for the drug distribution system as Mr. Luong dispensed medications for himself and immediate members of his family contrary to the standards of practice and in some cases, where the patient did not have a documented history of a condition that warranted a need for the drug. Mr. Luong should have known better as an experienced pharmacist and licensee. In the Ihejirika decision, the Tribunal awarded fines of \$2,500 for similar conduct. Since that did not have a deterrent effect on Mr. Luong, a higher fine of \$5,000 for each allegation is necessary.

Given the seriousness of the conduct, the Complaints Director submitted the fines should be paid within 90 days of the Tribunal's written decision on sanctions. It was submitted that 90 days is a standard time period for an order for fines to be paid and without evidence of financial hardship or mitigating circumstances, there was a lack of evidence supporting a variation.

In relation to the proposed orders prohibiting Mr. Luong from serving as a pharmacy licensee, owner or proprietor, the Complaints Director submitted that the governing framework of the profession makes it clear that licensees and proprietors have specific responsibilities to the public and the profession. In this case, Mr. Luong demonstrated that he does not understand or will not follow the requirements of the governing framework. The Complaints Director submitted that if Mr. Luong is entitled to return to practice at any point in the next ten years, he should not be able to serve as a licensee or an owner or proprietor during that time period. Mr. Luong's conduct, including his disregard for the self-regulatory nature of the profession, demonstrated he cannot be trusted to serve in these roles and uphold the subsequent statutory and regulatory obligations required of someone who holds these positions. The Complaints Director submitted that 10-year prohibitions on licensee, proprietorship and ownership were

ordered in the cases of Ms. Elbayomy, Dr. Rizk and Mr. Atique. It was submitted that, like Ms. Elbayomy, Mr. Luong failed in the significant duties and responsibilities of the role of licensee. As with Mr. Luong, Dr. Rizk abused his authority as a pharmacist and licensee and failed to cooperate with the hearing process. Similarly, Mr. Atique broke the trust placed in pharmacists to cooperate with third-party insurers, which is a role that is foundational to the function of Alberta's health system.

Regarding the order for the payment of costs, the Complaints Director submitted that the College and its members should not bear the costs of the investigation and hearing. The need for the investigation and hearing arose as a direct result of Mr. Loung's misconduct.

The Complaints Director submitted that the costs of the investigation and hearing up to March 12, 2024, prior to the Complaints Director's submissions on sanctions, were \$26,356.95. The Complaints Director suggested that the total costs after submissions on sanctions were prepared and the Hearing Tribunal had made its decision on sanctions may well exceed \$35,000.

The Complaints Director referred to *Jinnah v Alberta Dental Association and College, 2022 ABCA 336* ("*Jinnah*"), for the principle that costs should not be ordered by default or on a formulaic basis. *Jinnah* set out first instances where it is appropriate to order a significant portion of costs of a hearing against a member:

1. When a professional has engaged in serious unprofessional conduct;
2. When a professional is a serial offender who has engaged in unprofessional conduct on two or more occasions;
3. When a professional fails to cooperate with a college's investigators and forces a college to spend more resources than is necessary to ascertain certain facts related to a complaint; and
4. When a professional engages in hearing misconduct and unnecessarily prolongs the hearing or otherwise results in increased costs of prosecution that are not justifiable.

The Complaints Director submitted that Mr. Luong engaged in serious unprofessional conduct and failed to meaningfully participate in the investigation and did not attend the hearing, thus requiring the Complaints Director to spend additional time and resources to ensure the allegations could be proven on a balance of probabilities.

The Complaints Director submitted that an order of costs was warranted as:

1. the Complaints Director proved unprofessional conduct for four out of five of the allegations in the Notice of Hearing; however, the time spent on Allegation 3 was minimal and would not have resulted in any substantial additional costs of the proceeding;
2. each of the proven allegations constituted unprofessional conduct and was serious. The proven allegations harmed the integrity of the profession and demonstrated a failure by Mr. Luong to meet the high standards of professional



and ethical judgment expected and required of an Alberta pharmacist and licensee;

3. due to the fact that Mr. Luong did not attend the hearing, the hearing could not have been streamlined by including admissions of unprofessional conduct; and
4. the Complaints Director was not aware of any information that would suggest that an order for 100% of the costs of the investigation and hearing would impose a “crushing financial blow” to Mr. Luong. The Complaints Director has also asked that the costs ordered be apportioned across 24 months to make the payment structure more reasonable.

#### **IV. DECISION ON ORDERS**

The Hearing Tribunal found Mr. Luong to have committed unprofessional conduct as alleged in four of the allegations found in the Notice of Hearing. Having made its finding on unprofessional conduct, the Hearing Tribunal must determine the appropriate orders for penalty.

The Hearing Tribunal carefully considered the evidence, the findings of unprofessional conduct and the Complaints Director’s submissions on sanctions. The Hearing Tribunal notes that Mr. Luong was given an opportunity to make submissions on sanctions, but none were received. The Hearing Tribunal makes the following orders pursuant to section 82 of the HPA:

1. Mr. Luong’s registration with the Alberta College of Pharmacy on all College registers is cancelled;
2. Mr. Luong shall pay a fine of \$10,000 in respect of each of Allegations 1 and 2 and a fine of \$5,000 in respect of Allegations 4 and 5, for a total fine of \$30,000, to be paid within 90 days of the date of the Hearing Tribunal’s written decision pursuant to a payment schedule acceptable to the Hearings Director;
3. Mr. Luong is prohibited from serving as a pharmacy licensee or proprietor or owning some or part of a pharmacy for 10 years from the date of the Hearing Tribunal’s written decision; and
4. Mr. Luong shall pay 100% of the costs of the investigation and hearing of this matter within 24 months from the date of the written decision on sanction pursuant to a payment schedule acceptable to the Hearings Director

## **V. REASONS FOR DECISION ON ORDERS**

The Hearing Tribunal agrees that the sanctions proposed by the Complaints Director are appropriate.

### **1. Cancellation**

The Complaints Director sought an order for Mr. Luong's registration with the College be cancelled. The Tribunal recognizes that this is the most significant and serious sanction that it can impose on a member of the pharmacy profession. However, the Hearing Tribunal has determined that Mr. Luong's conduct justifies this significant and serious sanction.

In reviewing the *Jaswal* factors:

1. The Hearing Tribunal finds that this is a case involving two very serious aspects of unprofessional conduct: 1) a pharmacist dispensing supplies and medications to themselves and family members when not appropriate and 2) a failure to cooperate in an investigation and insurer audit. The conduct involves dishonest conduct by the member, which benefitted him financially and seriously undermines the integrity of the profession. Members of the public rely on insurance to pay for their prescriptions and the health care system relies on the honesty and integrity of the self-regulated professionals within it to submit claims on their behalf. Mr. Luong failed to meet these obligations of honesty and integrity.

In addition, Mr. Luong's failure or refusal to cooperate in the investigation, after refusing to cooperate with SunLife's audit, raises a concern with respect to the College's ability to regulate him as a member. In failing to cooperate with the investigation, Mr. Luong demonstrated a blatant disregard for the self-regulatory nature of the profession. If a college is unable to regulate its members, its ability to act as a self-regulating profession is placed in jeopardy.

The proven allegations reflect a failure to adhere to fundamental responsibilities of a pharmacist and pharmacy licensee. As observed by the Tribunal in the merits decision, the proven conduct "undermines the College's ability to engage in effective self-regulation". It also involved fundamental breaches of the statutory and regulatory obligations of an Alberta pharmacist and licensee and threatened the public's perception of the integrity of the profession as it exists within the province's health care system.

2. Mr. Luong was an experienced pharmacist and licensee who should have been aware of the expectation that he meets his statutory and regulatory obligations as a pharmacist and licensee and that he acts ethically and honestly with third-party insurance providers. Mr. Luong's conduct could not be explained by a lack of experience.

3. Mr. Luong had a personal relationship with the individuals he provided professional services to and one of the children was a minor during the relevant time. The Tribunal agreed this was an aggravating factor as it reflects the vulnerability of the patients.
4. Mr. Luong's conduct was not a single instance or an isolated event. It involved a repeated pattern of conduct that extended for almost 2 years, from January 7, 2021 to September 14, 2022. Mr. Luong also failed to cooperate in the investigation and complaint process despite being given multiple opportunities to do so. The Tribunal agreed this was an aggravating factor.
5. Mr. Luong created an environment in which there was a greater risk of harm by dispensing medications and devices for himself and other immediate family members. When a pharmacist engages in such self-serving, there is a lack of objective and proper assessment.
6. The Tribunal agrees that both specific and general deterrence are important in this case as the College, the public, and insurers, trust that pharmacists are complying with the laws and standards of practice and that insurers pay out millions of dollars in insurance claims trusting the integrity of pharmacists and that those pharmacists are dispensing what is submitted. A sanction must be imposed that will demonstrate to both Mr. Luong and other members of the profession that the College will not tolerate the proven misconduct.
7. The need to maintain public confidence in the integrity of the profession is also important. Mr. Luong's conduct of refusing to cooperate with the College or a third-party insurer, as well as his conduct in inappropriately providing medication and devices to himself and his family, cannot be tolerated or permitted.

Assessing the factors from *Jaswal*, there were no mitigating factors and several aggravating factors.

A self-regulated profession must regulate its members in a way that maintains the public's confidence in the integrity of the profession. The Hearing Tribunal is greatly concerned that Mr. Luong's conduct seriously undermines the integrity of the profession and must therefore have serious consequences. There is no question that the conduct in this case on all allegations is beyond the range of permitted conduct. There is a repeated pattern of unprofessional interactions with an insurer and the failure to comply with an investigation, as well as the failure to follow dispensing obligations. Mr. Luong's conduct demonstrates an unwillingness to comply with the fundamental duties of a pharmacist as well as a complete disregard for the ethical duties and standards that apply to pharmacists.

Mr. Luong's proven unprofessional conduct also demonstrated several indicia of ungovernability. Not every breach incident of unprofessional conduct makes a pharmacist ungovernable, but a pharmacist found to be ungovernable cannot be regulated and cannot be trusted to practice pharmacy in the public's best interests. Ungovernable conduct warrants cancellation.

Mr. Luong appears to be unwilling or unable to cooperate with the College as his regulator. Mr. Luong's response to the complaints and the College's investigations was egregious. He tried to mislead the investigator as to the relationship between himself and patients and failed to address the questions, repeatedly stating that he was not "prepared to respond" or "not ready" to answer questions. Mr. Luong was given multiple opportunities to provide the requested information but failed to do so. This is conduct that is similar to Mr. Luong's response to SunLife and its auditor, where Mr. Luong provided only limited documentation and refused to provide additional information, prior to ceasing to respond altogether. This conduct, combined with Mr. Luong's decision not to attend the hearing and to not engage with the College in any manner after the investigation, were some indicia of his ungovernability.

The Tribunal finds that, given the proven conduct, Mr. Luong cannot be trusted to act with honesty and integrity in the performance of duties required of a pharmacist or a licensee or to address his conduct when it is called into question. In that sense, The Tribunal agrees with the Complaints Director that a member who attempts to subvert the discipline process cannot remain as a registered member of the College, and that Mr. Luong's case is similar to that of Dr. Rizk, who was also cancelled.

The Hearing Tribunal considered whether a lesser sanction would be adequate, but determined it would not. Mr. Luong's proven unprofessional conduct demonstrates a pattern of serious conduct across his pharmacy practice. The Tribunal does not believe Mr. Luong is capable of meeting the requirements of being a professional, engaging with the College, and practicing safely in the future.

When all of the circumstances are considered, particularly the failure to engage with both the insurer's audit and the College's investigation, it is appropriate in this case that Mr. Luong's registration be cancelled.

## **2. Fines**

Section 82(1)(k) of the HPA authorizes the Tribunal to direct Mr. Luong to pay fines according to the unprofessional conduct fines table in Section 158 of the HPA. Column 3 of the unprofessional conduct fines table, which applies to the College, provides that the maximum fine that can be imposed for each finding of unprofessional conduct is \$10,000 and the maximum aggregate fine that can be imposed for all findings of unprofessional conduct arising out of a hearing is \$50,000.

The Complaints Director proposed that Mr. Luong pay a fine of \$10,000 for each of Allegation 1 and 2, and a fine of \$5,000 for each of Allegation 4 and 5, for a total fine of \$30,000. The Tribunal accepts that these fines are appropriate.

Allegations 1 and 2 are very serious conduct. As previously observed by the Tribunal, conduct of this nature undermines the College's ability to engage in effective self-regulation. An inability to conduct a fulsome investigation would put the public at risk, as well as harm the public confidence in the profession. Mr. Luong's failure to cooperate with the Sun Life investigations also impaired confidence in the profession as a third-party insurer cannot

confirm every claim and must rely on pharmacists to provide information. Mr. Luong's conduct displayed a level of dishonesty and a lack of integrity that threatens the operation of the healthcare system. Accordingly, the maximum fine for each of these allegations is warranted.

Allegations 4 and 5 are also significant unprofessional conduct that reflect misuse of the authority which has been entrusted to pharmacists. Mr. Luong demonstrated a lack of integrity and stewardship for the drug distribution system. He dispensed medications for himself and immediate members of his family contrary to the standards of practice and in some cases, where the patient did not have a documented history of a condition that warranted a need for the drug dispensed. Such conduct warrants a fine to deter other members. Such a fine should be meaningful and should not be seen as a "cost of doing business". As noted by the Complaints Director, a Tribunal had previously imposed a fine of \$2,500 for similar conduct in the Ihejirika decision. A more significant fine is needed to demonstrate to other pharmacists that such conduct is not tolerated. Accordingly, the Tribunal agrees that a fine of \$5,000 for each of allegations 4 and 5 is warranted.

Substantial fines recognize the severity of the proven unprofessional conduct and condemn it. The fines ordered may have a financial impact on Mr. Luong, but they also serve a very important deterrent effect on other members of the pharmacy profession. The Tribunal considered that other members of the profession will take note that conduct similar to Mr. Luong's proven unprofessional conduct can result in a substantial fine and that this will deter other members from engaging in the serious misconduct.

The Tribunal considered that \$30,000 in aggregate fines is appropriate and proportional to the scope and nature of the proven unprofessional conduct. The Tribunal also finds that given the serious nature of the conduct, the payment of such fines within 90 days of the Hearing Tribunal's written decision is also appropriate.

### **3. Prohibition on Serving as a Pharmacy Licensee, Owner, or Proprietor**

The Hearing Tribunal accepts the Complaints Director proposal that Mr. Luong shall be prohibited from serving as a pharmacy licensee, proprietor or owner of a pharmacy for 10 years from the date of the Hearing Tribunal's decision.

The governing framework of the profession makes it clear that licensees and proprietors have specific responsibilities to the public and the profession. In this case, Mr. Luong demonstrated that he does not understand or will not follow the requirements of the governing framework.

Mr. Luong has demonstrated that he is unwilling or unable to properly comply with the requirements related to the operation of a pharmacy or the disclosure of records or the limitations of providing services to himself or family members in accordance with the Standards of Practice and the Code of Ethics. Much of Mr. Luong's proven unprofessional conduct occurred in an environment with no checks and balances. There was no one to oversee his practice or question his approach. Mr. Luong's conduct demonstrated that he cannot be trusted to serve in these roles and that he is incapable of independently providing care that is safe and compliant with the College's Standards and Code of Ethics.

A pharmacy licensee and/or proprietor also exerts significant control over the operations of a pharmacy including its personnel, policies and procedures, and adherence to standards of practice and ethics. The Tribunal is concerned that if Mr. Luong were permitted to serve in these roles, the lack of oversight would allow him to engage in similar conduct and to influence the conduct of others.

Mr. Luong is therefore not a suitable candidate to serve as a licensee, proprietor or owner until a significant period of time has passed, intended to allow him to engage in rehabilitation and to learn from his past mistakes. Mr. Luong's conduct also shares similarities to the conduct of Dr. Rizk, Ms. Elbayomy and Mr. Atique, all of whom also received a lengthy prohibition from serving as a licensee, owner, or proprietor.

#### **4. Costs**

The Complaints Director sought an order for Mr. Luong to pay 100% of the costs of the investigation and hearing, which were stated to have reached \$26,356.95 by March 14, 2023 and which could exceed \$35,000.00 when the hearing was complete.

In *Jinnah* the Alberta Court of Appeal held that costs under the HPA are a part of self-regulation and the profession as a whole is presumed to bear the costs of investigations and hearings in most cases. Costs are not punitive in nature and are not another penalty and should not be imposed as such. Costs orders are discretionary.

The Court of Appeal stated that costs should not be awarded in every case and that before making an order for costs the Tribunal should consider whether a costs order is warranted at all. The Court of Appeal held that it is generally inappropriate to require a disciplined health professional to pay a significant portion of the investigation and hearing costs without a compelling reason. A compelling reason will exist in four scenarios, which are where the proven unprofessional conduct is serious, where the member is a serial offender who engages in unprofessional conduct on two or more occasions, where a member fails to cooperate with the college investigators and forces the college to expend more resources than is necessary to ascertain the facts related to a complaint, and where a member engages in hearing misconduct that prolongs the hearing or results in increased costs that are not justifiable.

The Court gave examples of serious unprofessional conduct. These included a sexual assault on a patient, a fraud perpetrated on an insurer, the performance of a dental procedure while suspended, or the performance of a dental procedure in a manner that is a marked departure from the ordinary standard of care. The Court said that in these serious cases a Hearing Tribunal can justifiably order the disciplined professional to indemnify the College for all or a substantial portion of its expenses. The Court reasoned that in serious cases, the disciplined professional must have known that their behavior was unacceptable and would be unprofessional. As stated by the Court of Appeal at paragraph 141 of *Jinnah*, "It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint."

Although the Court of Appeal provided a few examples of what constitutes such serious unprofessional conduct in *Jinnah*, the Hearing Tribunal finds that the Court of Appeal did not provide an exhaustive list and that there are additional examples of unprofessional conduct which a Hearing Tribunal may find as “serious”. This is because there are other cases where a professional would know that their conduct is such a magnitude that it would be unacceptable and unprofessional. If a member engages in conduct that is a marked departure from what is expected of an Alberta pharmacist, and is conduct of such seriousness that they must have known, or if not should have known, that the behavior was completely unacceptable, the Hearing Tribunal can make a finding that such conduct is “serious” and warrants a costs order. The Hearing Tribunal is in the best position to make this determination given its knowledge of the profession and what is expected of a member of the profession.

According to the Court of Appeal, if a costs order is warranted, then the Tribunal should consider how to calculate an appropriate amount, what to include and whether all or only some of the included expenses should be ordered. The Tribunal must also consider whether the overall amount ordered is reasonable having regard to the success or failure of the parties, the seriousness of the allegations, and the conduct of the parties.

The Hearing Tribunal’s first step is to determine if there is a compelling reason to make a costs order against Mr. Luong.

The Hearing Tribunal finds that Mr. Luong failed to cooperate with the College’s investigator and that such conduct warrants a costs award. The Court of Appeal specifically referenced such conduct as warranting such an award. Further, Mr. Luong failed to cooperate with Sunlife’s audit, which is conduct that forced the College to spend more resources to ascertain the facts related to the complaint.

The Hearing Tribunal also finds that this failure to cooperate, along with the dispensing of medications, medical devices, and diabetic supplies as found in Allegations 4 and 5, are all serious unprofessional conduct warranting a costs award. As previously observed by the Tribunal in the merits decision and as noted above, this conduct is very serious. Mr. Luong has an obligation to use health resources wisely and to be a steward of the health care environment. Mr. Luong failed to do so and instead Mr. Luong used his professional status for his own personal benefit and the benefit of his family. A pharmacist would know that such conduct is a marked departure from expected conduct and is completely unacceptable.

Having determined that Mr. Luong should pay costs, the second step is to determine in what amount costs should be imposed.

In *Jinnah* at paragraph 141, the Court of Appeal observed that a professional who engages in serious unprofessional conduct can “justifiably be ordered to indemnify the College for a substantial portion or all of its expenses in prosecuting a complaint”. The Hearing Tribunal is also mindful of the Court of Appeal’s direction that costs are not intended to be punitive and that a Tribunal must ensure the final amount is a reasonable number.

In determining what is a reasonable amount of costs in this case, the Hearing Tribunal considered that the conduct involved a failure to comply with the College’s investigator and

SunLife's audit and that it was serious, as set out in this decision and the merits decision, and that Mr. Luong was convicted of 4 of 5 allegations. The Tribunal noted that the one allegation that was not proven was related to the others and that it did not involve a significant portion of the investigation or hearing. The Tribunal also considered that while Mr. Luong did not enter into a written admission or joint submission on sanction, while this was not an aggravating factor, the Tribunal found that the lack of admission could not serve as a mitigating factor that would warrant a reduction in costs. The Hearing Tribunal has also considered that Mr. Luong did not provide any submissions as to his financial circumstances and as to whether the costs would significantly impact his financial situation.


Taking all of these factors into account, the Tribunal has determined that Mr. Luong should pay 100% of the investigation and hearing costs. The Tribunal agrees with the Court of Appeal that it is not unfair or unprincipled to require a pharmacist who knowingly commits serious unprofessional conduct and who refuses to cooperate with an investigation to pay all the costs the regulator incurs in prosecuting a complaint. Further, the Complaints Director had no choice but to proceed with the hearing in light of Mr. Luong's conduct.

The Complaints Director proposed that Mr. Luong pay 100% of the costs within 24 months of the written tribunal's decision on sanction pursuant to a payment schedule acceptable to the Hearings Director. The Hearing Tribunal agrees that this is an appropriate timeline for payment.

## **5. Conclusion**

Taken together, the totality of the sanctions is appropriate for the combination of conduct in this case.

Signed on behalf of the Hearing Tribunal by the Chair on May 8, 2024.

Per:   
[Anjali Acharya \(May 8, 2024 15:54 MDT\)](#)  
Anjali Acharya