

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**EMERY OSTROSKY**

Registration number: 4615

**DECISION OF THE HEARING TRIBUNAL**

September 12, 2024

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Emery Ostrosky (“Mr. Ostrosky”).

The hearing commenced on January 31, 2024 and proceeded by way of video-conference. After an adjournment, discussed below, the hearing continued on July 8, 2024. The hearing was held under the terms of Part 4 of the *Health Professions Act*, RSA 2000, c. H-7 (“the *HPA*”).

In attendance on behalf of the Hearing Tribunal (“the Tribunal”) were: Brad Couldwell (pharmacist and chair) (“the Chair”), Tanner Bengry (pharmacist), Patricia Hull (public member) and Naz Mellick (public member). Maya Gordon acted as independent counsel to the Hearing Tribunal.

Also 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;
- Emery Ostrosky, the Investigated Member (January 31, 2024 only); and
- ■■■■■ (“Mr. ■■■■■ Agent for the Investigated Member for the Adjournment Application only (January 31, 2024 only).

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 present: Jessica Young, who was present on January 31, 2024; Shelley Becker, who was present on the July 8, 2024 proceedings; and Kelly Cochrane, who was present on the July 9, 2024 proceedings.

There were also observers in attendance at various times during the hearing.

## **II. ALLEGATIONS**

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Mr. Ostrosky (“the Allegations”), as set out in the Amended Notice of Hearing (revised start date), which was entered as Exhibit 2, Tab A.2:

IT IS ALLEGED THAT, while you were a registered Alberta clinical pharmacist and employed as a relief pharmacist at Shoppers Drug Mart (#315 and #2311) in Grande Prairie, you:

1. Provided 210 Xeljanz tablets to ■■■ from Shoppers Drug Mart #315 between July 31, 2022 and September 20, 2022 in the absence of a valid prescription;
2. Paid for only 38 of the 210 Xeljanz tablets you provided to ■■■ from Shoppers Drug Mart #315 between July 31, 2022 and September 20, 2022;

3. Attempted to conceal the number of Xeljanz tablets you provided to [REDACTED] from Shoppers Drug Mart #315 between July 31, 2022 and September 20, 2022 by replacing the removed Xeljanz tablets with Vitamin B tablets;
4. Created false records at Shoppers Drug Mart #315 and #2311 and on Netcare when you:
  - a. Fabricated 28 verbal prescriptions for patients [REDACTED] [REDACTED] or [REDACTED] between October 11, 2021 to October 30, 2022;
  - b. Listed Dr. [REDACTED] as a prescriber on more than 70 prescription transaction records for [REDACTED] [REDACTED] and [REDACTED] when Dr. [REDACTED] did not authorize you to do so and when Dr. [REDACTED] did not have a current professional relationship with any of [REDACTED] [REDACTED] or [REDACTED]
  - c. Documented in pharmacy records that you had dispensed 38 tablets of Xeljanz to [REDACTED] between July 31, 2022 to September 20, 2022 from Shoppers Drug Mart #315 when you had actually provided approximately 210 tablets of Xeljanz to [REDACTED] in that time period.
5. Diverted methadone from Shoppers Drug Mart #315 on or about October 3, 2022 for use by [REDACTED] and [REDACTED]
6. Between October 11, 2021 and October 30, 2022, provided medications from Shoppers Drug Mart #315 and #2311 for yourself, members of your [REDACTED] family ([REDACTED] and [REDACTED] and friends whom you considered family ([REDACTED] and [REDACTED] on more than one occasion:
  - a. in the absence of a valid prescription; and
  - b. when the medication was not for a minor condition, or an emergency or when another prescriber was not readily available.

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;
- b. Undermined the integrity of the profession;
- c. Created the potential for patient harm; and
- d. Failed to fulfill professional and ethical judgement expected and required of an Alberta pharmacist.

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

- Standards 1 (sub-standards 1.1 and 1.2), 2(sub-standard 2.1(e)), 6 (sub-standard 6.4) and 18 (sub-standard 18.1(b and f)) and Appendix A of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Principles 1(sub-principles 1 and 2), 3(sub-principles 3 and 4), and 10(sub-principles 1 and 2) of the Alberta College of Pharmacy's Code of Ethics;
- Sections 4(1) and 5(2) of the *Controlled Drugs and Substances Act*; and
- Section 31(2)(a) 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)(i), 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*.

### **III. PRELIMINARY MATTERS**

#### **Agent for Mr. Ostrosky – January 31, 2024**

Mr. Ostrosky requested, as a preliminary matter, to have an agent make the submissions on his behalf. He put forth Mr. [REDACTED] as his proposed agent.

The Chair allowed Ms. Chisholm to reply to the Application. She began her submissions by noting that section 72 of the HPA allowed for legal representation at hearings, but did not expressly allow for agents. That being said, she noted that in some cases, agents could provide assistance to investigated members.

However, the Complaints Director had serious concerns with proceeding with Mr. [REDACTED] as an agent for Mr. Ostrosky. Mr. Ostrosky and Mr. [REDACTED] may have accessed the disclosure for the hearing. Mr. [REDACTED] may be a witness who has potentially benefitted from the alleged conduct. If Mr. [REDACTED] could act as an agent, he could not then be called as a witness. That may prejudice Mr. Ostrosky's case at a later date.

The Tribunal took a brief adjournment and came back to ask Mr. [REDACTED] some questions. First, the Chair asked Mr. [REDACTED] about his role today. Mr. [REDACTED] replied that he was only here to request the adjournment, for today only. It was not his intent to represent Mr. Ostrosky in the hearing.

Second, the Chair asked Mr. [REDACTED] about why Mr. Ostrosky could not represent himself. Mr. [REDACTED] replied that there had been a lot of stress on Mr. Ostrosky, and it has had significant effects on his health. Mr. Ostrosky wanted assistance in conveying his opinions to the panel articulately, and Mr. [REDACTED] agreed to do so. Mr. [REDACTED] relayed that this matter has been extremely mentally, physically, and emotionally stressful to Mr. Ostrosky.

Third, Mr. [REDACTED] stated that currently, he was not planned to be used as a witness by Mr. Ostrosky.

Finally, the Chair asked whether Mr. [REDACTED] could restrict his submissions only to submissions about the adjournment, and Mr. [REDACTED] said that he could.

Thereafter, the Tribunal caucused about whether they would allow Mr. [REDACTED] to make submissions, expressly restricted to the adjournment request, on behalf of Mr. Ostrosky.

*Decision of the Hearing Tribunal*

The Hearing Tribunal acknowledged that Mr. Ostrosky submitted, by email and through Mr. [REDACTED] that he felt he could not properly express himself at this hearing for the purposes of requesting an adjournment. The Tribunal is committed to ensuring as fair a hearing as possible for Mr. Ostrosky and wanted him to feel that he has been able to make fulsome submissions, given the gravity of this matter.

The Tribunal was also aware of the fact that Mr. [REDACTED] may be involved in this complaint, and could be called by a witness.

With those factors in mind, the Tribunal decided to allow Mr. [REDACTED] to make submissions on Mr. Ostrosky's behalf, however his submissions were restricted only to the adjournment request. He was restricted from making any submissions about the substance of the complaint itself, as the substantive portion of the hearing had not yet begun.

**Adjournment Request – January 31, 2024**

*Submissions of Mr. [REDACTED] on Behalf of Mr. Ostrosky*

In his submissions, Mr. [REDACTED] noted that Mr. Ostrosky had attempted to get an attorney for this matter, in Calgary. Mr. Ostrosky had paid a retainer, and incurred approximately \$10,000.00 in costs, but that attorney was not following instructions from Mr. Ostrosky. Therefore, the relationship was terminated.

Mr. Ostrosky then sought to retain three subsequent attorneys, but they could not assist. Then they found an additional lawyer, from Parlee McLaws, who said that they may be able to act, but they required an adjournment to review the file.

The reason for the adjournment request was simply for the new lawyer to be able to review the case, as it has been presented, and to give a recommendation as to whether they should proceed with an offer, and how the offer should be addressed. It was not to delay this matter – there was an effort underway to have this matter resolved, but Mr. Ostrosky would like to receive legal advice on how to proceed.

*Submissions of Ms. Chisholm, on Behalf of the Complaint's Director*

Ms. Chisholm replied and advised that the Complaints Director was strongly opposed to the requested adjournment. She noted that the proposed legal counsel for Mr. Ostrosky was not in fact retained, and any suggestion to the contrary is inaccurate.

However, due to the information received over the last few days, the Complaints Director has received additional information which showed signs and raised concerns that if the proceedings did proceed, they may not be in the public interest and the integrity of the process would not be protected appropriately.

It appears that Mr. Ostrosky had not reviewed the disclosure package, which may have meant that he was not prepared to respond to the evidence of the Complaints Director. He had indicated that he intends to retain legal counsel, and to call witnesses, although he has not done so yet. He also indicated that he was in a vulnerable emotional and mental state, and has advised that he cannot proceed coherently. Mr. Ostrosky is a compellable witness who could be called if he did not intend to provide evidence himself.

The Complaints Director would like to avoid a situation where the hearing would need to be extended, adjourned, or prejudiced due to a lack of preparedness on the part of the Investigated Member, Mr. Ostrosky.

The charges and allegations in this matter are serious, and if proven, the Complaints Director will be seeking substantial sanctions, so Ms. Chisholm stated that it is important that the process is protected.

If the Tribunal was inclined to grant an adjournment and exercise its authority under section 65 of the *HPA*, it is able to make an Application to a Committee to impose conditions on an investigated person's practice permit, generally or with respect to the practice of that individual, until the completion of the proceedings. This is open to the Tribunal, to protect the public, if it wishes to do so.

Up until this point, the Complaints Director was satisfied that Mr. Ostrosky was unlikely to repeat the conduct and that this was proceeding efficiently, but at this time, it seems that an additional adjournment is likely, and therefore, the Complaints Director was seeking an order under section 65.

*Response by Mr. [REDACTED]*

Mr. [REDACTED] advised that Mr. Ostrosky has been working over the past year to respond to this matter. There was some information that had been requested from the College, including his College file and witness information, which had not yet been received.

*Decision of the Tribunal*

After deliberations, the Tribunal decided to allow the adjournment being requested by Mr. Ostrosky, subject to the following conditions:

- The adjournment shall be peremptory on Mr. Ostrosky. This means that the proceeding will occur on the next date that is scheduled for the hearing to begin, and no further adjournments shall be considered. Mr. Ostrosky should know the gravity of this finding and be prepared to proceed on the next chosen date, even if legal counsel cannot be retained by that time. There is a public interest and an interest to the profession that this matter moves forward as expeditiously as possible.

- If he chooses to hire a lawyer to represent him in this matter, Mr. Ostrosky shall find legal counsel as soon as possible, and provide the Hearings Director with the closest available date to continue this matter.
- Mr. Ostrosky must communicate with the Hearings Director and with counsel for the Complaints Director by no later than March 1, 2024, advising on whether he has retained a lawyer. It is suggested that Mr. Ostrosky make sure he understands and is clear on the nature of his retainer with his lawyer.
- In the event that no date for the continuation of the hearing has been set down by March 8, 2024, the Hearings Director shall have the ability to set down the hearing for the next available date without getting the consent of Mr. Ostrosky or his counsel, and it will come back before the Tribunal for further direction at that time.
- Mr. Ostrosky is suggested to speak to his lawyer, once retained, about the disclosure that he is requesting, and if he is having difficulty in accessing the disclosure package already provided by the College, he or his lawyer should speak to Ms. Chisholm about those concerns.

Additionally, the Tribunal considered the Complaints Director's request that the Hearing Tribunal make a recommendation under section 65 of the *Health Professions Act* to have the College impose a condition on the practice permit of Mr. Ostrosky. It declined to do so at this time, but notes that the Complaints Director continues to have the jurisdiction to make a similar recommendation, if it decides it is appropriate, under section 65.

#### **Proceeding in the Absence of Mr. Ostrosky – July 8, 2024**

Following the adjournment granted by the Hearing Tribunal, this matter reconvened on July 8, 2024. Although some correspondence had occurred between the Hearings Director and Mr. Ostrosky in the interim, there was no confirmation prior to the July 8, 2024 resumption of the hearing that Mr. Ostrosky had in fact retained counsel in this matter.

Following the resumption of proceedings and noting the absence of Mr. Ostrosky on July 8, 2024, counsel for the Complaints Director brought an application to the Hearing Tribunal under section 79(6) of the *HPA*, which reads as follows:

- (6) Despite section 72(1), if the investigated person does not appear at a hearing and there is proof that the investigated person has been given a notice to attend the hearing tribunal may
  - (a) proceed with the hearing in the absence of the investigated person, and
  - (b) act or decide on the matter being heard in the absence of the investigated person.

Ms. Morley was called as a witness to provide evidence in respect of service on Mr. Ostrosky. Prior to her being sworn in, the Hearing Tribunal confirmed receipt of a

collection of documents entitled “2026-07-08 Exhibit A”, which was entered as **Exhibit 1**.

### **Evidence of Margaret Morley**

In her role as the Hearings Director for the College, Ms. Morley advised that it was her responsibility to provide Mr. Ostrosky with the Notice of Hearing.

Reviewing Exhibit 1, Ms. Morley provided the following testimony:

1. *Tab 1* – Included in this tab is an email that Ms. Morley sent on July 3, 2024 to Mr. Ostrosky at (emostro739@gmail.com), which is the email he has on record with the College. She had previously corresponded, and Mr. Ostrosky has replied, from this email address. This email enclosed four documents, enclosed behind Tab 2.
2. *Tab 2* – This tab included the attachments to the email at Tab 1: 05-15-2024 Notice of Hearing with Revised Start Date; 05-15-2024 Email Re Notice of Hearing with Revised Start Date; 05-15-2024 E-calendar invite Ostrosky hearing; and Letter to All Parties re: Adjournment.
3. *Tab 3* – This was an email sent to Mr. Ostrosky on May 15, 2024, to the same email referenced above, which summarized a phone conversation Ms. Morley had with him earlier that day. Ms. Morley testified that during this call, he confirmed that he was no longer represented by legal counsel, and he would be representing himself. He also indicated that he was aware that the hearing was to recommence on July 8. On the phone call, he had indicated that there was no issue starting on this date. Attached to this email was 2024-05-15 Notice of Hearing package with revised start date document, as well as the Letter to All Parties re Adjournment document.
4. *Tab 4* – This was an email sent to Mr. Ostrosky, which was a reminder of the Zoom link for today’s hearing. It was sent on July 8, 2024.
5. *Tab 5* – This is a confirmation from Canada Post that Ms. Morley’s registered letter, which had included the Notice of Hearing, was received at the post office where it was sent, and was signed for by someone other than Mr. Ostrosky (“M. ██████████”). It was picked up on May 21, 2024. Ms. Morley had mailed the Amended Notice of Hearing to the address on file with the College. She had also confirmed Mr. Ostrosky’s mailing address with him over the phone, as evidenced in her summary email to him included under Tab 3.

Ms. Morley concluded her evidence by stating that Mr. Ostrosky did not reply to any of her above correspondence. He does not have a current practice permit, as he did not renew it on July 1, 2024.

Following this evidence, Ms. Chisholm went through the legislative requirements to ensure proper service upon the Investigated Person. These documents can be sent to



an individual's address, as shown on the Register of the College, by registered mail. This was done in this case, and Mr. █████ signed for the registered mail on May 21, 2024. This occurred more than thirty days in advance of the hearing resumption date (July 8, 2024), as required by section 77(a) of the *HPA*.

Ms. Chisholm then concluded her submissions, urging the Hearing Tribunal to proceed in the absence of Mr. Ostrosky, pursuant to section 79(6) of the *HPA*.

### *Decision of the Tribunal*

The Hearing Tribunal reviewed the evidence put forth by Ms. Morley, including each tab included within Exhibit 1.

Upon review, the Hearing Tribunal found that Mr. Ostrosky had been advised of today's hearing date by three different methods – he had a call with Ms. Morley on May 15, 2024 where she advised of the hearing and confirmed the date of July 8, 2024, that call was then followed by a confirming email where the date of July 8, 2024 was reiterated by Ms. Morley twice. Mr. Ostrosky was also served, by registered mail, with the Amended Notice of Hearing demonstrating the July 8, 2024 start date. That was picked up by M. █████ on his behalf, on May 21, 2024. Finally, there were two additional emails sent to him on July 3, 2024 and July 8, 2024 confirming the start date and time, and providing him with access details.

The Hearing Tribunal also took note of the fact that the email and the mailing address that these documents were sent to were those that were provided by Mr. Ostrosky to the College for notices of this nature, which he did not amend or change. In addition, Ms. Morley testified that she had spoken to him on May 15, 2021 to confirm his mailing address, and that she had corresponded with him previously at that email address.

As such, the Hearing Tribunal was satisfied that Mr. Ostrosky had in fact been served with the Notice of Hearing in this matter, and therefore that it could proceed in the absence of Mr. Ostrosky.

### **Additional Preliminary Issues**

During her preliminary comments, Ms. Chisholm requested that the allegations be amended, slightly, due to a typo in the amount of the pills for Xeljanz. In the original Notice of Hearing, it had said "172 of the 210 Xeljanz tablets", while the Amended Notice of Hearing stated "38 of the 210 Xeljanz tablets". The Amended Notice of Hearing, which would be put before the Hearing Tribunal, was the corrected version.

In January 2024 and in May 2024, Mr. Ostrosky had received notice of the Amended Allegations. The Hearing Tribunal confirmed that these amended allegations would be the ones considered by the Hearing Tribunal in this hearing.

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

##### Summary

The following documents were entered as Exhibits:

**Exhibit 1** – “2024-07-08 Exhibit A.pdf”

**Exhibit 2** – “2024-01-28 Hearing Exhibit Book.pdf”

The following individuals were called as witnesses for the Complaints Director:

The Complaints Director, James Krempien (“Mr. Krempien”);  
The Investigator, Jennifer Mosher (“Ms. Mosher” or the “Investigator”);  
The Complainant, [REDACTED] [REDACTED] (“Mr. [REDACTED] or the “Complainant”); and  
Dr. [REDACTED] [REDACTED] (“Dr. [REDACTED]”).

No witnesses were called for the Investigated Member. He was not in attendance for the substantive portion of the hearing.

##### Evidence of James Krempien

Mr. Krempien is the Complaints Director of the College. He has been in that role since 2008. In his role as Complaints Director, he received a complaint about Mr. Ostrosky from Mr. [REDACTED].

At this time, Ms. Chisholm confirmed that the Hearing Tribunal had access to the electronic Exhibit Book. Following Mr. Krempien’s evidence, Ms. Chisholm requested to have the entire Exhibit Book entered as **Exhibit 2**, and the Hearing Tribunal agreed.

Within that Exhibit Book, Mr. Krempien reviewed an email exchange between him and Mr. [REDACTED] dated November 14 – 16, 2022, which began with Mr. [REDACTED] sending an email to the College (via Andee Pullin of the College). The complaint is all three pages, from page 17 to page 19 (“the Complaint”).

Within the Complaint, Mr. [REDACTED] wrote that on October 29, 2022, his Shopper’s Drug Mart (“SDM”) location was doing some inventory counting of pills and they noticed that the pills in the Xeljanz 1 mg XR bottle looked wrong. The bottles were open, and pill amounts in the bottles were not correct.

Mr. [REDACTED] turned it over to Mr. [REDACTED] [REDACTED] (“Mr. [REDACTED] who is the SDM inhouse investigation officer. They pulled a summary of the prescriptions and identified what they felt were fraudulent prescriptions being processed by Mr. Ostrosky, which totaled 72 prescriptions. These were for various medications, some

of which were controlled and some of which were narcotics. The prescriptions were put under Dr. [REDACTED]. They spoke with Dr. [REDACTED] who stated that he knows Mr. Ostrosky but had no knowledge or record of these patients and did not authorize any of these prescriptions.

Mr. [REDACTED] and Mr. [REDACTED] presented Mr. Ostrosky with their findings during a meeting that occurred on November 7, 2022. He admitted “to doing it all”. He said he was doing it to help out his family and was not doing it for trafficking or personal purposes. At the end of the meeting, he wrote out a confession, and then Mr. [REDACTED] terminated him from employment. This matter was referred to the RCMP in November 2022.

Within the Exhibit Book (Tabs 2 and 3), Mr. Krempien provided documents that were College internal documents from when the Complaint came in. In a Memo, Mr. Krempien documented receiving the Complaint, and based on his review, he decided to initiate an investigation under section 55(2)(b) of the *HPA*. There would be three investigators: himself, Jennifer Mosher and Brad Willsey. Mr. Willsey did not act as an active investigator in this matter.

Mr. Krempien then had a conversation with Mr. [REDACTED] (Tab 4). He reviewed a Memo where he kept notes of that call. The Memo included what Mr. Krempien discussed with Mr. [REDACTED]. Mr. [REDACTED] summarized the results of their internal SDM investigation of this matter to Mr. Krempien.

Following that call, Mr. Krempien tried to contact Mr. Ostrosky by phone, at the number that the College had for Mr. Ostrosky, and the number Mr. [REDACTED] had on file as well for him (Tab 5). On both calls it said that the phone number was temporarily out of service.

On November 18, 2022, Mr. Krempien emailed Mr. Ostrosky, enclosing a password protected letter of the same date (Tab 6). It was emailed to “emostro739@gmail.com”. There was confirmation that the email had successfully been sent from Microsoft Office. Within that letter, Mr. Krempien provided a description of the allegations and status of the investigation, along with the Complaint and some College documentation that provided an investigated party with information about the complaint process.

Mr. Krempien continued to try to reach Mr. Ostrosky by phone (Tab 7), but he did not reach him. He provided a Memo to this effect, dated November 21, 2022.

Mr. Ostrosky did in fact email Mr. Krempien back on November 21, 2022, providing his current address and his telephone number (Tab 8). They confirmed that they would speak the following day.

After receiving his updated Calgary address, Mr. Krempien (Tab 9) sent the letter at Tab 6 to Mr. Ostrosky via his new address provided. The new Calgary address is identified by the Canada Post registered mail sticker on page 43 of Exhibit 2.

Mr. Krempien sent a letter to Mr. [REDACTED] dated November 18, 2022 (Tab 10) which included information about the process of the Complaint.

Mr. Ostrosky then provided Mr. Krempien with an updated phone number for himself (Tab 11), with a new area code, via email.

Mr. Krempien then had a call with Mr. Ostrosky on November 22, 2022. They discussed the Complaint. They discussed the Canada Post letter notifying him about the investigation and the December 18, 2022 deadline for his reply. He confirmed that he had received and reviewed the letter, including a copy of the Complaint. They discussed the customary investigation steps and timeframes. He was not practicing and if he should resume, he would let Mr. Krempien know. He provided a Calgary address for himself, and confirmed his email address (which was the one being used). He also confirmed that he understood that if any contact information changed, the College had to be notified (Memo at Tab 12).

Within Tab 13, Mr. Krempien emailed Mr. [REDACTED] requesting the internal Shopper's Drug Mart Investigation Documents ("SDM Documents").

Mr. Krempien received the SDM Documents. These were provided from Mr. [REDACTED] and are all included in Tab 14.

Within the SDM Documents, there were details of their own internal SDM investigation, and their own findings. They found that the value of the described theft was for a total of \$9,939.96 for Patient [REDACTED] (page 59, Exhibit 2). [REDACTED] was a [REDACTED] of Mr. Ostrosky's at that time. There were 72 fraudulent prescriptions dispensed for [REDACTED] (his friend), [REDACTED] (his [REDACTED] [REDACTED] (his [REDACTED] and [REDACTED] (his [REDACTED] They considered these to be fraudulent in that there was either no prescription scanned into the software for these events, or the prescriptions were scanned in, but later found not to be authorized by the prescriber, Dr. [REDACTED]

Mr. Ostrosky had paid for the cost of some of the prescriptions, but did not pay for the markup or dispensing fees. This occurred at two SDM locations (#315 and #3211, both in Grande Prairie, Alberta). The SDM Documents referred to a CCT video obtained by SDM, which it was stated showed that Mr. Ostrosky had entered a prescription for a tablet for generic Viagra, and he had waived the markup and dispensing fee for this. The SDM Documents also indicated that Mr. Ostrosky had taken other prescription medications for his own personal use.

In addition to their report narrative, the SDM Documents included a prescription transaction list, which cites the prescriptions that they considered to be fraudulent (Exhibit 2, pages 66 - 77, within Tab 14).

Within Tab 15, Mr. [REDACTED] emailed Mr. Krempien, providing the link for all the problematic prescription and entry details, which was provided via a Google Drive link.

Mr. Krempien then emailed with Mr. Ostrosky (Tab 16) on December 19, 2022. In this exchange, Mr. Ostrosky provided his written response to the complaint. He spoke

about the period in question (October 2021 and November 2022), and how he felt that visits to family physicians were ill-advised, as these people were at high risk of contracting COVID-19. They were all members of his family and he had personal relationships with them. At no time did he use the drugs for resale or monetary gain, no other pharmacists were involved. Mr. Ostrosky stated that all of the drugs provided to ■■■ and ■■■ were paid for.

Mr. Ostrosky wrote that Dr. ■■■ had stated “Emery knows what to do, he can use my name for scripts for his family, don’t worry about it” (page 111, Exhibit 2).

Within Tab 17, in an email dated December 20, 2022, Mr. Ostrosky provided updated employment information to Mr. Krempien, as he was now working as a relief pharmacist at two SDM locations in Lloydminster, Alberta.

Following this, the mail that had been sent to Mr. Ostrosky was returned to the College. Mr. Krempien emailed Mr. Ostrosky on December 22, 2022 (Tab 18) advising that he was required to provide a proper mailing address. Mr. Krempien advised Mr. Ostrosky that he must cooperate with the investigation and failure to do so could constitute unprofessional conduct under the *HPA*.

By email exchange dated between December 22 - 24, 2022 (Tab 19), Mr. Ostrosky replied to Mr. Krempien and then provided an updated mailing address in Calgary, Alberta. He also noted that he had updated this in the portal for the College. Mr. Krempien confirmed that following this, all letters and documents would now be sent to this Calgary address provided.

Mr. Krempien received an email on January 13, 2023 from Tracy Peerless-Day, who works at the College (Tab 24). She wanted to advise that a USB stick had been dropped off and she was told to pass this along to the Investigator.

After he received the Investigation Report of Ms. Mosher, Mr. Krempien reviewed it, along with all of the attached documents, and all of the information gathered in the investigation. Following that, it was referred to Ms. Morley so that she could establish a Hearing Tribunal to hear this matter. This decision was recorded in Exhibit 2, Tab B, Page 14 as the “Record of Decision under section 66(3) of the *Health Professions Act*”.

Mr. Ostrosky has a record with the College. There have been three (3) prior formal complaints regarding his conduct which have been investigated and reviewed by the College. None of those complaints were referred to a Hearing Tribunal or resulted in a finding of unprofessional conduct.

One of those complaints related to a concern from an Albertan, ■■■ ■■■. There was a concern that Mr. Ostrosky had dispensed controlled substance medications to the son of ■■■ and the complainant. The allegation was that it was inappropriate for Mr. Ostrosky to have dispensed that medication to the ■■■, because Mr. Ostrosky had a close personal relationship with this person (at that time, ■■■ was Mr. Ostrosky’s boss

and the owner of the pharmacy of which Mr. Ostrosky was the licensee, and Mr. Ostrosky was living with both [REDACTED] and his [REDACTED]).

The second complaint was from the same individual. This complaint was generally about whether Mr. Ostrosky was complying with the undertaking that he had made in resolution of the first complaint. One of the undertakings was that he would not provide medications to the [REDACTED], or other family members.

The third complaint, which was more recent, was made by a pharmacy assistant regarding Mr. Ostrosky. The pharmacy assistant had alleged that his [REDACTED] had been involved in a financial dealing with [REDACTED] that had turned sour, and [REDACTED] had wanted to get his money out of the [REDACTED]. It was alleged that Mr. Ostrosky had set up the meeting or the relationship between the pharmacy assistant's family member and [REDACTED].

The Hearing Tribunal had no questions of Mr. Krempien.

The Hearing Tribunal found Mr. Krempien to be a reliable and objective witness, largely putting in the College's procedural background in relation to the complaint.

#### **Evidence of Jennifer Mosher**

The next witness to be called by the Complaints Director was Ms. Mosher, the investigator of this matter.

She received training toward completing investigations, both basic and advanced, through a company called "Clear". She has experience applying the College's standards. She was formerly a practice consultant, assessing a pharmacy's practice with the standards. And as an investigator, she often does the same thing.

She was assigned the Complaint relating to Mr. Ostrosky. Mr. Krempien supplied her with a file with some preliminary documents, and he asked her to investigate the complaint and provide him with a report (the "Investigation Report").

She recognized the documents in Exhibit 2, Tabs 1 – 37. These are documents that she reviewed as part of her investigation.

She first reviewed Exhibit 2, Tab 20. This was an email sent by Ms. Mosher on January 3, 2023 to Mr. Ostrosky. She asked him for the "more information forthcoming" that he had said he had, and she was following up on that.

On January 5, 2023, Ms. Mosher emailed Mr. [REDACTED] (Tab 21), requesting a USB containing videos of Mr. Ostrosky at the SDM. Mr. [REDACTED] advised it would be provided.

On January 11, 2023, Mr. Ostrosky forwarded an email to Ms. Mosher (Tab 22). Mr. Ostrosky was forwarding an email from Mr. [REDACTED] containing personal information, largely not relevant to the investigation. There was an additional email, forwarded by Mr. [REDACTED] with an "NDA" attached, which again was not related to the Complaint.

In her response dated January 12, 2023, Ms. Mosher replied to Mr. Ostrosky (Tab 23) acknowledging the emails from Mr. [REDACTED] but continuing to request relevant information. Mr. Ostrosky had indicated that he would be providing prescriptions that were not available in the SDM Documents. Mr. Krempien had asked for details on how the medications were diverted, and requested a full accounting, and information about any parallel or criminal court proceedings. That information had not been received.

As noted above, Mr. Krempien testified that he received a USB from a College office assistant. Mr. Krempien provided the USB to Ms. Mosher. The email is at Tab 24.

Within the USB, it included screenshots such as the following:

1. Prescription report for [REDACTED]
2. Prescription for [REDACTED] prescribed by Dr. [REDACTED]. She noted that there was no prescription image provided. Typically, the prescription would be scanned in the box. It says "No Image Available". This was for Metronidazole, an antibiotic;
3. Prescription for [REDACTED] prescribed by Dr. [REDACTED]. There was also "No Image Available" for this prescription. Within that same box, it said "Bypassed by EOSTROS1 on 2022-10-30". He would have had to bypass the inclusion himself;
4. Prescription for [REDACTED] from Dr. [REDACTED]. No image of the prescription was provided. This was for Viagra;
5. Prescription for [REDACTED] for Tadalafil. This looked like a verbal order from a doctor. It is not on the doctor's letterhead and is signed by Mr. Ostrosky. Dr. [REDACTED] did not make this order.

The documents between pages 155-189 within Exhibit 2 were similar documents for patients [REDACTED] [REDACTED] and [REDACTED]

At page 190 of Exhibit 2, there was a Prescription Transaction List related to Mr. Ostrosky from October 2021 – October 2022. There is highlighting and handwritten notes on this listing. SDM, in their investigation, had highlighted some patient names and dates, and handwritten "No Prescription", "Fraudulent Prescription", or "Valid Prescription". These were all related to SDM #315.

Within the SDM Documents, they concluded an investigation report of their own. They came to their own findings. She did not find anything different in that report from the information that she collected.

In addition, within Exhibit 2 a number of videos are attached. Ms. Mosher reviewed the footage, which was security footage taken of Mr. Ostrosky while he was in the pharmacy. The videos were not conclusive to support or not support the allegations within the Complaint.

In an email dated January 16, 2023, she followed up with Mr. [REDACTED] seeking additional information (Tab 25). He had replied that he was looking for these documents and would provide them when he could.

On January 18, 2023, Ms. Mosher followed up again with Mr. Ostrosky by email (Tab 26). Mr. Ostrosky replied that he was “just awaiting information from third parties and [that he had] imparted the urgency,” and Ms. Mosher replied she would await the documents.

On January 25, 2023, Ms. Mosher emailed Mr. Ostrosky, requesting a virtual meeting to discuss the Complaint (Tab 27).

Following this, on January 30, 2023, Ms. Mosher emailed Mr. [REDACTED] following up on her request for additional documents, including Mr. Ostrosky’s admission document (Tab 28).

On January 30, 2023, Ms. Mosher also followed up with Mr. Ostrosky regarding the virtual meeting. He replied on the same day, advising that he could not meet until February 8, 2023. Ms. Mosher sent him an invite for a virtual meeting on that date at 9:30 am (Tab 29).

On February 8, 2023, Ms. Mosher received an email from Mr. Ostrosky in which he forwarded an email from Mr. [REDACTED] containing information about Mr. [REDACTED] his physician, and previous prescriptions (Tab 30). This was not the information that she was looking for, nor was it relevant to the Complaint. It included a Netcare screenshot, but does not indicate who the patient is on the Netcare screenshot.

On February 8, 2023, Ms. Mosher met with Mr. Ostrosky via Microsoft Teams. During this call, she confirmed his current working location which he advised was at Shoppers Drug Mart, location #335. He did not dispute the allegations, he apologized, he was regretful. Ms. Mosher’s summary of this call was contained in Tab 31.

During this meeting, Ms. Mosher asked about the relationships with the individuals. He described [REDACTED] as someone what he considers family. [REDACTED] is [REDACTED] [REDACTED], and Mr. Ostrosky also considers her family. At the time of the Complaint allegations, [REDACTED] was his [REDACTED]. She is no longer his [REDACTED]. [REDACTED] is Mr. Ostrosky’s [REDACTED].

In this call, Mr. Ostrosky described how he diverted the Xeljanz for [REDACTED] one bottle at the time. There was a prescription for this medication for [REDACTED] who had [REDACTED]. When processing the medication, Mr. Ostrosky paid for only 38 tablets (totaling \$1,875.49) but 210 tablets had been diverted by Mr. Ostrosky (totaling \$10,767.12), via the method he described in that document.

Regarding [REDACTED] [REDACTED] and [REDACTED] he described how he provided drugs to them, in the absence of a legitimate prescription, as described in more detail in Ms. Mosher’s Memo.

On February 16, 2023, Ms. Mosher emailed Mr. [REDACTED] (Tab 32). They made a meeting to meet via Microsoft Teams.

Ms. Mosher and Mr. [REDACTED] met on Microsoft Teams on February 17, 2023. They had a discussion, and Ms. Mosher wrote a Memo describing her discussion with him (Tab



33). During their meeting, they discussed the Complaint and Mr. Ostrosky's response to the Complaint. Mr. [REDACTED] indicated how he had come across these discrepancies. Mr. [REDACTED] had also received confirmation from Dr. [REDACTED] that he had not in fact provided a blanket authorization to Mr. Ostrosky to prescribe medications on his behalf.

Following a request and a follow-up, Mr. [REDACTED] did provide all the Xeljanz transactions and Mr. Ostrosky's statement, by email dated February 19, 2023 (Tab 34). The statement of Mr. Ostrosky itself is also provided behind this tab. This document was provided to the RCMP. In addition, the Xeljanz transaction records were included in this email. The prescription was prescribed on June 21, 2021 (included at Exhibit B, page 236) and dispensed on August 17, 2022, so the prescription would not have been current. Ms. Mosher's perspective was that prescriptions must be filled 1 year after they are written, so this was an expired prescription.

On February 23, 2023, there was an email exchange between Mr. [REDACTED] and Ms. Mosher (Tab 35). Mr. [REDACTED] had asked the College as to whether he was required to tell Mr. Ostrosky's current employer about these allegations. She confirmed with Mr. Krempien that if Mr. [REDACTED] felt that Mr. Ostrosky presented a risk, the current employer should be informed.

On March 3, 2023, Ms. Mosher called Dr. [REDACTED] who was the prescriber of the Xeljanz for [REDACTED] (Tab 36). He confirmed that the Xeljanz prescription was written on June 21, 2021 for [REDACTED]. He confirmed that he had seen [REDACTED] again on June 28, 2022.

Finally, Ms. Mosher called Dr. [REDACTED] on March 3, 2023 (Tab 37) and prepared a Memo relating to that conversation. During this discussion, she discussed Dr. [REDACTED] relationship with Mr. Ostrosky. He had known him since 2014. Mr. Ostrosky had not been a patient of his since July 2018 and he had a 'no contact' with Mr. Ostrosky since then. Dr. [REDACTED] reviewed his records and indicated he had no records of patients [REDACTED] or [REDACTED]. He would not have given Mr. Ostrosky any blanket authority to provide prescriptions on his behalf, and that he would not have prescribed anything without a record of the patient.

There were a number of drugs provided to [REDACTED], [REDACTED] and [REDACTED]. They were not for minor conditions or emergency cases. In her view, needing these medications for family members does not justify his actions in this case.

Following a caucus, the Hearing Tribunal asked Ms. Mosher to comment on whether there were any supporting documentation following the call that was described in the Memo provided at Tab 37. Ms. Mosher replied that there was no additional information provided by Dr. [REDACTED] however she noted that Mr. [REDACTED] had a similar discussion with Dr. [REDACTED] and she was relying on that as corroboration.

As Mr. Ostrosky was not present or represented by counsel, Ms. Mosher was not cross-examined. The Hearing Tribunal found Ms. Mosher to be a reliable and credible witness, providing information relating to her investigation of this matter.

**Evidence of [REDACTED] [REDACTED]**

[REDACTED] [REDACTED] the Complainant, was called to provide his evidence. He is an associate owner of SDM #315 and #2311.

Mr. Ostrosky worked from September 2021 to October 2022 as a relief pharmacist, mostly in his #315 store. He worked regularly during this time – around 40 hours a week.

One day, Mr. [REDACTED] was contacted by an assistant [REDACTED] who was doing some inventory counting. Staff had noticed that some Xeljanz bottles had been opened and tablets did not look correct. Mr. [REDACTED] came and confirmed that the tablets looked different. When they looked them up in the system, the pills did not look how they were supposed to look.

Reviewing their system, they found that these drugs had all been dispensed to one patient, and Mr. Ostrosky had been the only one dispensing this drug. There were about 6 bottles missing. He contacted a loss prevention individual with SDM, and then they ran additional reports which located other seemingly fraudulent prescriptions relating to Mr. Ostrosky. Xeljanz was not a narcotic, but was very expensive.

Ms. Chisholm provided him with the Complaint to review. He reviewed it and confirmed that he recognized it. He did not want to add or change this statement.

He discussed his conversation with Dr. [REDACTED]. A lot of the fraudulent prescriptions were under Dr. [REDACTED]. Dr. [REDACTED] told him that he did know Mr. Ostrosky, but he had never met with any of these patients. He had not spoken with Mr. Ostrosky about these particular prescriptions. Many of the prescriptions reviewed were blank pages that had Dr. [REDACTED] name listed as the prescriber.

Mr. [REDACTED] also discussed this matter with Mr. Ostrosky. He said that he had never spoken with Dr. [REDACTED].

The witness was directed to Tab 4 of Exhibit 2, a Memo created by Mr. Krempien relating to a call with Mr. [REDACTED]. He reviewed it while he was under oath, and confirmed this was an accurate summary of his conversation with Mr. Krempien. He would not change it or add anything to it.

After this, Ms. Chisholm reviewed Tab 13 of Exhibit 2. This was an email exchange relating to video evidence. Mr. [REDACTED] said that the videos demonstrated that Mr. Ostrosky was the one entering and filling the prescriptions of Xeljanz. The video was not viewed by the Hearing Tribunal or the witness at this point. Mr. [REDACTED] testified that it is hard to see what Mr. Ostrosky is doing on the CCTV footage.

Following this, Mr. [REDACTED] confirmed that he was copied on an email from Mr. [REDACTED] who was the SDM loss prevention coordinator for his region. Tab 14 included Mr. [REDACTED] report of the loss totals and for the forgeries. He reviewed each of the

prescriptions himself. There were 5 completed at SDM #2311, and all the others occurred at SDM #315.

He knew that the prescriptions were fraudulent because there was no prescription scanned in at all. There were a few that were signed from Dr. [REDACTED] however it was all in Mr. Ostrosky's handwriting. When he later spoke with Dr. [REDACTED] Dr. [REDACTED] confirmed to Mr. [REDACTED] that Dr. [REDACTED] had not written any of those prescriptions.

At page 66 of Exhibit 2, there is a listing of prescriptions dispensed to these patients. There is handwriting on the document, and Mr. [REDACTED] confirmed it was Mr. [REDACTED] who had written on each item. Mr. [REDACTED] confirmed what each of the handwritten notations from Dr. [REDACTED] meant.

At page 80 of Exhibit 2, there is a patient profile screenshot for [REDACTED]. It is within Mr. [REDACTED] login information. You can see from the image that Mr. Ostrosky prepared, from intake to completion of this medication, and dispensed it. This was for Viagra for [REDACTED].

On the following page (81), there is a blank screen where the prescription is supposed to be scanned. He noted that it is not common to have a blank screen – even if a pharmacist is prescribing it themselves, they should have a hard copy.

On page 82, again there is a blank screen, and in this case the drug is for Vyvanse, which is a controlled substance.

On page 86, there is another screenshot. This was for [REDACTED]. Mr. Ostrosky wrote out a prescription on a pad in his own handwriting (Mr. [REDACTED] recognized his writing, as they had worked together a lot). He noted that the prescription pad was available to the pharmacists at his SDM, and Mr. Ostrosky had, in his opinion, forged Dr. [REDACTED] signature. It could have been called in by Dr. [REDACTED] but Dr. [REDACTED] did not say any prescriptions were called in.

On page 87, Mr. Ostrosky had forged Mr. [REDACTED] signature. Mr. [REDACTED] confirmed that it was not his signature.

On page 89, Mr. Ostrosky had written out another prescription, and then signed Dr. [REDACTED] name. Following these images, there are quite a few additional screenshots – they are either what appears to be a fraudulent prescription, or Mr. Ostrosky bypassed the screen and left it blank with no prescription added.

Mr. [REDACTED] asked Mr. Ostrosky why he had done this. He noted that his family and friends had asked him to do it, and he wanted to save them time from seeing a doctor. He did not indicate to Mr. [REDACTED] that a doctor had in fact given a prescription for these, he said he was just helping out his family members.

On December 6, 2022, Mr. [REDACTED] provided Mr. Krempien with a link with all the forged prescriptions (page 78). He advised that the types of drugs were some anti-

anxiety drugs like Wellbutrin and Cipralex, some controlled drugs like Vyvanse, and Viagra as well.

He had a discussion with Ms. Mosher, the Investigator, on February 17, 2023 (Tab 33). He reviewed her Memo following their discussion. In this report, he advised Ms. Mosher that Dr. [REDACTED] that he did not authorize Mr. Ostrosky to provide the subject patients with the prescriptions described in the report. He noted that he provided the names to Dr. [REDACTED] and that Dr. [REDACTED] had told him he had no records for those patients. He did not get any additional confirmation.

On February 19, 2023, Mr. [REDACTED] provided the Investigator with an email with attachments relating to Xeljanz and Mr. Ostrosky's interview statement (Tab 34).

Regarding the interview statement, during a meeting with Mr. [REDACTED] and Mr. [REDACTED] Mr. Ostrosky told them that he wished to write out a confession statement, so they left him for a few minutes, and he wrote out this statement. Mr. Ostrosky then gave this statement to the College and to the police. He had an interview with the police, and provided them this information, but did not hear back from the police. Mr. Ostrosky did not pay for any of the losses evidenced in the SDM Documents.

Regarding the Xeljanz documents included under Tab 34, Mr. [REDACTED] went through them. He noted that there was in fact an original prescription, but that Mr. Ostrosky was paying only for portions of the drugs, as evidenced in those documents.

On page 106, Mr. Ostrosky entered a prescription for [REDACTED] for an antibiotic that was entered as if Mr. [REDACTED] had prescribed it. Mr. [REDACTED] did not prescribe it.

On page 107, there was another prescription entered for [REDACTED] under Mr. [REDACTED] name for an antibiotic. Again, Mr. [REDACTED] did not prescribe this to [REDACTED]

On page 108, there was a further prescription entered for [REDACTED] under Mr. [REDACTED] name, again for an antibiotic. Mr. [REDACTED] confirmed that he did not prescribe this to [REDACTED]

Following this, counsel for the Complaints Director concluded her questions of Mr. [REDACTED] As Mr. Ostrosky was not present and had no counsel, there was no cross-examination completed of Mr. [REDACTED]

The Hearing Tribunal asked Mr. [REDACTED] about the practices at SDM with regard to prescriptions and whether it was their practice always to keep hard copies after they are scanned. Mr. [REDACTED] advised that SDM keeps all hard copies, they are filed and kept in boxes and kept for eighteen (18) years. After this Complaint, he did not search their records to see whether these prescriptions were in fact there in hard copy, because of Mr. Ostrosky's confession. In their system, it is possible to fill in a scan for a prescription after the prescription has been filled.

Mr. [REDACTED] was a reliable witness, and provided the Hearing Tribunal with background details relating to the administrative processes at his pharmacies where these actions occurred.

**Evidence of Dr. [REDACTED]**

During prior testimony, the Hearing Tribunal asked the Complaints Director and his counsel whether they had contemplated calling Dr. [REDACTED]. They responded that the evidence that they had planned to enter consisted of the statements that Dr. [REDACTED] made to both Ms. Mosher and Mr. [REDACTED] as well as Mr. Ostrosky's "confessions" in writing that had been entered previously in the evidence. Ms. Chisholm took the Tribunal to Tab 31 (page 225) to go over the discussion that Mr. Ostrosky had with the Investigator and confirmed the statements that he had made in relation to the prescriptions.

During this discussion, counsel for the Complaints Director offered to call Dr. [REDACTED] and provide him with a Notice to Attend during this hearing.

The Hearing Tribunal stated that it wished to have Dr. [REDACTED] direct evidence in relation to the forgeries, and his evidence on any agreements with Mr. Ostrosky, which had been suggested by Mr. Ostrosky in his responses. The Hearing Tribunal directed counsel for the Complaints Director to attempt to contact Dr. [REDACTED] and provide an update as to his ability to testify at the morning of the next hearing date.

Following that direction, counsel for the Complaints Director made arrangements with Dr. [REDACTED] to attend the second day of the hearing. He attended on the second day of the hearing, and was sworn in by the Court Reporter to provide his evidence.

Dr. [REDACTED] is a family physician who graduated in South Africa and came to Canada in 2006. He is registered with the CPSA. He is in a family practice based in Calgary since 2011, in [REDACTED] Medical Centre.

He did recall a conversation with somebody, but could not recall the name, relating to this matter. He confirmed that there was no record of patient [REDACTED] on his files.

When he spoke to the Investigator, Dr. [REDACTED] advised he had an acquaintance with Mr. Ostrosky when Mr. Ostrosky was working at the Bridlewood clinic many years back. When Mr. Ostrosky left the practice, they had not done any further work together for patients.

Mr. Ostrosky did come to him, on a personal level, for himself and his [REDACTED] for treatment, one time after they worked together. Dr. [REDACTED] did not give further details about this. Outside of that, there was no contact with Mr. Ostrosky.

Dr. [REDACTED] did not authorize the Tylenol for [REDACTED]. He had no awareness of [REDACTED] as his client. Some of these prescriptions were for controlled substances.

Dr. [REDACTED] was asked about whether he had any arrangements with Mr. Ostrosky about prescriptions. He testified that his practice was that all prescriptions have to come to him for him to sign. If it is a controlled substance, there is no way that he would give verbal or implied consent for those prescriptions. He would want to see a patient in person for him to provide those prescriptions. He would have at least opened a file for

each patient. There is no file on the system for [REDACTED]. He had nobody with the name [REDACTED] on his file, going back to 2011.

He did not authorize prescriptions for [REDACTED] for narcotics, or any other prescriptions. He had not authorized *any* prescriptions for [REDACTED] regardless of the class of drug.

He has no record of patient [REDACTED] in his office. There is no [REDACTED] in his office, including him and his two colleagues. He did not authorize *any* prescriptions for [REDACTED]

During his testimony, he confirmed with his assistant at the medical office that there were no files with [REDACTED] in the surname, and that this search included closed/inactive files.

No record of [REDACTED] being a patient at his office. There were no records of her as his patient, so he did not authorize *any* prescriptions for her.

Dr. [REDACTED] confirmed that there were no verbal discussions with Mr. Ostrosky about authorizing any medications.

The Hearing Tribunal felt that Dr. [REDACTED] testimony was critical to them understanding his involvement in this matter, and that once he completed his testimony, it was supportive of the documentation, and that he was a reliable witness.

## V. CLOSING SUBMISSIONS ON THE ALLEGATIONS

### **Submissions on behalf of the Complaints Director**

Ms. Chisholm went over the task before the Hearing Tribunal. She noted that there was a two-part task which is before them. The first task is to review each allegation to ascertain whether the facts underlying each allegation were proven by the Complaints Director, on a balance of probabilities. Ms. Chisholm discussed the balance of probabilities standard. Second, for any allegations which were factually proven, the Hearing Tribunal must then consider whether the conduct is in fact unprofessional conduct pursuant to the *HPA*.

She then made submissions related to the larger scope of evidence available to Hearing Tribunals than for a court of law, pursuant to section 79(5) of the *HPA*, which states:

(5) Evidence may be given before the hearing tribunal in any manner that it considers appropriate, and it is not bound by the rules of law respecting evidence applicable to judicial hearings.

Although Mr. Ostrosky was not present, Ms. Chisholm argued that due to section 79(5), the Hearing Tribunal could accept his written admissions, and his statements to the Investigator as evidence. She stated that the Hearing Tribunal can also rely on the hearsay conversations that both Mr. [REDACTED] and Ms. Mosher had with Mr. Ostrosky.

Following this, Ms. Chisholm went through each allegation, arguing that for each allegation, the Complaints Director had proven the allegation factually on a balance of probabilities, and that in each case, the facts constituted unprofessional conduct.

The Hearing Tribunal had no further questions of Ms. Chisholm.

There was no closing statement made on behalf of Mr. Ostrosky.

## **VI. DECISION AND REASONS**

### **Background**

The Hearing Tribunal is aware of its two-part task. First, it will consider the factual evidence that was put before it by the Complaints Director in their case, to ascertain whether each allegation has been factually proven, on a balance of probabilities.

In considering the conduct for each proven allegation, the Hearing Tribunal will then consider the definition of unprofessional conduct as defined in s. 1(1)(pp)(i), (ii) and (xii) of the *HPA*, which includes the following:

- (pp) “unprofessional conduct” means one or more of the following, whether or not 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;

### **Specific Allegations**

#### *Allegation 1*

It is alleged that Mr. Ostrosky:

- 1. Provided 210 Xeljanz tablets to [REDACTED] from Shoppers Drug Mart #315 between July 31, 2022 and September 20, 2022 in the absence of a valid prescription;**

Regarding this allegation, the Hearing Tribunal reviewed the following evidence that was before it during this hearing:

1. In his original Complaint, Mr. [REDACTED] reported to the College about how the missing Xeljanz was located. He ran a dispensing report that found that Xeljanz had only been entered on one file ([REDACTED]) and that Mr. Ostrosky’s name was the one that entered, filled, checked and ran it through the till. In total, he wrote that “210 pills were missing” (\$1,553.00 per bottle, \$10,871.00 total), and that Mr. Ostrosky

had paid for 38 pills (\$1,968.00). Mr. ██████ said it was through a video it was confirmed that he was the one entering and filling and paying for them [this video was not shown to the Hearing Tribunal]. He also noted that there was no video of him swapping the pills, “but he confessed in the interview” (Exhibit 2, p. 19);

2. Mr. ██████ also testified in the hearing, under oath, confirming his statement in his complaint that 7 bottles of Xeljanz had been opened (at 30 tablets per bottle, this would result in 210 tablets);
3. In the case of ██████, there was a prescription for ██████ for Xeljanz from a Dr. ██████ entered into evidence. The Hearing Tribunal reviewed it, at Exhibit 2, p. 236. The prescription appeared to be dated June 21, 2021, although the writing was hard to read;
4. The Hearing Tribunal reviewed the Memo made by Ms. Mosher during her investigation of a call with Dr. ██████ (Exhibit 2, p. 246). In this call, Dr. ██████ confirmed that he had written the prescription for ██████ for Xeljanz and dated it June 21, 2021;
5. The Hearing Tribunal reviewed Exhibit 2, pages 235-242, which provided the SDM records related to the Xeljanz provided by Mr. Ostrosky. It found the following prescriptions:

Patient	Page #	Service Date	Prescription	“Prescriber”	Image (Y/N)	# Tablets	RX No.	Tx No.
JL	235, 236	2022-08-17	Xeljanz XR 11MG	██████ D	Y	10	1010791	13096943
JL	237, 238	2022-07-31	Xeljanz XR 11MG	██████ D	Y	8	1010791	13093133
JL	239, 240	2022-09-10	Xeljanz XR 11MG	██████ D	Y	10	1010791	13102676
JL	241, 242	2022-09-20	Xeljanz XR 11MG	██████ D	Y	10	1010791	13105232

These above documents only demonstrate 38 tablets being provided as “CMPT” within the SDM system – meaning completed and provided to JL.

In the SDM system, it was clear that Mr. Ostrosky was listed as the individual who was completing all steps on these ██████ prescriptions: he was involved from intake to completion on all these transactions;

In particular, the Hearing Tribunal noted that the “Service Date” for each of these prescriptions occurred after June 21, 2022, meaning that the Dr. ██████ prescription was not active for each of the prescriptions;

6. Mr. Ostrosky also made a statement to Mr. Krempien, by email, dated December 19, 2022, and this reflects his own words as to the allegations in this matter, which was valuable to the Hearing Tribunal due to the fact that he did not attend. In that



written statement (Exhibit 2, pages 111-112), Mr. Ostrosky wrote to the Complaints Director that:

“The drugs for Ms. [REDACTED] was to assist with her medical condition which was affecting her mental health negatively. There is a prescription on file in support of the dispensed medication. The payment for the cost of these drugs was to be made by Ms. [REDACTED] through me. However, this was one of the reasons for the breakdown in my relationship with Ms. [REDACTED]

Xeljanz was prescribed to Ms. [REDACTED] to treat her medical condition for hair regrowth. This medication was not diverted to any other parties for any other use or financial gain. The complaint shows payments being made to the balance of 10871\$. Leaving a balance of 8903.00\$, which also demonstrates that there was no malice or intent to divert medication for personal gain.

I must state this unequivocally, during the period in question, I did not divert any of the drugs for anything beyond personal use. During the interview with the complainant, I did not hesitate to acknowledge my responsibility for claims made within the complaint. It was also made clear the drugs were dispensed for use by family members only”;

7. Ms. Mosher, the Investigator, testified that she had a call with Mr. Ostrosky on February 8, 2023. During that call, Ms. Mosher’s Memo (Exhibit 2, pages 224 - 226) states that:
  - a. Mr. Ostrosky self-identified the period of time during which these activities occurred as approximately November 2021 to October 2022;
  - b. He told Ms. Mosher that [REDACTED] was prescribed Xeljanz by her [REDACTED] for [REDACTED]”. This auto-immune condition left her feeling “devastated” and brought her “to depths as far as a human being could go”;
  - c. Mr. Ostrosky described that “he diverted Xeljanz one bottle (30 tablets) at a time for [REDACTED] for a total of seven bottles (210 tablets). He described “advancing the bottles” to [REDACTED] “in lieu of payment forthcoming”. He described that he was trying to “buy time” until he could pay for the tablets”;
  - d. He obtained a legitimate prescription from [REDACTED] and processed that prescription through the dispensing software, putting the prescription “on hold”. He would place 30 tablets in a vial, label the vial and send it to [REDACTED] in Calgary. In order to avoid detection, Mr. Ostrosky replaced the Xeljanz tablets with vitamin B tablets and put the Xeljanz bottle back on the shelf;
  - e. Mr. Ostrosky had paid for a portion of the diverted tablets by filling a portion of the prescription (from the existing prescription on hold), adjusting the price to “cost only”, and performing a debit/credit transaction at the point-of-sale terminal. Ms. Mosher noted that of the 210 tablets diverted by Mr. Ostrosky (value \$10,767.12), Mr. Ostrosky stated he paid

for 38 tablets (value \$1,875.49), leaving 172 tablets unpaid (value \$8,891.63); and

- f. Mr. Ostrosky explained to Ms. Mosher that the diversion of the Xeljanz tablets went “further than he ever imagined it would” and ultimately led to the breakdown of his relationship with [REDACTED]. He was “torn between compassion” and a method to pay for the diverted tablets;
8. Finally, when SDM reviewed this matter and Mr. [REDACTED] investigated, their final report (Exhibit 2, page 59) states that:

“The Associate stated drug, Xeljanz XR 11 mg (DIN: 02470608), total of 7 bottles [of Xeljanz] were ordered during the time period of October 22, 2021 – May 30, 2022 and only 38 were dispensed under the patient [REDACTED] and were paid for by Mr. OSTROSKY. Each bottle of Xeljanz XR 11 mg consists of 30 tabs and costs \$1,538.16 per bottle. All the tablets have been taken out of the bottles and replaced with what looks like vitamin B12 or something similar and put back on the shelf. The drug hasn’t been dispensed to any other patient.

Xeljanz XR 11 mg 30 tabs @ \$1,538.16 per bottle  
7 bottles (210 tablets) \$10,10,767.12  
38 tablets dispensed \$1,875.49 (paid by Mr. OSTROSKY

...

All prescriptions filled by Mr. OSTROSKY are paid for by him using a debit card but he is waiving the Markup and Dispense Fee.

...

Mr. OSTROSKY was asked about the Xeljanz XR 11 mg and he stated he took it for his [REDACTED] at the time.”

Regarding this allegation in particular, the Hearing Tribunal relied upon the evidence of Mr. [REDACTED] in relation to the 210 tablets, confirmed in his oral testimony and contained within his complaint, which was corroborated by the SDM investigation report. Mr. [REDACTED] also confirmed that this conduct occurred at his SDM #315 store, which is corroborated by the SDM investigation report.

The dates listed in the allegation do match the dates where the Xeljanz was provided to [REDACTED] within the SDM Documents and noted in the table of [REDACTED] prescriptions, above.

Mr. Ostrosky, in his written response to the College and in his interview with Ms. Mosher seemed to believe that [REDACTED] had a valid prescription for Xeljanz. However, given the information from Dr. [REDACTED] provided to Ms. Mosher and the prescription itself, all these dispensations occurred more than 1 year after the prescription was issued by Dr. [REDACTED] on June 21, 2021, meaning these dispensations by Mr. Ostrosky occurred in the absence of a valid prescription.

Accordingly, this Hearing Tribunal finds this allegation proven on a balance of probabilities.

Regarding whether these proven facts constitute unprofessional conduct, the Hearing Tribunal finds that this conduct displayed a lack of knowledge or judgment in the provision of professional services. In this case, Mr. Ostrosky demonstrated this by providing a prescription to a patient which was clearly expired. In his written response to the College, Mr. Ostrosky stated that ■ had a prescription for Xeljanz, but he clearly failed to check that the prescription remained valid. He should have had the knowledge to know the date that prescriptions expire, and to have made further efforts to confirm this before dispensing the Xeljanz to ■

The Hearing Tribunal finds the breaches of the Standards of Practice for Pharmacists and Pharmacy Technicians and ACP Code of Ethics are serious and constitute unprofessional conduct under section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

#### Standards of Practice for Pharmacists and Pharmacy Technicians

*Standard 6: Each time a pharmacist or a pharmacy technician dispenses a Schedule 1 drug or blood product pursuant to a prescription:*

*a) the pharmacist must determine that the prescription is appropriate;*  
*and*

*b) the pharmacist or the pharmacy technician must determine that the prescription is current, authentic, and complete.*

#### *Determining the currency of a prescription*

*6.4 Neither a pharmacist nor a pharmacy technician may dispense a drug or blood product under a prescription that was issued more than one year before the date the drug or blood product is to be dispensed.*

The Hearing Tribunal also finds that the conduct harms the integrity of the profession. The public would expect that when providing a prescription to a patient, a pharmacist would only do so when a valid prescription exists, and that a pharmacist would be careful, in each instance, to check the validity of the prescription and to ensure that it is not expired. By his conduct under this allegation, Mr. Ostrosky harmed the integrity of the profession.

For the reasons outlined above, Allegation 1 is proven and the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

#### *Allegation 2*

It is alleged that Mr. Ostrosky:

- 2. Paid for only 38 of the 210 Xeljanz tablets you provided to ■ from Shoppers Drug Mart #315 between July 31, 2022 and September 20, 2022;**

Regarding this allegation, the Hearing Tribunal relies upon the summary of evidence under Allegation 1 in relation to ■ and the Xeljanz tablets.

This allegation relates to the failure on the part of Mr. Ostrosky to pay for all of the tablets which he dispensed to ■

As expressed in the summary of evidence above, the Hearing Tribunal looked for evidence of the number of tablets which were paid for, and the number of tablets which were not.

The evidence in this respect came originally from Mr. ■ whose complaint provided information about the seven (7) bottles of Xeljanz which were missing, totaling 210 missing pills. He also noted in his complaint, and confirmed during his testimony, that Mr. Ostrosky had only paid for 38 of the tablets, totaling \$1,968.00.

Mr. ■ analysis was corroborated by the SDM investigation, which also found 210 tablets missing, with only 38 confirmed as dispensed to ■ in the SDM system. Oddly, the SDM investigation found that \$1,874.49 paid for by Mr. Ostrosky, a slightly different total than Mr. ■ total. This was noted by the Hearing Tribunal but found not to be material as the allegation related to the number of pills paid for, not the total amount paid. During her discussion with Mr. Ostrosky, Ms. Mosher totaled the amount paid as \$1,875.49.

Both Mr. ■ and the SDM investigation report confirm this took place at the SDM #315 location.

The Hearing Tribunal then reviewed the documentary evidence in relation to the Xeljanz dispensations to ■ contained at pages 235-242. A review of the SDM system demonstrated that although Mr. Ostrosky had entered a number of entries for ■ he had cancelled four (4) of them, leaving only four (4) completed prescriptions, totaling 38 tablets. These documents further corroborated Mr. ■ analysis. These filled prescriptions for ■ did occur in the timeframe contemplated in this allegation.

Finally, the Hearing Tribunal reviewed what they could of Mr. Ostrosky's own evidence, including his written response to the College and his interview with Ms. Mosher relating to the allegations. In those responses, Mr. Ostrosky did not dispute that he had not paid for all of the tablets. He confirmed the reason for the diversion, being his ■'s diagnosis and related mental health issues and the method by which he made these partial payments, to Ms. Mosher. In his written correspondence, he also acknowledged there was still a significant amount owing relating to the Xeljanz tablets.

Accordingly, this Hearing Tribunal finds this allegation proven on a balance of probabilities.

First, the Hearing Tribunal finds that this conduct displayed a lack of judgment in the provision of professional services. Mr. Ostrosky demonstrated a lack of judgment when he decided to dispense a drug and only pay for a portion of the drug. This was

deceitful behaviour, intended to allow ■ to only pay for a portion of the drug's actual cost. In addition, it was a dangerous decision as the SDM patient record in relation to ■ only demonstrated that she had received 38 tablets, which she had in fact received 210. This discrepancy could have been relied upon by other prescribers or pharmacists in making additional health care recommendations to ■ putting her health at risk.

The Hearing Tribunal finds the breaches of the Standards of Practice for Pharmacists and Pharmacy Technicians and ACP Code of Ethics are serious and constitute unprofessional conduct under section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

#### Standards of Practice for Pharmacists and Pharmacy Technicians

*Standard 18: A pharmacist must create and maintain patient records for pharmacist services provided by that pharmacist.*

##### *Transaction record*

*18.1 Each time a pharmacist or a pharmacy technician dispenses a Schedule 1 drug or blood product, the pharmacist or the pharmacy technician must ensure that a written transaction record is created that includes:*

...

*b) the name of the prescriber of the drug;*

...

*f) the quantity of drug dispensed;*

The Hearing Tribunal also finds that the conduct harms the integrity of the profession. The public would expect that any patient receiving a prescription from a pharmacist would be paying the proper amount for that drug, and not receiving some of those drugs for free by the pharmacist manipulating the system and diverting drugs for free. This demonstrated an overt lack of judgment on the part of Mr. Ostrosky and a complete disregard for the manner in which drugs are recorded and dispensed in Alberta. It has resulted in a loss to his employer, SDM, that is thousands of dollars.

For the reasons outlined above, Allegation 2 is proven and the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

#### *Allegation 3*

It is alleged that Mr. Ostrosky:

- 3. Attempted to conceal the number of Xeljanz tablets you provided to ■ from Shoppers Drug Mart #315 between July 31, 2022 and September 20, 2022 by replacing the removed Xeljanz tablets with Vitamin B tablets;**

Regarding this allegation, the Hearing Tribunal relies upon the summary of evidence under Allegation 1 in relation to ■ and the Xeljanz tablets.

This allegation relates to the fact that when the Xeljanz tablets were provided to ■■■ Mr. Ostrosky attempted to conceal how many Xeljanz tablets he had provided by replacing the removed Xeljanz tablets with Vitamin B tablets.

As above, it was clear on the evidence that was provided to the Hearing Tribunal that this conduct occurred within the dates set out in the allegation, and occurred in SDM #315.

Relating specifically to the attempt to conceal, the Hearing Tribunal first heard from Mr. ■■■ that an associate at SDM #315 had informed him that during an inventory count, bottles of Xeljanz were opened. Once opened, Mr. ■■■ and the associate noted that there were pills inside the bottles which did not look correct. After a review, they confirmed that these were not Xeljanz pills, which should have been in the bottles. Mr. ■■■ confirmed this information during his testimony, under oath.

The SDM investigation corroborated Mr. ■■■ stating that “All the tablets had been taken out of the bottles and replaced with what looks like vitamin B12 or something similar and put back on the shelf” (Exhibit 2, p. 59).

Finally, Mr. Ostrosky provided Ms. Mosher with evidence as to what he did during his call with her in the investigation. As he relayed to her, he would place 30 tablets in a vial, label the vial and send it to ■■■ in Calgary. In order to avoid detection, Mr. Ostrosky “replaced the Xeljanz tablets with vitamin B tablets and put the Xeljanz bottle back on the shelf” (Exhibit 2, page 225).

Accordingly, this Hearing Tribunal finds this allegation proven on a balance of probabilities.

First, the Hearing Tribunal finds that this conduct displayed a lack of judgment in the provision of professional services. This allegation demonstrated a severe lack of judgment on the part of Mr. Ostrosky. The evidence, which was accepted as a fact by the Hearing Tribunal, demonstrated that rather than discarding the empty Xeljanz bottles, Mr. Ostrosky chose to leave them on the shelf, open. Furthermore, he placed incorrect pills in the Xeljanz bottles, in an attempt to conceal that the Xeljanz tablets had in fact already been diverted, improperly, to ■■■ This behaviour was deceitful, dishonest and demonstrated a wanton disregard for the health of patients by replacing actual prescription medication with vitamin tablets. Another pharmacist could have dispensed those vitamin tablets, in lieu of the correct tablets, to another patient and the patient would not have received the medication that they required.

The Hearing Tribunal finds the breaches of the Standards of Practice for Pharmacists and Pharmacy Technicians and ACP Code of Ethics are serious and constitute unprofessional conduct under section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

#### ACP Code of Ethics

*PRINCIPLE 10 Act with honesty and integrity*  
*To uphold this principle, I:*

1. Comply with both the letter and the spirit of the law that governs the practice of pharmacy and the operation of pharmacies.
2. Am honest in dealings with:
  - patients;
  - other pharmacists, pharmacy technicians, health professionals and the college; and
  - contractors, suppliers and any others encountered in business dealings related to the practice of my profession or the operation of a pharmacy.

The Hearing Tribunal also finds that the conduct harms the integrity of the profession. The public would be very concerned to know that a regulated pharmacist would be able or willing to conceal the diversion of drugs by replacing the proper tablets with another tablet. The public expects pharmacists to have respect for the integrity of the medications being prescribed, and to be careful about where pills are stored, and the possibility of the wrong tablets being dispensed.

For the reasons outlined above, Allegation 3 is proven and the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

#### *Allegation 4*

It is alleged that Mr. Ostrosky:

4. **Created false records at Shoppers Drug Mart #315 and #2311 and on Netcare when you:**
  - a. **Fabricated 28 verbal prescriptions for patients [REDACTED] [REDACTED] or [REDACTED] between October 11, 2021 to October 30, 2022;**
  - b. **Listed Dr. [REDACTED] as a prescriber on more than 70 prescription transaction records for [REDACTED] [REDACTED] and [REDACTED] when Dr. [REDACTED] did not authorize you to do so and when Dr. [REDACTED] did not have a current professional relationship with any of [REDACTED] [REDACTED] or [REDACTED]**
  - c. **Documented in pharmacy records that you had dispensed 38 tablets of Xeljanz to [REDACTED] between July 31, 2022 to September 20, 2022 from Shoppers Drug Mart #315 when you had actually provided approximately 210 tablets of Xeljanz to [REDACTED] in that time period.**

Regarding this allegation, the Hearing Tribunal finds the following facts:

1. Beginning with the Complaint, Mr. [REDACTED] stated that after the Xeljanz tablets were discovered to be missing (see Allegations 1, 2, and 3), the asset protection manager instructed Mr. [REDACTED] to run some more reports, and at this point Mr. [REDACTED] discovered other prescriptions which were put through by Mr. Ostrosky. Mr. [REDACTED] discovered prescriptions being processed for [REDACTED] and [REDACTED] which he felt were fraudulent. In total, Mr. [REDACTED] found 64 prescriptions for a variety of medications. This was included in the Complaint (Exhibit 2, page 19) as well as during Mr. [REDACTED] oral testimony;

2. Around the same time, Mr. ██████ began reviewing the records as part of the SDM internal investigation. In the SDM investigation report, the findings are all set out (Exhibit 2, pages 59-60). Included in the report are the conclusions of Mr. ██████ including:

“Mr. Emery OSTROSKY processed a total of 72 fraudulent prescriptions under patients ██████ ██████ ██████ and ██████ at SDM 0315 in Grande Prairie between October 1, 2021 and November 1, 2022. Either a fraudulent hard copy of the prescription was scanned into health watch or no prescription was scanned.

Mr. Emery OSTROSKY processed a total of 5 prescriptions for VIAGRA under ██████ at SDM 2311”;

3. During the SDM investigation, a number of SDM Documents were obtained, which included a number of prescriptions and SDM printouts. For Allegation 4, the Hearing Tribunal reviewed these within Exhibit 2, at pages 81-108, 66 – 77 (duplicated at 190 – 201) and 146 – 189. The following pages are the Hearing Tribunal’s summary of the documentary evidence located within Exhibit 2, and demonstrate 75 prescriptions issued by Mr. Ostrosky for ██████ ██████ and ██████ where either Dr. ██████ or Mr. ██████ are listed as the prescriber;
4. During the hearing, both Mr. ██████ and Dr. ██████ were called as witnesses. Under oath, Mr. ██████ confirmed that he had not prescribed anything to either ██████ or ██████. Under oath, Dr. ██████ confirmed that he had never seen ██████ ██████ or ██████ in his practice, and that his practice was not to provide a prescription for someone without seeing them as his patient. He also confirmed that he had not provided Mr. Ostrosky with any sort of allowance or agreement to prescribe medications on Dr. ██████ behalf;
5. In addition to the 75 prescriptions listed below which were found in Exhibit 2, the SDM Report additionally noted that 5 prescriptions for Viagra which occurred at the SDM 2311 location. There were no records other than this reference in the SDM investigation report to corroborate this finding, however the Hearing Tribunal was not required to make a finding on those 5 additional prescriptions due to the wording of the charge which stated “over 70 prescriptions”; and
6. In his written response to the College (Exhibit 2, page 111) and in his statements made to the Investigator Ms. Mosher (Exhibit 2, pages 224 – 226), Mr. Ostrosky did not deny that he had forged prescriptions for his friends and family.



#	Patient	Page #	Service Date	Prescription	"Prescriber"	Image (Y/N)	Verbal (Y/N)	Notes?	RX No.	Tx No.	Pharm #
1		147, 168, 200, 76	2022-10-03	Metronidazole 250 MG	Dr. [REDACTED]	N		No Prescription	1038705	13108687	315
2		148, 149, 169, 170, 201, 77	2022-10-30	Lupin-Estradiol 1 MG	Dr. [REDACTED]	N		No Prescription	1043690	13115676	315
3		150, 151, 171, 172, 201, 77, 80	2022-10-19	Viagra 25 MG	Dr. [REDACTED]	N		No Prescription	1041404	13112690	315
4		152, 153, 173, 200, 76	2022-10-03	Tadalafil 20 MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1038702	13108683	315
5		154, 175, 192, 68	2022-03-20	Odan-Bupropion SR 10...	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1004503	13061256	315
6		155, 176, 192, 68	2022-03-20	Adderall XR 20 MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1004502	71577614	315
7		156, 177, 192, 68, 90	2022-03-30	Teva-Emtec-30 300/30 M...	Dr. [REDACTED]	Y	Y?	Fraudulent Prescription	1006354	71577907	315
8		157, 178, 192, 68	2022-05-17	Odan-Bupropion SR 10...	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1014634	13074808	315
9		158, 179, 199, 75	2022-09-25	Teva-Emtec-30 300/30 M...	Dr. [REDACTED]	Y	Y	Fraudulent Prescription See 71582015	1021476	71582023	315
10		159, 180, 194, 70	2022-07-11	Odan-Bupropion SR 10...	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1024459	13088515	315
11		160, 181, 198, 74	2022-09-13	Sildenafil 50 MG	Dr. [REDACTED]	Y	Y?	Fraudulent Prescription Refill	1034836	13103554	315
12		162, 183, 192	2022-05-17	Lupin-Estradiol 1 MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1014647	13074821	315
13		163, 184, 190, 66, 97	2021-11-02	Teva-Emtec-30 300/30 M...	Dr. [REDACTED]	Y	N	Fraudulent Prescription	9999821	71574557	315
14		164, 185, 190, 66	2021-11-09	Teva-Emtec-30 300/30 M...	Dr. [REDACTED]	Y	N	Fraudulent Prescription	10001348	71574754	315
15		165, 186, 194, 70, 100	2022-07-11	Lupin-Estradiol 1 MG	Dr. [REDACTED]	Y	Y	Fraudulent Prescription	1024453	13088509	315

#	Patient	Page #	Service Date	Prescription	"Prescriber"	Image (Y/N)	Verbal (Y/N)	Notes?	RX No.	Tx No.	Pharm #
16		189	2022-10-21	Teva-Sildenafil 25 MG	Dr. [REDACTED]	N		Theft / Fraudulent Prescription (No Patient Present)	9869184	19255003	2311
17		190, 66, 85	2021-10-11	Cefixime 400MG	Dr. [REDACTED]	N		No Prescription	9994933	13019829	315
18		190, 66, 98	2021-11-09	Cefixime 400MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	10001349	13034070	315
19		190, 66	2021-12-10	Salbutamol 100MCG	Dr. [REDACTED]			No Prescription	10008864	13039087	315
20		191, 67	2021-12-19	Cefixime 400MG	Dr. [REDACTED]			No Prescription	10008865	13039088	315
21		191, 67, 99	2021-12-19	Acetamin/Cod 30MG	Dr. [REDACTED]	N		No Prescription	10008866	71575698	315
22		191, 67, 103	2022-01-06	Salbutamol 100MCG	Dr. [REDACTED]	N		No Prescription	10008864	13043179	315
23		191, 67, 86	2022-01-26	Vyvanse 20MG	Dr. [REDACTED]	Y	N	No Prescription	10015146	71576556	315
24		191, 67	2022-02-11	Act-Amphetamine XR 20MG	Dr. [REDACTED]			No Prescription	10018249	71576858	315
25		191, 67, 89	2022-03-20	Escitalopram 20MG	Dr. [REDACTED]	Y	N	No Prescription	1004501	13061255	315
26		192, 68	2022-05-17	Escitalopram 20MG	Dr. [REDACTED]			Fraudulent Prescription Refill	1014635	13102680	315
27		193, 69, 91	2022-05-17	Acetamin/Cod 30MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1014636	71579074	315
28		193, 69, 92	2022-06-04	Vyvanse 20MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1014633	71579576	315
29		193, 69	2022-06-15	Ramipril 5MG	Dr. [REDACTED]			No Prescription Refill See 13102684	1020185	13102681	315
30		193, 69	2022-06-15	Testosterone USP 1%	Dr. [REDACTED]			No Prescription	1020190	71579809	315
31		193, 69	2022-06-22	Acetamin/Cod 30MG	Dr. [REDACTED]			Fraudulent Prescription See 71582023	1021476	71582015	315

#	Patient	Page #	Service Date	Prescription	"Prescriber"	Image (Y/N)	Verbal (Y/N)	Notes?	RX No.	Tx No.	Pharm #
32		193, 69, 93	2022-06-30	Vyvanse 50MG	Dr. [REDACTED]	N		No Prescription	1020188	71580256	315
33		194, 70	2022-07-05	Viagra 25MG	Dr. [REDACTED]			No Prescription	1023467	13087147	315
34		194, 70, 94	2022-07-08	Sildenafil 50MG	Dr. [REDACTED]	N		No Prescription	1024084	13087975	315
35		194, 70	2022-07-11	Viagra 50MG	Dr. [REDACTED]			No Prescription	1024327	13088345	315
36		194, 70, 95	2022-07-11	Vyvanse 50MG	Dr. [REDACTED]	Y	N	Fraudulent Prescription	1024456	71580407	315
37		195, 71, 96	2022-07-11	Vyvanse 20MG	Dr. [REDACTED]	N		Fraudulent Prescription See 71580826	1024461	71580408	315
38		195, 71	2022-07-31	Estradiol 1MG	Dr. [REDACTED]			No Prescription	1027505	13093116	315
39		195, 71, 101	2022-07-31	Estradiol 0.06%	Dr. [REDACTED]	N		No Prescription	1027506	13093117	315
40		195, 71	2022-07-31	Salbutamol 100MCG	Dr. [REDACTED]			No Prescription	1000864	13093118	315
41		195, 71	2022-07-31	Cephalexin 500MG	Dr. [REDACTED]			No Prescription	1027514	13093130	315
42		196, 72	2022-07-31	Odan-Bupropion SR 100MG	Dr. [REDACTED]			No Prescription Refill See 13102686	1027509	13102682	315
43		196, 72	2022-07-31	Vyvanse 20MG	Dr. [REDACTED]			Fraudulent Prescription See 71580408	1024461	71580826	315
44		196, 72	2022-08-07	Sildenafil 50MG	Dr. [REDACTED]			No Prescription	1024638	13094859	315
45		196, 72	2022-08-19	Sildenafil 50MG	Dr. [REDACTED]			No Prescription	1024638	13097481	315
46		196, 72	2022-08-19	Metronidazole 250MG	Dr. [REDACTED]			Fraudulent Prescription Refill See 71580408	1030421	13106559	315
47		196, 72	2022-08-19	Vyvanse 20MG	Dr. [REDACTED]			No Prescription	1030419	71581248	315

#	Patient	Page #	Service Date	Prescription	"Prescriber"	Image (Y/N)	Verbal (Y/N)	Notes?	RX No.	Tx No.	Pharm #
48		197, 73	2022-09-05	Cephalexin 500MG	Dr. [REDACTED]			No Prescription	1033042	13101327	315
49		197, 73, 84	2022-09-09	Sildenafil 50MG	Dr. [REDACTED]	N		No Prescription	1033967	13102399	315
50		197, 73	2022-09-10	Naproxen SOD 550MG	Dr. [REDACTED]			No Prescription	1034201	13102683	315
51		197, 73	2022-09-10	Ramipril 5MG	Dr. [REDACTED]			See 13102681	1020185	13102684	315
52		197, 73	2022-09-10	Escitalopram 20MG	Dr. [REDACTED]			See 13102680	1014635	13102685	315
53		197, 73, 83	2022-09-10	Odan-Bupropion SR 100MG	Dr. [REDACTED]	N		No Prescription See 13102682	1027509	13102686	315
54		198, 74, 82	2022-09-10	Vyvanse 50MG	Dr. [REDACTED]	N		No Prescription	1034200	71581693	315
55		198, 74	2022-09-18	Sildenafil 50MG	Dr. [REDACTED]			Refill Arrow From 13103554	1034836	13104719	315
56		198, 74	2022-09-22	Tadalafil 20MG	Dr. [REDACTED]			No Prescription	1037561	13107082	315
57		198, 74	2022-09-25	Sildenafil 50MG	Dr. [REDACTED]			Refill Arrow From 13103554	1034836	13106556	315
58		198, 74, 102	2022-09-25	Metronidazole 250MG	Dr. [REDACTED]	N		No Prescription See 13106559	1030421	13106560	315
59		199, 75, 104	2022-09-27	Salbutamol 100MCG	Dr. [REDACTED]	N		No Prescription	10008864	13107085	315
60		199, 75	2022-09-27	Escitalopram 20MG	Dr. [REDACTED]			No Prescription	1037563	13107086	315
61		199, 75	2022-09-28	Cephalexin 500MG	Dr. [REDACTED]			No Prescription	1030420	13107329	315
62		199, 75	2022-10-03	Sildenafil 50MG	Dr. [REDACTED]			Fraudulent Prescription	1034836	13108681	315

#	Patient	Page #	Service Date	Prescription	"Prescriber"	Image (Y/N)	Verbal (Y/N)	Notes?	RX No.	Tx No.	Pharm #
63		199, 75	2022-10-03	Escitalopram 20MG	Dr. [REDACTED]			No Prescription	1037563	13108682	315
64		200, 76	2022-10-03	Odan-Bupropion SR 100MG	Dr. [REDACTED]			Fraudulent Prescription	1038703	13108684	315
65		200, 76, 105	2022-10-03	Salbutamol 100MCG	Dr. [REDACTED]	N		No Prescription	1038704	13108686	315
67		200, 76	2022-10-03	Vyvanse 50MG	Dr. [REDACTED]			Fraudulent Prescription	1038701	71582256	315
68		161, 182, 200, 76, 81	2022-10-15	Viagra 25MG	Dr. [REDACTED]	N		No Prescription	1040784	13111702	315
69		201, 77	2022-10-30	Odan-Bupropion SR 100MG	Dr. [REDACTED]			No Prescription	1043689	13115675	315
70		201, 77	2022-10-30	Vyvanse 50MG	Dr. [REDACTED]			No Prescription	1043688	71582925	315
71		87	2022-02-11	Odan-Bupropion SR 100MG	J. [REDACTED]	Y	N		10011617	13052110	
72		88	2022-02-11	Omeprazole 20MG	J. [REDACTED]	N			10018248	13052111	
73		106	2022-07-10	Cephalexin 500MG	J. [REDACTED]	N			1024309	13088292	
74		107	2022-08-19	Diclo 10% Top Gel Perm...	J. [REDACTED]	N			1030424	13097491	
75		108	2022-09-12	Cephalexin 500 MG	J. [REDACTED]	N?			1034543	13103271	

Particular 4(a)

This particular alleges that there were twenty-eight (28) fabricated verbal prescriptions for [REDACTED] [REDACTED] or [REDACTED] between October 11, 2021 and October 30, 2022.

In reviewing the evidence expressed above as well as the table created by the Hearing Tribunal, there were only four prescriptions written by Mr. Ostrosky that had some notation to be “verbal prescriptions” – those found at lines 7, 9, 11 and 15 of the above table. Fifteen (15) other prescriptions written on prescription pads used by in the dispensary to commonly receive verbal prescriptions were likely also verbal without the notation to be “verbal prescriptions”. Therefore, the Tribunal has accepted nineteen (19) prescriptions fabricated verbal prescriptions for [REDACTED] [REDACTED] or [REDACTED] between October 11, 2021 and October 30, 2022.

During her closing argument, counsel for the Complaints Director urged the Hearing Tribunal to find that all of the prescriptions made between pages 80-108 be considered “verbal prescriptions” for the purposes of particular 4(a). However, the Hearing Tribunal was not able to find that all of the prescriptions between pages 80-108 were in fact “verbal prescriptions.”

As such, this particular to Allegation 4 was not proven by the Complaints Director on a balance of probabilities to the Hearing Tribunal, given the specific wording of the charge, and the fact that these 28 “verbal prescriptions” are actually included in the 75 prescriptions outlined in the table above, making up the prescriptions found in particular 4(b).

Particular 4(b)

This particular alleges that Mr. Ostrosky listed Dr. [REDACTED] as a prescriber on more than 70 prescription transaction records for [REDACTED] [REDACTED] and [REDACTED] when Dr. [REDACTED] did not authorize him to do so and when Dr. [REDACTED] did not have a current professional relationship with any of [REDACTED] [REDACTED] or [REDACTED]

Given the above evidence of Mr. [REDACTED] Ms. Mosher, Dr. [REDACTED] and the written and verbal statements made by Mr. Ostrosky, and reviewing it against the documentary evidence summarized in the table above, the Hearing Tribunal does find this particular to be proven on a balance of probabilities, despite only finding that 70 prescriptions evidenced Dr. [REDACTED] as a prescriber (see table, above).

The Hearing Tribunal is aware that in an administrative proceeding, it is well-established that charges in a professional discipline case should not be approached as though they were counts in a criminal indictment and that a Hearing Tribunal should avoid technical application of the rules. Charges must comply with the specific legislative requirements, and they must comply with the common law requirements of *audi alteram partem* which ensures that the professional, in this case Mr. Ostrosky, has adequate notice of the case which he has to meet.

In this case, notwithstanding the reference to “more than 70 prescription transaction records” in this particular, the Hearing Tribunal finds that the particular, and the allegation as a whole, complies with the specific legislative requirements, and that Mr. Ostrosky had adequate notice of the case to meet by virtue of being served with the pleadings and the disclosure in this matter.

#### Particular 4(c)

Finally, particular 4(c) relates to the dispensation of Xeljanz to ■ between July 31, 2022 and September 20, 2022 from SDM #315 when he had actually provided approximately 210 tablets of Xeljanz to ■ in that time period.

Given the findings made above under Allegations 1, 2, and 3, it is clear that Mr. Ostrosky created false records in relation to the dispensation of Xeljanz to ■ between August 2022 and September 2022. It would appear, both in the SDM system and on Netcare, that ■ only received 38 tablets of Xeljanz, however the evidence clearly established that Mr. Ostrosky had actually provided her 210 tablets.

Accordingly, the Hearing Tribunal does find this particular to have been proven on a balance of probabilities.

#### Allegation 4

Allegation 4, overall, states that Mr. Ostrosky created false records at Shoppers Drug Mart #315 and #2311 and on Netcare, and contains three particulars.

The Hearing Tribunal has found that when he issued the prescriptions to ■ for Xeljanz, and in relation to all prescriptions for ■ ■ and ■ under the prescribers Dr. ■ and Mr. ■ Mr. Ostrosky did in fact create false records at Shoppers Drug Mart #315 and #2311, and by virtue of the Netcare reporting requirements, these false records also would have been transmitted and stored on these patients' Netcare, as well.

Notwithstanding the wording of particular 4(a), the Hearing Tribunal did find particulars 4(b) and 4(c) to have been found, on a balance of probabilities, and accordingly Allegation 4 was found on a balance of probabilities.

First, the Hearing Tribunal finds that this conduct displayed a lack of knowledge, skill and/or judgment in the provision of professional services. By creating false records within the SDM system, copied over to Netcare, for patients ■ ■ ■ and ■ Mr. Ostrosky put patient care at risk. This was a demonstration of a lack of judgment, as he did not take the requisite level of care to ensure that when prescriptions were being entered into the system, they were entered with a proper prescription in place, and that the quantity provided matched what actually went to the patient. Mr. Ostrosky knew, or should have known, that no prescriptions should be entered into a system if the prescriber has not authorized it – either verbally or with a written prescription. His justification, that Dr. ■ had an agreement with him that he could prescribe at his own discretion, made no sense to the Hearing Tribunal and was, frankly, not credible.

The Hearing Tribunal finds the breaches of the Standards of Practice for Pharmacists and Pharmacy Technicians and ACP Code of Ethics are serious and constitute unprofessional conduct under section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

Standards of Practice for Pharmacists and Pharmacy Technicians

*Standard 18: A pharmacist must create and maintain patient records for pharmacist services provided by that pharmacist.*

*Transaction record*

*18.1 Each time a pharmacist or a pharmacy technician dispenses a Schedule 1 drug or blood product, the pharmacist or the pharmacy technician must ensure that a written transaction record is created that includes:*

...

*b) the name of the prescriber of the drug;*

...

*f) the quantity of drug dispensed;*

The Hearing Tribunal also finds that the conduct harms the integrity of the profession. The public has the right to rely upon a pharmacy's records to ascertain whether a drug has been properly prescribed, who the prescriber is, and how much of each medication has been provided to a patient. Patients rely on this information, but so do pharmacists, and health care professionals throughout the system. By failing in his duty to ensure accurate records and proper prescriptions, Mr. Ostrosky damaged the integrity of the profession.

For the reasons outlined above, Allegation 4 is proven and the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

*Allegation 5*

It is alleged that Mr. Ostrosky:

**5. Diverted methadone from Shoppers Drug Mart #315 on or about October 3, 2022 for use by [REDACTED]**

In her closing arguments, counsel for the Complaints Director stated that the evidence underlying this allegation was a statement in the report of Mr. [REDACTED]

The statement, which was contained in a document entitled "Pharmacy Fraud and Theft" for SDM Store #0315, stated "Mr. OSTROSKY was asked about Methadone he took on October 3, 2022 and he stated it was for [REDACTED] (Exhibit 2, p. 60).

During the hearing itself, no additional evidence was provided in support of this allegation. The Hearing Tribunal reviewed Exhibit 2 carefully to find additional support of this allegation, but nothing was located.



The Hearing Tribunal has difficulty finding this allegation on a balance of probabilities, for the following reasons:

- The evidence from Mr. [REDACTED] was hearsay – Mr. [REDACTED] was not called by the Complaints Director as a witness. As a result, the Hearing Tribunal was not able to hear this evidence directly from him, learn his qualifications, or to have him cross-examined or questioned by the Hearing Tribunal;
- Ms. Mosher emailed Mr. [REDACTED] on January 16, 2023, asking him to provide her with “A copy of the prescription and prescription transaction record, for the methadone that Mr. Ostrosky indicated that he provided to [REDACTED] (Exhibit 2, p. 232);
- In his reply to Ms. Mosher, Mr. [REDACTED] advised that “There was no transaction record for the stolen methadone as it was just caught on camera of him dispensing into an empty bottle and putting in his bag” (Exhibit 2, p. 232);
- Although a video was referenced, and videos were provided to the Hearing Tribunal within Exhibit 2, counsel for the Complaints Director stated in her comments that none of these videos could be used to prove any of these Allegations, and none were put before the Hearing Tribunal as particular evidence toward this or other allegations;
- In addition, the Hearing Tribunal did not see any Inventory Report, Health Canada Report, or any other evidence that supported this allegation that the Methadone was diverted;
- Although Mr. [REDACTED] was called, it was not clear whether he was the licensee of the SDM #315 location where this diversion allegedly occurred. The licensee should have been called to provide the appropriate records demonstrating this loss, which was not done; and
- Although Mr. Ostrosky was not present and made certain statements that were contained in the record, there was not a clear admission made in relation to the diversion of Methadone.

Without further corroboration of the statement found in Mr. [REDACTED] report, the Hearing Tribunal cannot find this allegation to have been proven on a balance of probabilities.

#### *Allegation 6*

It is alleged that Mr. Ostrosky:

- 6. Between October 11, 2021 and October 30, 2022, provided medications from Shoppers Drug Mart #315 and #2311 for yourself, members of your [REDACTED]**

family (█) and friends whom you considered family (█) and (█) on more than one occasion:

- a. in the absence of a valid prescription; and
- b. when the medication was not for a minor condition, or an emergency or when another prescriber was not readily available.

Regarding this allegation, the Hearing Tribunal relies on the findings evidenced above under Allegation 4, and in particular the table, which demonstrated that Mr. Ostrosky provided medications from SDM #315 and #2311 to his (█) (█) and to his two friends who he considers family, being (█) and (█) on more than one occasion.

It is clear, on the face of it, that (█) was Mr. Ostrosky's (█) and that therefore she was in fact his family. In addition, there was evidence before the Hearing Tribunal about the relationship that Mr. Ostrosky had with his close friends (█) and (█) and how he considered both to be his family.

This is clear in the SDM investigation report (Exhibit 2, page 63), where Mr. (█) uncovered that (█) was Mr. Ostrosky's friend and (█) was Mr. Ostrosky's (█)

Beyond this, Mr. Ostrosky himself confirmed this. In his written reply to the College, he wrote "The patients referred to in the complaint are members of my family, and a person with whom I had a relationship with at the time" (Exhibit 2, page 111). He also wrote the medications were "dispensed for use by family members only" (Exhibit 2, page 112). In a confession written out during the SDM investigation, of which the Hearing Tribunal placed little weight, Mr. Ostrosky states he has been "providing medication for my family and friends" (Exhibit 2, page 233).

In addition, although the content of the emails was not useful to the Hearing Tribunal, Mr. Ostrosky provided the College with emails from Mr. (█) which start with Mr. (█) referring to Mr. Ostrosky as "Brother" (Exhibit 2, pages 136 and 139).

Accordingly, this Hearing Tribunal finds this allegation proven on a balance of probabilities.

First, the Hearing Tribunal finds that this conduct displayed a lack of judgment in the provision of professional services. Along with the other lapses in judgment on the part of Mr. Ostrosky, he should have known better than to provide medication to his (█) his (█) and his (█) and close friend. There would have been many options for him in Grande Prairie to assist his family members to obtain prescriptions without him having to provide them himself. This demonstrated a lack of judgment on this part.

The Hearing Tribunal finds the breaches of the Standards of Practice for Pharmacists and Pharmacy Technicians and ACP Code of Ethics are serious and constitute unprofessional conduct under section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

ACP Code of Ethics

*PRINCIPLE 3*

*Maintain a professional relationship with each patient*

*To uphold this principle, I:*

...

*4. Limit treatment of myself or members of my [REDACTED] family only to minor conditions, emergency circumstances or when another appropriate health professional is not readily available.*

There was no evidence, from anyone, to demonstrate that any of these drugs were emergency prescriptions for [REDACTED] [REDACTED] or [REDACTED]. In addition, none of the prescriptions listed were for “minor conditions”. And finally, there was another prescriber readily available, as Mr. Ostrosky worked in a fairly large city at this time (Grande Prairie, Alberta), in a chain pharmacy (SDM) with other locations, and could have called another pharmacist to provide these prescriptions for his close friends and family.

As such, the Hearing Tribunal did not find that any of the prescriptions to [REDACTED] [REDACTED] or [REDACTED] fall into one of the exceptions from the Code of Ethics, as will be cited above.

The Hearing Tribunal also finds that the conduct harms the integrity of the profession. Pharmacists are required by their Code of Ethics to only dispense medications to family and close friends in very narrow circumstances, and only if it meets one of the exceptions set out in the Code of Ethics. The reason for this rule is to ensure objectivity and impartiality in the profession, and to allow patients to have neutral and professional care. The public would have expected a pharmacist like Mr. Ostrosky to have been aware of these rules, and to have followed them carefully.

For the reasons outlined above, Allegation 6 is proven and the conduct constitutes unprofessional conduct pursuant to section 1(1)(pp)(i), (ii) and (xii) of the *HPA*.

**VII. CONCLUSION**

The Hearing Tribunal finds that Allegation 1 is proven and that the conduct breached the following: Standard 6 of the Standards of Practice for Pharmacists and Pharmacy Technicians. The conduct also demonstrated a lack of skill and judgment, and harmed the integrity of the profession. Therefore, the conduct in Allegation 1 constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii), (iii) and (xii) of the *HPA*.

The Hearing Tribunal finds that Allegation 2 is proven and the conduct breached the following: Standard 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians. The conduct also demonstrated a lack of judgment, and harmed the integrity of the profession. Therefore, the conduct in Allegation 2 constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii), (iii) and (xii) of the *HPA*.

The Hearing Tribunal finds that Allegation 3 is proven and the conduct breached the following: Principal 10 of the ACP Code of Ethics. The conduct also demonstrated a lack of judgment, and harmed the integrity of the profession. Therefore, the conduct in Allegation 3 constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

The Hearing Tribunal finds that Allegation 4 is proven and the conduct breached the following: Standard 18 of the Standards of Practice for Pharmacists and Pharmacy Technicians. The conduct also demonstrated a lack of skill, knowledge, and/or judgment, and harmed the integrity of the profession. Therefore, the conduct in Allegation 4(a) constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

The Hearing Tribunal did not find that Allegation 5 was proven on a balance of probabilities.

The Hearing Tribunal finds that Allegation 6 is proven and the conduct breached the following: Principal 3 of the ACP Code of Ethics. The conduct also demonstrated a lack of judgment, and harmed the integrity of the profession. Therefore, the conduct in Allegation 6 constitutes unprofessional conduct pursuant to section 1(1)(pp)(ii), (iii) and (xii) of the HPA.

As a concluding note, the Hearing Tribunal wishes to advise the College that in matters such as this, Hearing Tribunals are wary to rely upon hearsay evidence that goes to material elements of the allegations.

In this case, the College asked the Hearing Tribunal to rely upon two witnesses' recollections of conversations with Dr. [REDACTED] rather than having Dr. [REDACTED] specifically testify to those elements of the allegations. This is a matter of procedural fairness, even in cases where the investigated member has written "confessions" of varying degrees of specificity, or in cases where the investigated member did not attend the hearing. In fact, this hearing where the investigated member did not attend highlighted this challenge, and caused the Hearing Tribunal to reflect on this point.


The College is encouraged to consider the best evidence rule, ensuring that Hearing Tribunals are provided with the best possible evidence to consider each allegation. In addition, if conversation notes are being provided as evidence, it would be best if those conversation notes were in fact confirmed by the individual providing that information, rather than using a Memo which simply relies upon the memory and judgment of the author.

The Hearing Tribunal will hear submissions from the Complaints Director and Mr. Ostrosky, if he chooses to attend, with respect to orders to be made by the Hearing Tribunal. The Hearing Tribunal requests that the parties consult each other, if possible, with respect to the process for submissions and advise the Hearing Tribunal of the proposed procedure for submissions on sanction within 2 weeks of receipt of this decision. If the parties are unable to agree on the process for submissions, or if the

Complaints Director cannot reach Mr. Ostrosky to have such a discussion, the Hearing Tribunal will provide further direction.

When arguing sanction, the parties are asked to address if section 80(2) of the *HPA*, applies given that there was evidence in this matter that was reported to the police.

Signed on behalf of the Hearing Tribunal by the Chair on the 12<sup>th</sup> day of September, 2024.

Per:   
Brad Couldwell (Sep 12, 2024 23:25 MDT)  
\_\_\_\_\_  
Brad Couldwell, Chair