

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*,
BEING CHAPTER H-7 OF THE REVISED STATUTES OF ALBERTA, 2000**

**AND IN THE MATTER OF AN APPEAL BY ANKIT PARIKH
FROM THE DECISION OF THE HEARING TRIBUNAL
OF THE ALBERTA COLLEGE OF PHARMACY
DATED NOVEMBER 24, 2023, AND
ITS SANCTIONS DECISION DATED APRIL 4, 2024**

DECISION OF A PANEL OF COUNCIL

October 3, 2024

I. INTRODUCTION

- [1] On August 20, 2024, a Panel of Council (the “**Panel**”) of the Alberta College of Pharmacy (“**ACP**”) convened to hear an appeal via Zoom video conference. The appeal was convened pursuant to sections 87 to 89 of the *Health Professions Act*, RSA 2000, c H-7 (the “**HPA**”).

The members of the Panel were:

Carmen Wyton, public member, Chair
Patrick Thomson, Pharmacist
Nina Dueck, Pharmacy Technician
Jason West, public member

Also in attendance were:

James Krempien, Complaints Director
Annabritt Chisholm, legal counsel for the Complaints Director
Monica Tran, legal counsel for the Complaints Director
Ankit Parikh, Investigated Person
Curtis Wolff, legal counsel for Mr. Parikh
Julie Gagnon, independent legal counsel to the Panel
Trevor Sullivan, Student-at-Law, attending with Ms. Gagnon as an observer
Margaret Morley, Hearings Director
Shelley Becker, Court Reporter

II. PRELIMINARY MATTERS

- [2] The parties confirmed that there were no objections to the composition of the Panel present to hear the appeal or the jurisdiction of the Panel to proceed with the appeal.

- [3] The following documents were entered as exhibits:

Exhibit 1 Notice of Appeal of Ankit Parikh (Corrected)

Exhibit 2 Record of Proceedings before the Hearing Tribunal, including:

1. Combined book of exhibits
2. December 15, 2021 Facebook post
3. Hearing transcript (November 9–10, 17–18, 2022)
4. Written submissions of the Complaints Director, dated January 6, 2023
5. Written submissions of Ankit Parikh, dated February 6, 2022

6. Reply submissions of the Complaints Director, dated February 10, 2023
7. Written submissions of the Complaints Director on sanction, dated December 22, 2023
8. Written submissions of Ankit Parikh on sanction, dated January 23, 2024
9. Reply submissions of the Complaints Director on sanction, dated January 30, 2024
10. Victim impact statements

Exhibit 3 Decision of the Hearing Tribunal, dated November 24, 2023

Exhibit 4 Decision of the Hearing Tribunal Concerning Sanctions, dated April 4, 2024

[4] In addition, the following written submissions and case authorities were reviewed and considered by the Panel:

Submissions of Ankit Parikh, enclosing the following authorities:

1. *Housen v. Nikolaisen*, 2002 SCC 33.
2. *Salomon v. Matte-Thompson*, 2019 SCC 14.
3. *Baird Estate v. Baird*, 1995 ABCA 220.
4. *Duncan (Litigation Guardian of) v. Mazurek*, 2010 BCCA 344.
5. *White v. R.*, 1947 CarswellOnt 8.

Submissions of the Complaints Director, with the following authorities hyperlinked:

1. *Health Professions Act*, RSA 2000, c H-7.
2. *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98.
3. *Sahi v. Alberta Veterinary Medical Association*, 2023 ABCA 368.
4. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.
5. *R. v. Gagnon*, 2006 SCC 17.
6. *Takashima v. Ontario College of Teachers*, 2015 ONSC 3125.
7. *F.H. v. McDougall*, 2008 SCC 53.
8. *R. v. Norris*, 2020 ONCA 847.
9. Decision of the Hearing Tribunal in the Matter of Sinan Hadi, Alberta College of Pharmacy
10. *Alsaadi v. Alberta College of Pharmacy*, 2021 ABCA 313.
11. Standards of Practice for Pharmacists and Pharmacy Technicians, Alberta College of Pharmacy.
12. Standards of Practice Sexual Abuse and Sexual Misconduct, Alberta College of Pharmacy
13. *Jinnah v. Alberta Dental Association and College*, 2022 ABCA 336.

14. *Zuk v. Alberta Dental Association and College*, 2018 ABCA 270.

15. *Mema v. Chartered Professional Accountants of Alberta (Complaints Inquiry Committee)*, 2022 ABCA 4.

III. BACKGROUND

A. The Allegations

[5] A Hearing Tribunal held a hearing into the conduct of Mr. Ankit Parikh on November 9, 10, 17, and 18, 2022. During the hearing, the Hearing Tribunal considered six allegations made against Mr. Parikh. The allegations against Mr. Parikh were as follows:

IT IS ALLEGED THAT while you were both a registered Alberta pharmacist and the licensee of [REDACTED] Pharmacy (ACP License [REDACTED]) (the “Pharmacy”), you:

1. Engaged in sexual abuse of your employee and patient, Individual A, including when you:
 - (a) Used your body to block Individual A against the fridge;
 - (b) Threatened to rape Individual A if she didn’t have sexual intercourse with you;
 - (c) Engaged in sexual intercourse with Individual A in the Pharmacy on multiple occasions between October 2018 and September 2019 without her consent.
2. Engaged in sexual misconduct towards your employee and patient, Individual A, including when you:
 - (a) Approached Individual A and told her you had just brushed his teeth and wanted a kiss;
 - (b) Told Individual A that you masturbated to the thought of her.
3. Engaged in sexual abuse of your employee and patient, Individual B, between approximately 2015 and 2016, when you:
 - (a) Asked Individual B to perform oral sex on you in relation to providing her a \$50.00 advance on her paycheck;
 - (b) Engaged in sexual intercourse with Individual B in the Pharmacy on multiple occasions without her consent.
4. Breached your duties as a licensee when you caused your employee and patient, Individual C, to feel uncomfortable, including when you:
 - (a) Suggested Individual C lose weight to look better;

- (b) Repeatedly stared at the nametag on Individual C's chest such that she stopped wearing a nametag;
 - (c) Repeatedly allowed your friend to socialize with you in the Pharmacy, although you knew he made comments of a sexual nature to Individual C.
5. Breached your duties as a licensee when you caused your employee and patient, Individual D, to feel uncomfortable, including when you:
- (a) Commented on Individual D's body shape;
 - (b) Invited Individual D to stay after work to drink with you in the Pharmacy;
 - (c) Invited Individual D to go to bar [sic] without you after work;
 - (d) Suggested to Individual D it was ok to cheat on a wife.
6. Repeatedly consumed alcohol on the Pharmacy premises, including when the Pharmacy was open to patients and you were the pharmacist in charge.

[6] Mr. Parikh contested each of the allegations.

B. The Merits Decision

[7] In the Decision of the Hearing Tribunal dated November 24, 2023 (the "**Merits Decision**"), the Hearing Tribunal found that, on a balance of probabilities, Allegations 1(a), 1(b), 1(c), 2(a), 2(b), 3(a), 3(b), 4(b), and 6 were made out. The Hearing Tribunal found that Allegations 4(a), 4(c), and 5(a), (b), (c), (d) were *not* made out on a balance of probabilities.

i. Allegation 1(c)

[8] The Hearing Tribunal first addressed Allegation 1(c). For ease of reference, Allegation 1(c) alleged that Mr. Parikh engaged in non-consensual sexual intercourse with Individual A in the Pharmacy on multiple occasions between October 2018 and September 2019.

[9] Individual A was employed at the Pharmacy when Mr. Parikh purchased it in 2010. She initially worked at the front end of the Pharmacy but began working as a pharmacy assistant about two years before leaving the Pharmacy. Individual A was also a patient of Mr. Parikh's and received professional services like prescriptions and immunizations from him.

[10] According to Individual A, Mr. Parikh began sexually assaulting her sometime in early 2019. She claimed that one evening, after the Pharmacy had closed, Mr. Parikh told her that he would rape her if she did not have sex with him. He directed Individual A into the storage room at the back of the Pharmacy, laid some sweaters down on the floor, and made Individual A lie down. He then took off her pants, got on top of her, and had sexual intercourse with her. According to Individual A, she felt that "shutting off [her] brain" and going along with it was preferable to Mr. Parikh forcibly assaulting her.

- [11] Following this incident, Mr. Parikh continued to have sexual intercourse with Individual A in the storage room of the Pharmacy two or three times a week. She claimed that it would occur when no one else was around and that she never initiated sex with Mr. Parikh. She also stated that, when Mr. Parikh would go to the bathroom and come out reeking of Axe body spray, it was a telltale sign that Mr. Parikh intended on having sex with her.
- [12] According to Individual A, she would occasionally try to say no to Mr. Parikh, make an excuse, or call her husband when the Pharmacy closed. When she did, Mr. Parikh would treat her “like absolute garbage” the following day. When Mr. Parikh engaged in this behaviour, Individual A felt that he was punishing her for not having sex with him.
- [13] Individual A was unable to recall the exact date the first instance of sexual intercourse occurred. She estimated that it would have been about a year before she made her complaint to the ACP, which would correspond to sometime in early 2019.
- [14] Individual A testified that she ended up in a very dark place as a result of Mr. Parikh’s conduct. On December 17, 2019, she saw her male family physician to seek help and understand her options regarding Mr. Parikh’s conduct. Individual A’s physician supported Individual A taking some time away from work. According to Individual A, this visit represented a “breaking point,” following which she did not have sex with Mr. Parikh.
- [15] Following her doctor’s visit, Individual A took a short time away from work before returning to the Pharmacy after December 22, 2019. However, she felt that things at the Pharmacy did not get better over the following weeks. So, believing a woman could better understand her situation, Individual A decided to make an appointment to discuss matters with her doctor’s female physician assistant on February 20, 2020. The physician assistant advised Individual A to report Mr. Parikh’s conduct to the RCMP and the ACP.
- [16] Shortly thereafter, Individual A reported “the fact that [she] was raped” by Mr. Parikh to the RCMP. Individual A left her employment at the Pharmacy sometime in March 2020 and submitted a complaint to the ACP on March 31, 2020.
- [17] Mr. Parikh denied engaging in non-consensual sexual intercourse with Individual A in the Pharmacy between October 2018 and September 2019, as alleged. Indeed, when the question was put to Mr. Parikh in cross-examination, he denied having any sexual relationship with Individual A. He claimed that Individual A conspired with Individual B to invent the allegation of sexual misconduct against him for material gain.
- [18] Faced with a he-said, she-said situation, the Hearing Tribunal undertook the difficult task of assessing the parties’ credibility. In doing so, the Hearing Tribunal reviewed a series of text messages between Individual A and Mr. Parikh in December 2019 and January 2020. Through these text messages, Individual A is clearly expressing frustration with Mr. Parikh’s actions. She does not expressly state what Mr. Parikh did to upset her. However, she claims that “you couldn’t keep your hands or thoughts to yourself,” and that “you are lucky you aren’t carrying anything (and believe me, I got tested).” She also alleges that she is experiencing of “lifetime of anguish,” that Mr. Parikh “stole” her, that she “no longer [has] an identity,” and that her doctor “recommended that [she] take this to the college.”

- [19] In his evidence, Mr. Parikh claimed that he thought Individual A was referring to something he had done to upset her at the recent company Christmas party. However, the Hearing Tribunal did not accept this. In its view, there was little doubt that Individual A was referring to some sort of sexual relationship with Mr. Parikh.
- [20] In response to Individual A's text messages, Mr. Parikh did not question what Individual A was referring to or deny her claims of sexual misconduct. He instead told her that he understood her frustration, asked her to "[p]lease don't fight," and told her to "please let me know how to make everything normal." He offered to clear her \$9,000 charge account at the Pharmacy, write her a cheque for \$6,000, and/or make \$500 payments towards her credit card debt each month. Then, in response to a request by Individual A to acknowledge that what he did was wrong, Mr. Parikh said "I did nothing wrong; nothing was doing [sic] forcefully; I was also mentally upset and drunk all the time."
- [21] According to the Hearing Tribunal, Mr. Parikh's responses to Individual A's text messages made no sense if, as Mr. Parikh alleged, they never had any sexual relationship. In its view, the more plausible narrative was that Mr. Parikh knew that Individual A was referring to a sexual relationship. This would explain why none of Mr. Parikh's responses expressed any shock or surprise or even questioned what Individual A was alleging. In addition, it interpreted Mr. Parikh's offers to pay Individual A as attempts to "buy her off." The Hearing Tribunal therefore held that the text messages severely damaged the credibility of Mr. Parikh's outright denial of any sexual relationship with Individual A.
- [22] In assessing the credibility of Individual A's testimony regarding Allegation 1(c), the Hearing Tribunal considered a multitude of factors, including:
1. *Individual A's debt to the Pharmacy.* The Hearing Tribunal heard evidence that Individual A owed the Pharmacy thousands of dollars by December 2019. According to Mr. Parikh, this gave Individual A a motive to fabricate allegations of sexual assault in order to leverage Mr. Parikh into forgiving her debt.
 2. *Individual A's inconsistent accounts of key events.* Individual A initially testified that Mr. Parikh pinned her to the fridge and threatened to rape her on the same evening. However, notes Individual A recorded in February 2020 described these two events as occurring over two separate evenings. Individual A indicated that the notes were more accurate, as she made them closer to the events in question.
 3. *Other issues with Individual A's memory.* Individual A indicated that she had a foggy memory of the period when the alleged sexual abuse occurred. She had trouble recalling the dates of certain events and could not provide much detail about how things occurred. In fact, as Mr. Parikh pointed out, Individual A was only able to describe the first alleged instance of sexual intercourse with Mr. Parikh.
 4. *Individual A's opportunity to collude with Individual B.* The Hearing Tribunal heard evidence that Individual A and Individual B discussed their shared experiences with Mr. Parikh before Individual A made her complaint to the ACP.

5. *Individual A's claim that she did not see Mr. Parikh's penis.* Despite alleging that she and Mr. Parikh had sexual intercourse two or three times per week over the course of about a year, Individual A claimed that she did not see Mr. Parikh's penis. The Hearing Tribunal questioned whether this was ultimately plausible.
6. *Individual A described Mr. Parikh's penis incorrectly.* Individual A's evidence was that Mr. Parikh was circumcised. However, Mr. Parikh testified that he is uncircumcised.

- [23] For reasons the Panel will explore further below, the Hearing Tribunal found that these issues did not significantly diminish Individual A's credibility. Accordingly, it concluded that Individual A's testimony was more credible than that of Mr. Parikh, and that it was more likely than not that the sexual activity occurred as Individual A had alleged. Likewise, the Hearing Tribunal also accepted that the conduct in question "occurred over the course of just over a year, from October 2018 to at least September 2019."
- [24] The Hearing Tribunal then went on to consider whether the relationship between Individual A and Mr. Parikh was consensual at any point. In this case, the presence or absence of consent was only relevant for the period of sexual activity that occurred before April 1, 2019. Effective April 1, 2019, the Legislature amended the *HPA* to define a sexual relationship with a patient as sexual abuse and to automatically require cancellation of an investigated person's practice permit and registration upon a finding that the investigated person engaged in sexual abuse.¹ Hence, the sexual activity that occurred after April 1, 2019 was subject to these amendments.
- [25] That said, the Hearing Tribunal accepted that the sexual relationship between Individual A and Mr. Parikh was non-consensual at all relevant times. While there was no evidence that Mr. Parikh used force against Individual A, there was a significant power imbalance between Individual A and Mr. Parikh. Accordingly, Allegation 1(c) was made out.

ii. *Allegation 1(a) and (b)*

- [26] Having found that the Complaints Director established Allegation 1(c), the Hearing Tribunal considered Allegations 1(a) and 1(b). Allegations 1(a) and 1(b) alleged that Mr. Parikh used his body to block Individual A against a fridge and threatened to rape Individual A if she did not have sexual intercourse with him, respectively.
- [27] Individual A testified that, one evening, her and Mr. Parikh were in the kitchen at the back of the Pharmacy after the Pharmacy had closed. At some point, Mr. Parikh approached Individual A and asked for a hug because he was stressed. Individual A claimed that, as she backed away from him, Mr. Parikh pinned her to the fridge and tried to kiss her.
- [28] In addition, as explained above, Individual A alleged that Mr. Parikh told her that he would rape her if she did not have sex with him. This was followed by Mr. Parikh directing

¹ *An Act to Protect Patients*, SA 2018, c 15, ss 2, 15(b), 28.

Individual A into the storage room in the back of the Pharmacy, telling her to lie down, removing her clothes, and having sexual intercourse with her.

- [29] Mr. Parikh presented a different version of events. He claimed that he was drinking alcohol in the Pharmacy kitchen one evening when Individual A entered the room, placed his hand on her chest, and encouraged him to touch her by saying “you can have it.” Then, on account of his intoxication, Mr. Parikh claimed he lost his balance and put his hand on the fridge to catch his fall. He denied using his body to block Individual A against the fridge. He also denied threatening to rape Individual A if she did not have sex with him.
- [30] Ultimately, the Hearing Tribunal found that these allegations had been made out on a balance of probabilities. In doing so, the Hearing Tribunal stated that:

These allegations are also challenging to assess. However, given that the Hearing Tribunal has found that there was a non-consensual sexual relationship between Individual A and Mr. Parikh, and in light of the Hearing Tribunal’s concerns with Mr. Parikh’s credibility in terms of the existence of the sexual relationship, the Hearing Tribunal is also prepared to accept Individual A’s version of events as set out in Allegations (1)(a) and (b) and finds that it is more likely than not that Mr. Parikh used his body to block Individual A against the fridge and threatened to rape Individual A if she didn’t have sexual intercourse with him.

- [31] Having found that the Complaints Director had proven the conduct set out in Allegation 1, the Hearing Tribunal held that it amounted to unprofessional conduct.

iii. Allegation 2

- [32] In Allegation 2, it was alleged that Mr. Parikh: (a) asked Individual A for a kiss, and (b) told Individual A that he masturbated to the thought of her.
- [33] According to Individual A, during one evening in or around October 2018, Mr. Parikh was counting inventory while Individual A was typing information into the computer. Mr. Parikh went to the washroom and, when he returned, he stood by Individual A. Mr. Parikh told her he had just brushed his teeth and asked “can I have a kiss?”. Individual A replied “no, absolutely not” before leaving the store shortly thereafter. The following day, Mr. Parikh apologized to Individual A and told her that “it was due to the alcohol”.
- [34] Individual A also testified that, one evening, her and Mr. Parikh were in the kitchen at the back of the Pharmacy after the Pharmacy had closed. Individual A was washing dishes at the sink while Mr. Parikh sat on a nearby chair. Because Mr. Parikh had recently returned from a trip to Las Vegas, Individual A asked how his vacation had been. Mr. Parikh replied with “I spent every night masturbating to the thought of you”. When she attempted to leave, Mr. Parikh pinned her to the fridge and tried to kiss her (as described above).
- [35] Mr. Parikh’s version of events differed from Individual A’s. He confirmed that there was an evening in October 2018 when he and Individual A stayed late to do inventory and that, at some point, he went to the bathroom to brush his teeth. However, he claimed that when

he returned from brushing his teeth, Individual A asked him if he had a plan to kiss. Mr. Parikh replied with “to who?” and Individual A laughed. On cross-examination, Mr. Parikh denied telling Individual A that he had just brushed his teeth and asking for a kiss.

[36] Mr. Parikh also denied telling Individual A that he masturbated to the thought of her. He instead claimed that one evening, he was watching cooking videos online when Individual A asked him if he was watching porn. He said no; to which Individual A replied by stating that he did not need to watch porn anymore because she was there for him. Mr. Parikh did not say anything in response to this statement and just laughed. On cross-examination, Mr. Parikh denied telling Individual A that he masturbated to the thought of her.

[37] The Hearing Tribunal noted that, as with Allegation 1, the events underlying Allegations 2(a) and 2(b) were the subject of a credibility contest between Mr. Parikh and Individual A. It ultimately found that Allegations 2(a) and 2(b) were made out on a balance of probabilities. In doing so, it stated that:

As discussed above in the reasons with respect to Allegation 1, the Hearing Tribunal has determined that Individual A is more credible than Mr. Parikh in terms of whether there was sexual interaction between them. Given the Hearing Tribunal’s concerns with Mr. Parikh’s credibility, it is prepared to accept that it is more probable than not that Individual A’s description of the events set out in Allegation 2 occurred as alleged.

[38] Having found that Allegation 2 was made out, the Hearing Tribunal concluded that the conduct set out in those allegations was proven and constituted unprofessional conduct.

iv. Allegation 3

[39] In Allegation 3, it was alleged that Mr. Parikh (a) asked Individual B to perform oral sex on him in exchange for an advance on her paycheque, and (b) engaged in sexual intercourse with Individual B in the Pharmacy on multiple occasions without her consent.

[40] Individual B started working at the Pharmacy in 2009 as a front store clerk. When Mr. Parikh bought the Pharmacy, Individual B started working in the back as a pharmacy technician. Individual B also confirmed that she was a patient of the Pharmacy at all material times. While Individual B enjoyed working at the Pharmacy in the beginning, she claimed that it eventually became an abusive environment. In her recollection, the abuse started in 2015.

[41] Individual B testified that, on one occasion, she asked Mr. Parikh for a \$50 advance on her paycheque to cover her rent. He told her to wait until after work. After work, they went into the kitchen and Mr. Parikh pulled \$50 out of his wallet and started unzipping his pants. Individual B testified that she then gave Mr. Parikh oral sex for \$50 to pay her rent. She did not want to perform oral sex on him, but she claimed that she did it for the \$50. On cross-examination, Individual B indicated that it was dark in the kitchen because Mr. Parikh turned the lights off. She also stated that she had her eyes closed the whole time.

- [42] Individual B further testified that, after this incident, there were many occasions where Mr. Parikh had sex with Individual B in the storage room at the back of the Pharmacy without her consent. After work, Mr. Parikh would take her into the storage room, lay a jacket or sweater down, and tell her to lie down. He would then take off her clothes, climb on top of her, and have sex with her. Occasionally, Mr. Parikh would pay Individual B for sex.
- [43] According to Individual B, Mr. Parikh had sexual intercourse with her in the back of the Pharmacy roughly two or three times per week for a year and a half or two years. This would occur after work when everyone else was gone. Individual B testified that she never initiated these encounters but that she knew when they were coming. If Mr. Parikh came to work and told Individual B that she was the “boss” of the Pharmacy for the day, that meant that he would get to have his way with her after work. The misconduct stopped around 2016, when Individual B left the Pharmacy to be a stay-at-home mom.
- [44] Mr. Parikh offered a very different account. On cross-examination, he denied engaging in non-consensual sexual intercourse with Individual B in the Pharmacy on multiple occasions in 2015 and 2016. In fact, he claimed that Individual B jumped on him, hugged him, and kissed him on two separate occasions. Mr. Parikh also denied asking Individual B to perform oral sex on him in exchange for \$50. He testified that it was Individual B’s former boyfriend who asked Individual B to do this when she told him she was short on rent money. The Hearing Tribunal noted that, in doing so, Mr. Parikh implicitly acknowledged that there was an incident that involved oral sex in exchange for \$50.
- [45] In assessing the credibility of Individual B’s account, the Hearing Tribunal considered several factors, including:
1. *Individual B’s debt to the Pharmacy.* Individual B agreed that there was an outstanding balance on her Pharmacy charge account. According to Mr. Parikh, this gave Individual B a motive to fabricate allegations of sexual assault against him.
 2. *Individual B’s opportunity to collude with Individual A.* As stated, the Hearing Tribunal heard evidence that Individual A and Individual B discussed their shared experiences with Mr. Parikh before Individual A made her complaint to the ACP.
 3. *Individual B’s claim that she did not see Mr. Parikh’s penis.* Like Individual A, Individual B claimed that she never saw Mr. Parikh’s penis despite alleging that she had sex with him over a hundred times and even performed oral sex on him.
 4. *Individual B described Mr. Parikh’s penis incorrectly.* Individual B claimed that Mr. Parikh was circumcised. However, Mr. Parikh said he is uncircumcised.
- [46] Ultimately, the Hearing Tribunal accepted that, on a balance of probabilities, the conduct set out in Allegations 3(a) and 3(b) occurred as Individual B had alleged. It held that:
- The Hearing Tribunal has reviewed the factors affecting credibility and has not identified any factors that would suggest that Individual B is not a credible witness. By contrast, the Hearing Tribunal has identified concerns with respect to Mr. Parikh’s credibility and the plausibility of his narrative.

- [47] The Hearing Tribunal further held that, in light of Individual B's precarious financial situation and the significant power imbalance between her and Mr. Parikh, the sexual interactions between Mr. Parikh and Individual B could not be considered consensual. Accordingly, Allegations 3(a) and 3(b) were proven.
- [48] Having found that Allegations 3(a) and 3(b) were proven, the Hearing Tribunal concluded that the conduct amounted to unprofessional conduct.

v. *Allegation 4*

- [49] Individual C worked at the Pharmacy from March 2018 to March 2020. For her first year, she worked in the front-end of the Pharmacy. In her second year, she moved to the back of the Pharmacy to work as a pharmacy assistant.
- [50] In Allegation 4, it was alleged that Mr. Parikh caused Individual C to feel uncomfortable by: (a) suggesting that she lose weight to look better; (b) repeatedly staring at the name tag on her chest; and (c) repeatedly allowing his friend to socialize with him in the Pharmacy despite knowing that that friend had made comments of a sexual nature to Individual C.
- [51] The Hearing Tribunal held that Allegations 4(a) and 4(c) had not been made out. Those conclusions have not been challenged. The Hearing Tribunal did, however, conclude that Allegation 4(b) was proven on a balance of probabilities.
- [52] With respect to Allegation 4(b), Individual C testified that she stopped wearing her Pharmacy name tag because she would catch Mr. Parikh looking at her chest. He would then say that he was looking at her name tag and jokingly ask "what's your name again?". However, Individual C knew that he was looking at her chest. Individual A also testified that she witnessed Mr. Parikh repeatedly staring at Individual C's chest.
- [53] According to Mr. Parikh, he told Individual C that he would often rely on name tags when he was new to Canada to remember the names of the staff he was working with. In cross-examination, he denied that he inappropriately stared at Individual C's chest. In addition, several current and former employees of Mr. Parikh testified that they did not observe Mr. Parikh repeatedly stare at Individual C's chest in an inappropriate manner.
- [54] Mr. Parikh alleged that Individual C recently fabricated her evidence. In dismissing this claim, the Hearing Tribunal cited a text message Individual C sent to Mr. Parikh on March 13, 2020, which stated "You have no right to comment on my weight or my chest. [...]. I hated you look [sic] at my chest and saying, 'what's your name' when I would catch you."
- [55] The Hearing Tribunal found that, although it could not attach any specific timeline to the allegation, it was more likely than not that Allegation 4(b) occurred as alleged. The Hearing Tribunal further found that this conduct amounted to unprofessional conduct.

vi. *Allegation 5*

- [56] In Allegation 5, it was alleged that Mr. Parikh did various things to make Individual D feel uncomfortable. Despite the Complaints Director's best efforts, Individual D did not testify before the Hearing Tribunal. Hence, the only evidence the Hearing Tribunal had with respect to Allegation 5 were hearsay statements that Individual D made outside the hearing process. On that basis, the Hearing Tribunal found that the Complaints Director had failed to prove Allegation 5. That determination has not been challenged.

vii. *Allegation 6*

- [57] Allegation 6 alleged that Mr. Parikh repeatedly consumed alcohol on the Pharmacy premises, including when the Pharmacy was open, and he was the pharmacist in charge.
- [58] The evidence is clear that the Pharmacy was open from 10:00 AM to 6:00 PM from Monday to Friday and from 10:00 AM to 1:00 PM on Saturday. The Pharmacy was closed on Sundays. Mr. Parikh was always the pharmacist in charge at the Pharmacy, except on Wednesdays and Saturdays. Those were the days that his wife (also a pharmacist) worked. It was also undisputed that vodka, beer, and wine were kept on the Pharmacy premises.
- [59] Individual A and Individual C testified that Mr. Parikh usually started to drink at around 4:00 or 5:00 PM each night before the Pharmacy closed. In contrast, Mr. Parikh denied drinking at the Pharmacy while it was open. He acknowledged cooking supper and drinking with his friends in the Pharmacy in the evenings, but only after the Pharmacy was closed. Mr. Parikh claimed that, during the day, he could drink warm water with lemon. In addition, multiple current and former employees of Mr. Parikh testified that they never saw him consume alcohol on the Pharmacy premises before the Pharmacy closed.
- [60] In assessing Allegation 6, the Hearing Tribunal carefully scrutinized one instance in which Mr. Parikh admittedly drank alcohol at the Pharmacy. As discussed above, Mr. Parikh claimed that he was drunk in the Pharmacy one evening in October 2018, at around 6:15 PM. Owing to his intoxication, he lost his balance and put his hand on the fridge to catch his fall. Based on this account, the Hearing Tribunal concluded that:²

The Hearing Tribunal agrees that it is unlikely that Mr. Parikh would have been drinking a non-alcohol beverage that he was "not supposed to have" or that if he had only started drinking after the Pharmacy closed at 6 pm, he would have lost his balance or needed to use the washroom because of the drinks he had had, within a 15-minute period. In this instance, the Hearing Tribunal finds that it is more likely than not that Mr. Parikh had been consuming some of the alcohol he kept in the kitchen before the Pharmacy was closed to the public.

In the Hearing Tribunal's view, this incidence undercut Mr. Parikh's claim that he never drank at the Pharmacy while it was open.

² Merits Decision, paragraph 634.

- [61] The Hearing Tribunal also noted that the evidence — including Mr. Parikh’s own testimony — demonstrated that Mr. Parikh regularly drank at the Pharmacy. In addition, in a text message to Individual A on December 19, 2019, Mr. Parikh acknowledged that he was “drunk all the time.” Accordingly, the Hearing Tribunal found that it was more likely than not that Mr. Parikh repeatedly consumed alcohol on the Pharmacy premises, including when the Pharmacy was open, and he was the pharmacist in charge.
- [62] Having found that Allegation 6 was made out, the Hearing Tribunal further held that by drinking alcohol in the Pharmacy while it was open to the public and he was the pharmacist in charge, Mr. Parikh had engaged in unprofessional conduct.

C. The Sanctions Decision

- [63] The Complaints Director submitted that the Hearing Tribunal should order the cancellation of Mr. Parikh’s practice permit and registration; that Mr. Parikh shall not be permitted to directly or indirectly own or act as a proprietor for a licensed pharmacy; a fine of \$5,000 for allegation 6, to be paid on a monthly schedule as directed by the Hearings Director with payment in full within 24 months of the date of receipt of this decision; payment of 75% of the costs of the investigation and hearing, to be paid on a monthly schedule as directed by the Hearings Director with payment in full within 24 months of the date of receipt of this decision.
- [64] In his submissions to the Hearing Tribunal on sanctions, Mr. Parikh submitted that his practice permit and registration should not be cancelled. He acknowledged that, under the April 1, 2019, amendments to the *HPA*, sexual intercourse with a patient would trigger mandatory cancellation. However, he highlighted that there was no concrete evidence of any singular event of sexual abuse occurring on or after April 1, 2019. Mr. Parikh submitted that section 82 of the *HPA* does not permit the Hearing Tribunal to ban him from directly or indirectly owning or acting as proprietor for a licensed pharmacy. Mr. Parikh agreed that a fine of \$5,000 was appropriate and submitted that he should bear 50% of the costs of the investigation and hearing.
- [65] The Hearing Tribunal did not give effect to Mr. Parikh’s argument that there was no concrete evidence of sexual abuse on or after April 1, 2019. The Hearing Tribunal held that “[w]e found that this sexual activity involved sexual intercourse and it continued to at least September 2019, meaning that it was continuing to occur after April 1, 2019.” Accordingly, it was required to order the cancellation of Mr. Parikh’s practice permit and registration with the ACP.³
- [66] In the Decision of the Hearing Tribunal Concerning Sanctions, dated April 4, 2024 (the “**Sanctions Decision**”), the Hearing Tribunal made the following orders:
1. Mr. Parikh’s practice permit and registration are hereby cancelled;

³ *HPA*, s 82(1.1).

2. Mr. Parikh shall pay a fine of \$5,000, which may be paid by monthly installments as directed by the Hearings Director, provided the fine must be paid in full within 24 months of Mr. Parikh's receipt of the Sanctions Decision;
3. Mr. Parikh shall pay 75% of the costs of the investigation and hearing, which may be paid by monthly installments as directed by the Hearings Director, provided the costs must be paid in full within 36 months of Mr. Parikh's receipt of the Sanctions Decision.

IV. GROUNDS OF APPEAL

[67] On January 2, 2024, counsel for Mr. Parikh issued a Notice of Appeal of the Merits Decision. He appealed on the basis that the Hearing Tribunal erred in:

1. Interpreting and relying on the text messages between Mr. Parikh and Individual A in December 2019 and January 2020 in assessing Allegation 1(c);
2. Importing its findings regarding Allegation 1(c) in assessing and making findings in relation to Allegations 1(a), 1(b), 2(a) and 2(b) rather than assessing Allegations 1(a), 1(b), 2(a) and 2(b) individually;
3. Finding that Mr. Parikh was less credible than Individual A and Individual B;
4. Finding that any alleged sexual abuse of Individual A occurred after or upon the April 1, 2019 amendments to the *HPA* came into force;
5. Assessing the potential for collusion between Individuals A and B;
6. Finding that Allegation 4(b) was made out on a balance of probabilities; and
7. Finding that Allegation 6 was made out on a balance of probabilities.

Mr. Parikh does not challenge the Hearing Tribunal's conclusion that, in light of the facts that it found to be true, Mr. Parikh engaged in unprofessional conduct.

[68] Mr. Parikh also appeals the Sanctions Decision. However, that appeal hinges on the success of his appeal of the Merits Decision. If his appeal of the Merits Decision is successful with respect to certain allegations, Mr. Parikh seeks a corresponding reduction in his monetary penalty. Further, if the Panel finds that the Hearing Tribunal erred in finding that any sexual abuse occurred on or after April 1, 2019, Mr. Parikh asks it to impose a lesser sanction than permanent cancellation of his practice permit and registration.

V. STANDARD OF REVIEW

[69] The Complaints Director cites *Yee v. Chartered Professional Accountants of Alberta*, 2020 ABCA 98 [*Yee*], for the standards of review that apply to "internal" appeals (i.e., appeals *within* an administrative structure). In *Yee*, Justice Slatter held at paragraph 35 that:

[35] When reviewing the decision of a discipline tribunal, the appeal tribunal should remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable. The appeal tribunal should, however, remain flexible and review the decision under appeal holistically, without a rigid focus on any abstract standard of review: *Halifax (Regional Municipality) v Anglican Diocesan Centre Corporation*, 2010 NSCA 38 at para. 23, 290 NSR (2d) 361. The following guidelines may be helpful:

- (a) findings of fact made by the discipline tribunal, particularly findings based on credibility of witnesses, should be afforded significant deference;
- (b) likewise, inferences drawn from the facts by the discipline tribunal should be respected, unless the appeal tribunal is satisfied that there is an articulable reason for disagreeing;
- (c) with respect to decisions on questions of law by the discipline tribunal arising from the profession's home statute, the appeal tribunal is equally well positioned to make the necessary findings. Regard should obviously be had to the view of the discipline tribunal, but the appeal tribunal is entitled to independently examine the issue, to promote uniformity in interpretation, and to ensure that proper professional standards are maintained;
- (d) with respect to matters engaging the expertise of the profession, such as those relating to setting standards of conduct, the appeal tribunal is again well-positioned to review the decision under appeal. The appeal tribunal is entitled to apply its own expertise and make findings about what constitutes professional misconduct: *Newton* at para. 79. It obviously should not disregard the views of the discipline tribunal, or proceed as if its findings were never made. However, where the appeal tribunal perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;
- (e) the appeal tribunal is also well-positioned to review the entire decision and conclusions of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession;
- (f) the appeal tribunal may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

At paragraph 13 of *Yee*, Justice Strekaf concurred with Justice Slatter's analysis of the internal standard of review.

- [70] In his oral submissions, counsel for Mr. Parikh noted that most of the issues in the appeal deal with the application of the law to the facts, which attracts a reasonableness standard of review, with the exception of one ground of appeal attracting a standard of correctness. Mr. Parikh's written submissions cite various cases dealing with standards of review: *Housen v. Nikolaisen*, 2002 SCC 33; *Salomon v. Matte-Thomson*, 2019 SCC 14; *Baird*

Estate v. Baird, 1995 ABCA 220; *Duncan (Litigation Guardian of) v. Mazurek*, 2010 BCCA 344.

- [71] The cases cited in Mr. Parikh’s written submissions address the standard of review in the context of an appeal from a chambers judge or a trial judge. While these authorities may offer some guidance in internal appeals, the Panel agrees that *Yee* is the most applicable authority here. Accordingly, the Panel adopts the guidelines set out in paragraph 35 of *Yee*.

VI. SUBMISSIONS

A. Submissions on Behalf of Mr. Parikh

i. Ground 1 – Interpreting and Relying on the Text Messages

- [72] Mr. Parikh argues that the Hearing Tribunal erred in interpreting and relying on the text messages between him and Individual A between December 2019 and January 2020.
- [73] First, Mr. Parikh argues that the Hearing Tribunal failed to consider his testimony regarding the staff Christmas party that took place on December 4, 2019. Mr. Parikh claimed that he believed he had gotten drunk at the Christmas party and said something to Individual A and/or her husband that caused Individual A to become upset at him. He argues that his responses to Individual A’s texts are completely consistent with a belief that he may have offended or done wrong by Individual A at the Christmas party. Mr. Parikh also highlights that he gave evidence that Individual A once put her hand on his chest and said, “you can have it.”
- [74] Second, Mr. Parikh argues that the Hearing Tribunal failed to acknowledge that at no point did Individual A make a clear, unambiguous allegation that he could respond to. Accordingly, he suggests that he should not be faulted for failing to deny the vague allegations of wrongdoing in Individual A’s texts.
- [75] Third, Mr. Parikh notes that he is originally from India and that English is not his native language. In doing so, he suggests that his difficulties with the English language help explain his non-responsiveness to Individual A’s texts, to some extent.
- [76] Fourth, Mr. Parikh argues that the Hearing Tribunal’s emphasis on Mr. Parikh’s non-responsiveness to Individual A’s vague allegations was misguided. He claims that he was regularly non-responsive to Individual A throughout their texting relationship. Hence, the text messages in question were consistent with his past communications with Individual A.
- [77] Fifth, Mr. Parikh criticizes the Hearing Tribunal’s conclusion that Individual A’s texts clearly referred to some sort of sexual relationship between Mr. Parikh and Individual A. For the texts claiming that Mr. Parikh could not keep his hands to himself, Mr. Parikh emphasizes that there are many ways one can place their hands on another in a non-sexual manner. Likewise, although Individual A referred to “getting tested,” she does not specify what she got tested for. Ultimately, Mr. Parikh claims that the Hearing Tribunal allowed the nature of the allegations to colour their interpretation of the text messages.

- [78] Lastly, Mr. Parikh claims that the Hearing Tribunal erred by interpreting his offers to pay Individual A as attempts to buy her silence. In the evidence before the Hearing Tribunal, it was not disputed that Mr. Parikh was an unusually generous employer.

ii. Ground 2 – Importing Findings Regarding Allegation 1(c)

- [79] Mr. Parikh argues that the Hearing Tribunal’s findings regarding Allegations 1(a), 1(b), 2(a), and 2(b) are premised almost entirely on its findings that there was a non-consensual sexual relationship between Mr. Parikh and Individual A and that Mr. Parikh was less credible than Individual A. In his view, these allegations were separate from Allegation 1(c). Accordingly, the Hearing Tribunal should have assessed them independently.
- [80] Further, if the Panel finds that the Hearing Tribunal erred in interpreting and relying on the text messages between Mr. Parikh and Individual A when assessing Allegation 1(c), Mr. Parikh states that it must conclude that the Hearing Tribunal erred in relying on the same evidence and findings in assessing Allegations 1(a), 1(b), 2(a), and 2(b).

iii. Ground 3 – Assessing the Parties’ Credibility

- [81] According to Mr. Parikh, the Hearing Tribunal erred in finding that he was less credible than both Individual A and Individual B. He claims that the Hearing Tribunal did not have due regard for the serious issues with the evidence Individual A and Individual B gave.
- [82] First, Mr. Parikh highlights that Individual A gave conflicting accounts as to whether certain key events occurred over one night or two. He claims that this major inconsistency was “fatal to Individual A’s credibility.” According to Dr. Robert Acton (a psychologist appointed to investigate the allegations against Mr. Parikh), the consistency of Individual A’s story was “really an important factor to consider in credibility.” Counsel for Mr. Parikh also noted in oral submissions that the version of events provided by Individual A to Dr. Acton and to the Hearing Tribunal was much more jarring, than what she later admitted was more accurate, which was the version contained in her notes.
- [83] Second, Mr. Parikh highlights that Individual A was only able to provide specific details about *one* of her many alleged sexual encounters with Mr. Parikh. Even then, she could not remember the date that this encounter allegedly occurred. In contrast, Mr. Parikh’s memory of the same period was “vivid and filled with detail.”
- [84] Third, Mr. Parikh highlights that both Individual A and Individual B said that they never saw Mr. Parikh’s penis and described Mr. Parikh as being circumcised. According to Mr. Parikh, he is not circumcised. He argues it is implausible that Individual A and Individual B — who have allegedly had sex with Mr. Parikh over 200 times, collectively — have never seen Mr. Parikh’s penis and cannot accurately describe it.
- [85] Fourth, Mr. Parikh claims that Individual A and Individual B owed money to Mr. Parikh and/or the Pharmacy, giving them a clear motivation to lie about the allegations.

- [86] Lastly, Mr. Parikh claims that the Hearing Tribunal erred by taking note of his failure to deny the allegations of sexual misconduct against him in direct examination.

iv. Ground 4 – Timing of the Alleged Sexual Abuse

- [87] Mr. Parikh argues that the Hearing Tribunal erred in finding that any sexual abuse of Individual A occurred after the April 1, 2019, amendments to the *HPA*. The only specific incident to which Individual A was able to attribute a date was the first instance of alleged sexual intercourse, which occurred sometime before April 1, 2019. She gave no evidence regarding any specific instance of sexual abuse occurring after April 1, 2019.
- [88] Accordingly, Mr. Parikh alleges that the timeline of Allegation 1(c) was not specific enough to allow the Hearing Tribunal to determine whether the conduct occurred at a time when the April 1, 2019, amendments to the *HPA* were in force. The Hearing Tribunal therefore erred in determining that the conduct referred to in Allegation 1(c) included “sexual abuse” as defined in the *HPA*, mandating cancellation of Mr. Parikh’s license.
- [89] On this issue, Mr. Parikh notes that the Hearing Tribunal’s analysis of Individual C’s allegations is illuminating. With respect to Allegation 4(b), the Hearing Tribunal held that:⁴

There are no specific timelines attached to this allegation nor were any specific timelines of when this conduct occurred established through the evidence. To this extent and given that Individual C worked at the Pharmacy between March 2018 and March 2020, the Hearing Tribunal is unable to determine whether the conduct occurred at a time where the April 1, 2019, amendments to the *HPA* regarding sexual misconduct and sexual abuse were in force.

- [90] Mr. Parikh argues that the Hearing Tribunal’s decision on whether the April 1, 2019, amendments to the *HPA* applied to his conduct attracts a correctness standard.

v. Ground 5 – Assessing the Potential for Collusion

- [91] According to Mr. Parikh, the evidence of Individual A and Individual B was very similar, and so were their circumstances. Both employees had failed to repay the balance of their charge accounts with the Pharmacy, giving them a clear motive to lie about Mr. Parikh. In addition, the Merits Decision detailed discussions between Individual A and Individual B before Individual A reported Mr. Parikh’s conduct to the ACP. Hence, Mr. Parikh argues that the Hearing Tribunal erred in failing to find that the similarity between Individual A and Individual B’s accounts reflects an attempt to line up their stories.

vi. Ground 6 – Allegation 4(b)

- [92] Mr. Parikh argues that the Hearing Tribunal erred in finding that Allegation 4(b) was made out on a balance of probabilities.

⁴ Merits Decision, paragraph 605.

- [93] First, he argues that the Hearing Tribunal erred in relying on the March 13, 2020, text message that Individual C sent to Mr. Parikh in finding that Mr. Parikh had repeatedly stared at Individual C's name tag. He emphasizes that just because Individual C previously made the allegation does not mean that the allegation is true.
- [94] Second, Mr. Parikh points out that Individual C was unable to articulate any specific incidents of Allegation 4(b).
- [95] Lastly, Mr. Parikh highlights that two witnesses who worked with him and Individual C testified that they never observed any inappropriate interactions between them.

vii. Ground 7 – Allegation 6

- [96] Mr. Parikh argues that the Hearing Tribunal erred in finding that he repeatedly drank alcohol at the Pharmacy when it was open to patients and he was the pharmacist in charge.
- [97] First, he claims that the Hearing Tribunal erred in assuming that Mr. Parikh could not have gotten drunk within a 15-minute period between 6:00 and 6:15 PM. No expert evidence was adduced regarding how quickly a man of Mr. Parikh's size and stature could get drunk.
- [98] Second, Mr. Parikh argues that it was improper for the Hearing Tribunal to extrapolate from one instance of supposed drunkenness while the Pharmacy was open in October 2018 to conclude that Mr. Parikh *repeatedly* drank while the Pharmacy was open.
- [99] Third, Mr. Parikh highlights that [REDACTED] — an employee at the Pharmacy who retired in August 2021 — testified that she never saw Mr. Parikh drinking alcohol at the Pharmacy. M.B.'s shifts went until 6:00 PM, the Pharmacy's closing time.

viii. Costs of the Appeal

- [100] Finally, Mr. Parikh requests costs on a solicitor-client basis if his appeal is granted.

B. Submissions on Behalf of the Complaints Director

- [101] The Complaints Director highlights that most of Mr. Parikh's grounds of appeal raise issues of fact or mixed fact and law. These findings should be afforded significant deference unless the Panel finds an articulable reason for disagreeing with them.
- [102] In brief, the Complaints Director argues that the Hearing Tribunal did not err in how it interpreted and weighed the evidence. It made reasonable assessments of credibility and reasonable inferences of fact based on all the evidence before it. Accordingly, Mr. Parikh's appeal of the Merits Decision should be dismissed in its entirety.

i. Ground 1 – Interpreting and Relying on the Text Messages

- [103] The Complaints Director claims that, in conjunction with Individual A’s testimony, the Hearing Tribunal was entitled to rely on the text messages between Individual A and Mr. Parikh to find that Allegation 1(c) was made out on a balance of probabilities.
- [104] According to the Complaints Director, Individual A’s text messages clearly referred to some sort of sexual relationship between her and Mr. Parikh. As a result, it was reasonable for the Hearing Tribunal to conclude that the nature of Mr. Parikh’s responses to those text messages damaged the credibility of his denial of a sexual relationship with Individual A.
- [105] Regarding Mr. Parikh’s claims about his English competency, the Complaints Director claims that Mr. Parikh did not allege a difficulty formulating responses to text messages at the hearing. As a result, the Panel should not consider this point. In any event, the Complaints Director highlights that Mr. Parikh is a professional pharmacist who has lived in Canada since 2003, and that the transcript confirms his grasp of the English language.
- [106] Regarding Mr. Parikh’s claims that he was regularly non-responsive to Individual A’s texts, the Complaints Director claims that they represent an attempt by Mr. Parikh to skirt the fact that some of his text messages *did* respond to Individual A’s allegations.

ii. Ground 2 – Importing Findings Regarding Allegation 1(c)

- [107] The Complaints Director claims that the Hearing Tribunal did not simply import its findings regarding Allegation 1(c) when assessing Allegations 1(a), 1(b), 2(a) and 2(b). Rather, it considered the credibility of Individual A as compared to Mr. Parikh and was prepared to accept the evidence of Individual A over that of Mr. Parikh.

iii. Ground 3 – Assessing the Parties’ Credibility

- [108] The Complaints Director emphasizes that heightened deference is owed to the Hearing Tribunal’s assessments of credibility, as it was the Hearing Tribunal who heard directly from the witnesses. The Complaints Director also highlights that assessing credibility is not a science. Citing *R. v. Gagnon*, 2006 SCC 17 at para 20, he emphasizes that it can be difficult to precisely articulate the “complex intermingling of impressions” that emerge after watching and listening to witnesses, which form the basis of credibility assessments.
- [109] That said, the Complaints Director argues that Mr. Parikh has failed to demonstrate any error in the Hearing Tribunal’s findings of credibility that would warrant appellate intervention. The Hearing Tribunal gave cogent reasons for why it accepted the testimony of Individual A and Individual B despite its lack of clarity and precision. It also provided sufficient reasons to address credibility issues, including their alleged motive to lie and the opportunity they had to concoct evidence.
- [110] Among other things, the Complaints Director highlights that there is no evidence Mr. Parikh has commenced a civil claim against Individual B for the recovery of a debt she

owed to the Pharmacy. He also highlights that, while he was not called as an expert witness, Dr. Acton found that Individual A was a more credible witness than Mr. Parikh.

iv. Ground 4 – Timing of the Alleged Sexual Abuse

- [111] According to Individual A, she and Mr. Parikh engaged in sexual intercourse two or three times per week from early 2019 to about December 2019. The Hearing Tribunal accepted this testimony and concluded that Mr. Parikh engaged in sexual intercourse with Individual A in the Pharmacy on multiple occasions between October 2018 and September 2019. The Complaints Director argues that there is no basis to disturb this finding.

v. Ground 5 – Assessing the Potential for Collusion

- [112] In this case, the evidence is clear that Individual A met with Individual B to discuss her experience of sexual abuse by Mr. Parikh. During that meeting, Individual B shared that she had a similar experience. However, citing *R. v. Norris*, 2020 ONCA 847 at para 35, the Complaints Director claims there must be more than just contact to establish collusion.
- [113] That said, the Complaints Director argues that the Hearing Tribunal considered the evidence and provided clear and cogent reasons for rejecting Mr. Parikh's suggestion that Individual A and Individual B colluded. There is no basis to disturb that finding.

vi. Ground 6 – Allegation 4(b)

- [114] With respect to Allegation 4(b), the Complaints Director argues that the Hearing Tribunal did not rely solely on the text messages between Mr. Parikh and Individual C to find that the allegation was made out on a balance of probabilities. The Hearing Tribunal also relied on the testimony of Individual C and the corroborating testimony of Individual A.
- [115] The Complaints Director also points out that while other employees did not observe the conduct alleged in Allegation 4(b), that does not prove that the conduct did not occur.
- [116] In sum, the Complaints Director argues that the Hearing Tribunal's reasons for concluding that Allegation 4(b) was made out are reasonable and should be afforded deference.

vii. Ground 7 – Allegation 6

- [117] Regarding Allegation 6, the Complaints Director rejects Mr. Parikh's contention that the Hearing Tribunal extrapolated from one supposed instance of drinking while the Pharmacy was open to conclude that he did so repeatedly. It claims that the Hearing Tribunal provided clear and cogent reasons for why it found it was more likely than not that Mr. Parikh repeatedly consumed alcohol on the Pharmacy premises while it was open.

viii. Appeal of the Sanctions Decision

- [118] The Complaints Director argues that the Sanctions Decision does not contain any reviewable errors. The sanctions the Hearing Tribunal imposed are not demonstrably unfit and Mr. Parikh's submissions do not point to any errors in principle.

ix. Costs of the Appeal

- [119] Regarding Mr. Parikh's request for solicitor-client costs, the Complaints Director argues that there is no authority in the *HPA* for the Panel to impose costs against the ACP.

C. Reply on Behalf of Mr. Parikh

- [120] Counsel for Mr. Parikh raised two points in reply. First, he sought to highlight that, although Dr. Acton did find that Individual A was more credible than Mr. Parikh, he did not consider the inconsistency in Individual A's account of whether certain key events occurred over one night or two when he made that determination.
- [121] Second, Mr. Parikh added that there was no civil claim against Individual B for the debt she owed to the Pharmacy because the two-year limitation period for the recovery of that debt had expired.

VII. DECISION

- [122] The Panel has carefully considered the written and oral submissions of the parties and the Appeal Record, including the Merits Decision and Sanctions Decision. For the reasons set out below, the Panel dismisses Mr. Parikh's appeal in its entirety.

VIII. REASONS FOR DECISION

A. Ground 1 – Interpreting and Relying on the Text Messages

- [123] As stated, the Hearing Tribunal reviewed a series of text messages that Individual A and Mr. Parikh exchanged in December 2019 and January 2020. In its view, these messages severely weakened the credibility of Mr. Parikh's claim that he and Individual A did not have any sort of sexual relationship.
- [124] With regard to the text messages, Mr. Parikh's arguments on appeal can be grouped into two categories: (1) those regarding the Hearing Tribunal's interpretation of Individual A's texts; and (2) those regarding the inferences the Hearing Tribunal drew from Mr. Parikh's responses to those texts. The Panel will address each of these categories in turn.

i. The Hearing Tribunal's Interpretation of Individual A's Text Messages

- [125] On December 17, 2019, Individual A texted Mr. Parikh to tell him that she was taking a leave of absence. Mr. Parikh responded by asking if everything was okay. From there,

Individual A and Mr. Parikh exchanged a number of text messages. In them, Individual A was clearly expressing frustration with something Mr. Parikh did.

[126] The Panel does not intend to reproduce all of the messages the Hearing Tribunal examined. That said, some of the more notable excerpts from Individual A's text messages include:

- “You can’t do what you did and then turn mean when you don’t get what you want. ... I have told [my husband]. Everything. I have a note from [my doctor], who also recommended that I take this to the college.”
- “I don’t want you to do this to anyone else. Ever.”
- “It’s not about the money at all. You have to accept the fact that what you did was wrong and that it cannot happen again.”
- “I know I’m the best for business, *which is why you should have kept your hands to yourself*. What is ‘just fun’ for you, is now a lifetime of anguish for me. Now I have to suffer and not work and be tormented by awful thoughts because of a decision you made.” [emphasis added]
- “You stole ME. ... I have worked there for 15 years and I no longer have an identity *because you couldn’t keep your hands or thoughts to yourself*.” [emphasis added]
- “I just want to be done with your predatory gaslighting self. ... I can never forgive you for what you did to me. You tried to ruin my family, and I hope you ruined yours. For dog’s [sic] sake I hope you tell your wife what a dirty, conniving skanky human you are. *Hundreds of prostitutes? For fucks sake you are lucky you aren’t carrying anything (and believe me, I got tested)*. ... Your poor wife. She probably knows nothing. I hope one day you have the balls to tell her what a terrible human you are. Oh. And. 🖐🖐🖐🖐🖐” [emphasis added]
- “You took advantage of me in a vulnerable state, and now I’m the one paying for it..”

[127] None of Individual A's text messages explicitly state what Mr. Parikh allegedly did wrong. Nevertheless, the Hearing Tribunal found that they were implicitly referring to some sort of sexual relationship or contact between Mr. Parikh and Individual A.

[128] Mr. Parikh disagrees that this was the only reasonable way to interpret Individual A's text messages. He suggests that there are many ways one can place their hands on another in a more innocent, non-sexual way. However, accompanying her allegations that Mr. Parikh could not keep his hands to himself, Individual A claims that Mr. Parikh's conduct has caused her a “lifetime of anguish” and stripped her of her identity. She also indicates that her doctor recommended that she report Mr. Parikh's conduct to the ACP. In doing so, Individual A is clearly not referring to some sort of minor, non-sexual physical contact.

- [129] In a later text message, Individual A also claims that she “got tested.” The Hearing Tribunal believed that this was clearly a reference to there being some sort of sexual relationship between Mr. Parikh and Individual A. Mr. Parikh emphasizes that Individual A did not specify what she got tested for. However, the context of the text message as a whole — including the claim that Mr. Parikh is “skanky,” the reference to “[h]undreds of prostitutes,” the statement that Mr. Parikh is not “carrying anything,” and the pity Individual A expresses for Mr. Parikh’s wife — indicates that Individual A was claiming she got tested for sexually transmitted infections she thought Mr. Parikh might be carrying. Of course, this would only be a concern for Individual A if her and Mr. Parikh had had some form of sexual contact. As a result, Individual A’s claim that she “got tested” weighs heavily in favour of interpreting Individual A’s texts as alleging a sexual relationship between her and Mr. Parikh. The Hearing Tribunal reached the same conclusion.
- [130] Further, Mr. Parikh argues that he reasonably believed Individual A’s text messages were expressing frustration with something he said to Individual A and/or her husband while intoxicated at the company Christmas party. However, the Hearing Tribunal gave clear and convincing reasons for rejecting this interpretation. For one, one of Individual A’s text messages states “I have told [my husband]. Everything.” Because Individual A’s husband was at the Christmas party, he would have presumably been aware of the events that unfolded there. As a result, the claim that she told her husband “everything” would make no sense if she was describing something that happened at the Christmas party. The Hearing Tribunal also pointed out that, among other things, Individual A’s text messages claimed that Mr. Parikh stole her identity. This made it implausible to interpret Individual A’s text messages as referring to some “slight” at the company Christmas party.
- [131] In his written submissions, Mr. Parikh also briefly highlights that he gave evidence that Individual A once put her hand on his chest and said, “you can have it.” The suggestion seems to be that Individual A’s texts could be interpreted as a reference to that incident. If so, this is nonsensical. Individual A’s text messages allege that Mr. Parikh is “predatory,” that he “took advantage” of her, and that he did something wrong. Her texts cannot reasonably be interpreted as a reference to something she herself had done.
- [132] In sum, the Hearing Tribunal gave cogent reasons for finding that Individual A’s text messages would reasonably be interpreted as implicit references to some sort of sexual relationship or contact between her and Mr. Parikh. The Panel sees no reason to interfere with this finding. The Panel analyzed the relevant text messages between Individual A and Mr. Parikh and does not view that the Hearing Tribunal has characterized them unfairly. The Panel finds no basis to intervene in the Hearing Tribunal’s decision on this issue.

ii. The Inferences the Hearing Tribunal Drew from Mr. Parikh’s Text Messages

- [133] In addition to reviewing Individual A’s text messages, the Hearing Tribunal analyzed Mr. Parikh’s responses to those messages. In response to Individual A’s accusatory text messages, Mr. Parikh generally responds by expressing that he understands Individual A’s frustration and wants to make amends. He claims that he is in trouble and wants Individual A to return to work at the Pharmacy. He does not want Individual A to “fight.”

- [134] Mr. Parikh testified before the Hearing Tribunal that he did not have *any* sexual relationship with Individual A, let alone a non-consensual sexual relationship. In the Hearing Tribunal's view, this testimony was difficult to reconcile with the nature of Mr. Parikh's responses to Individual A's texts. As stated, Individual A made a series of veiled accusations that Mr. Parikh engaged in some sort of serious misconduct of a sexual nature. In response, Mr. Parikh neither questions Individual A nor disputes the accuracy of Individual A's claims.
- [135] At one point, Mr. Parikh states "I did nothing wrong; nothing was doing forcefully. I was also mentally upset and drunk all the time; I wasn't with me." The Hearing Tribunal had the following to say about that response:⁵

At this point, Mr. Parikh appears to acknowledge that something happened but that it was not done forcefully. He also offers an excuse in that he was mentally upset and drunk all the time and "wasn't with me". In the view of the Hearing Tribunal, there would be no need to Mr. Parikh to offer excuses for his behavior if nothing had happened, as he alleged.

... Accordingly, the tenor of the full text message appears to the Hearing Tribunal to be "I did nothing wrong. It was done consensually and even if it wasn't I am to be excused for my behavior because I was mentally upset and drunk all the time."

In the end, the Hearing Tribunal concluded that Mr. Parikh's responses to Individual A's texts severely weakened the credibility of his claim that he did not have any sort of sexual relationship with Individual A.

- [136] Mr. Parikh challenges the inferences the Hearing Tribunal drew from his responses. First, he highlights that Individual A never made a clear, unambiguous allegation that he could respond to substantively. However, the Hearing Tribunal noted more than just a failure by Mr. Parikh to deny Individual A's allegations. In its view, it was also significant that Mr. Parikh did not express any surprise or seek any clarity regarding what Individual A was accusing him of. According to the Hearing Tribunal, this suggested "that Mr. Parikh knew just what Individual A was referring to (i.e., their sexual relationship)."
- [137] Second, Mr. Parikh emphasizes that he is originally from India and that English is not his native language. He seems to suggest that his difficulties with the English language help explain his non-responsiveness to Individual A's texts. However, the Panel rejects this argument. As the Complaints Director points out, Mr. Parikh did not raise any concerns about his English competency before the Hearing Tribunal.
- [138] In any event, Mr. Parikh is a professional pharmacist who has lived in Canada since 2003. Based on the Panel's review of Mr. Parikh's text messages and his testimony before the Hearing Tribunal, the Panel could not identify any obvious concerns regarding Mr. Parikh's ability to understand English and formulate responses. Indeed, Mr. Parikh has not pointed to anything in the record that would validate the existence of a language barrier.

⁵ Merits Decision, paragraphs 453 and 454.

- [139] Third, Mr. Parikh claims that he was regularly non-responsive to Individual A throughout their texting relationship. Hence, the text messages in question were consistent with his past communications with Individual A. Again, the Panel did not give effect to this argument. It is true that, prior to December 2019, Mr. Parikh's responses to Individual A's text messages were often brief (e.g., "No worries," "Sure," "No problem," "Should be fine," "👍," etc.). However, Individual A's text messages in December 2019 did not relate to the sort of everyday, mundane matters that had previously characterized the parties' texting relationship. Individual A was suggesting that Mr. Parikh had engaged in some serious misconduct of a sexual nature. As the Hearing Tribunal found, his failure to question what Individual A was accusing him of called his own version of events into question.
- [140] In addition, it is worth noting that although Mr. Parikh's text messages in December 2019 do not question or challenge Individual A's assertions, they are generally quite long. To the Panel, this suggests that Mr. Parikh is more than capable of formulating longer, more detailed text message responses where the circumstances require.
- [141] Finally, Mr. Parikh argues that the Hearing Tribunal erred by interpreting his offer to pay Individual A as an attempt to buy her silence. He claims that his "record as an unusually generous employer is well established." That said, the Hearing Tribunal considered and rejected Mr. Parikh's argument that his offer to pay Individual A was simply a generous attempt to retain a good employee. In its view, Mr. Parikh's need to make things right with Individual A extended beyond a mere desire to keep her as an employee:⁶

... [Mr. Parikh] offers to clear [Individual A's] charge account in the amount of \$9,000, to pay her \$6,000 and ... pay down her credit card debt by \$500 per month. He goes on to state "Please let me know anything I can do to make you happy, as you know that I never tried to wrong with anyone."

Mr. Parikh testified that he was offering this money to Individual A to retain her as she was a good employee. However, in the view of the Hearing Tribunal, this appears to be a very generous retention offer for someone who does not yet appear to have even inquired what led Individual A to consider leaving. Further, Mr. Parikh states in a later text message on December 18: "If you want to go for ROE, then what you want me to do to make happy? Please let me know." Similarly, Mr. Parikh states in a later text "If you don't want to come [to work] then tell me with ROE what you want me to more to make both life easy..."

If Individual A was opting for the ROE, then this would mean that she had decided to leave her employment. If Mr. Parikh was offering the money to retain Individual A as an employee, then it doesn't follow that he would still be inquiring what he could do to make her happy if she was opting to leave employment.

...

⁶ Merits Decision, paragraphs 431 to 433 and 459.

It is clear that he is also trying to actively dissuade Individual A from “fighting”, i.e., pursuing matters further. In the overall context of these exchanges, the Hearing Tribunal is prepared to accept Individual A’s characterization that Mr. Parikh was attempting to “buy her off”. While there is evidence before the Hearing Tribunal that Mr. Parikh was a generous employer, the Hearing Tribunal finds that the offers of money made in this context were attempts to placate Individual A so that she could not pursue matter of their sexual relationship further. It appears that Mr. Parikh did not want any further trouble. As he put it in one of his texts “my life is already fucked up hard”.

- [142] In the Panel’s view, the Hearing Tribunal provided sound reasons for rejecting Mr. Parikh’s claim that his offers to pay Individual A were directed solely at retaining a good employee, notwithstanding the evidence that he was often quite generous to his employees. The Panel sees no principled reason to depart from the Hearing Tribunal’s findings on this point.
- [143] The Hearing Tribunal, as a trier of fact, was required to make findings of fact and draw inferences from the facts. In assessing the credibility of the witnesses in this case, the Hearing Tribunal considered the factors in *Tsang v Mok*.
- [144] Counsel for the Complaints Director pointed to the decision of *Tsang v Mok*, 2020 ABQB 17, in oral submissions, at paragraph 25:

In assessing credibility and reliability, the whole tapestry of the evidence is considered, both in scope and nature. The Court may accept all, some or none of a witness’s evidence... The inquiry includes an evaluation of the story’s “harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions”... Evidence is assessed using several factors including internal consistency, consistency over time, compatibility and incompatibility with other evidence, corroboration, plausibility, quality of memory, admissions against interest, evasiveness, exaggeration, bias, motivation, and demeanour.

- [145] In this case, in assessing credibility, the Hearing Tribunal drew an inference that when people are first confronted by allegations of serious misconduct that they did not do, they generally deny or, at the very least, question those allegations. It held that Mr. Parikh’s failure to do so in the face of Individual A’s accusatory text messages damaged the credibility of his insistence that he and Individual A did not have a sexual relationship of any kind. The Panel sees no reason to interfere with this conclusion.

B. Ground 2 – Importing Findings Regarding Allegation 1(c)

- [146] After concluding that there was a non-consensual sexual relationship between Mr. Parikh and Individual A, the Hearing Tribunal went on to consider whether Allegations 1(a), 1(b), 2(a), and 2(b) were made out. As stated, it found that the Complaints Director had established those allegations on a balance of probabilities.

- [147] In Mr. Parikh's view, the Hearing Tribunal's findings regarding Allegations 1(a), 1(b), 2(a), and 2(b) are premised almost entirely on its findings that there was a non-consensual sexual relationship between Mr. Parikh and Individual A and that Mr. Parikh was less credible than Individual A. He argues that these allegations were separate from Allegation 1(c) and that the Hearing Tribunal should have assessed them independently.
- [148] The Panel does not give effect to this argument. The finding that there was a non-consensual sexual relationship between Mr. Parikh and Individual A did not lead, on its own, to adverse findings under the other allegations involving Individual A. The Hearing Tribunal had due regard for whether the Complaints Director had proven each allegation. It considered the parties' conflicting versions of events alongside several other factors, including:
- Mr. Parikh's evidence that he was drunk when he allegedly fell into Individual A by the fridge, which would impair his memory; and
 - Individual A's evidence that Mr. Parikh blamed his request to kiss her on alcohol, which was similar to a statement that Mr. Parikh made to Individual A via text (i.e., "I did nothing wrong; ... I was also mentally upset and drunk all the time.").
- [149] The Panel accepts that the Hearing Tribunal relied on its assessment of Mr. Parikh's credibility in its analysis of Allegation 1(c) when making findings under the other allegations involving Individual A. However, there is nothing objectionable about this. The allegations involving Individual A were not siloes. In assessing Allegations 1(a), 1(b), 2(a), and 2(b), the Hearing Tribunal was not required to disregard the concerns it had previously identified with Mr. Parikh's credibility. It was entitled to assess Mr. Parikh's credibility holistically. Mr. Parikh has not provided any authority that suggests otherwise.
- [150] In sum, the Panel concludes that the Hearing Tribunal did not err by failing to assess Allegations 1(a), 1(b), 2(a), and 2(b) independently of Allegation 1(c).

C. Ground 3 – Assessing the Parties' Credibility

- [151] A trier of fact's assessment of a witness's credibility is entitled to substantial deference on appeal. Triers of fact have the benefit of observing a witness's demeanor, tone, and overall behaviour during their testimony in real time. These observations provide critical context that cannot readily be captured in a written transcript.
- [152] Mr. Parikh argues that the Hearing Tribunal made palpable errors when weighing the credibility of Mr. Parikh, Individual A, and Individual B.
- [153] First, Mr. Parikh highlights the flaws in the clarity and consistency of Individual A's account. For one, Individual A gave conflicting accounts regarding whether certain key events occurred over one night or two. She was also only able to provide moderate details about *one* of her many alleged sexual encounters with Mr. Parikh.

- [154] However, the Hearing Tribunal was clearly alive to the weaknesses of Individual A's memory of the relevant time. It gave cogent reasons for why, in its view, these weaknesses were not fatal to the credibility or reliability of her testimony.⁷

Individual A testified that her memory from the time that the sexual assaults were occurring is foggy as she has blocked out a lot of that time. As such, she cannot recall exact moments and how things occurred. The Hearing Tribunal accepts that given the passage of time between the events in question and the dates of the hearing that Individual A may well not be able to recall the events with precision.

However, her accounts of the events in question have largely been consistent as between her descriptions of events as recorded in her notebook and provided to Mr. Acton and the Hearing Tribunal. One inconsistency in her evidence [regarding whether certain key events occurred over one night or two] was identified by Mr. Parikh.

...

In the view of the Hearing Tribunal, it is not particularly material whether the events as described by Individual A occurred over one night or two. It is not surprising that given the passage of time, the nature of the events in question and the length of time over which the events occurred that Individual A might mix up some of the details in question. The Hearing Tribunal does not view this minor inconsistency as undermining the credibility of Individual A.

Mr. Parikh alleges that Individual A's account of the sexual abuse should be viewed as less credible as she was only able to describe moderate details of the sexual assaults. However, Individual A described that the sexual intercourse always occurred in storage room and when no one else was in the Pharmacy. She described that Mr. Parikh would place some sweaters on the floor, have Individual A lie down, take her pants off and then have sex with her.

Individual A described a "tell tale sign" that Mr. Parikh intended on having sex with her is that he would go to the bathroom and come out "reeking of Axe" body spray. When this happened, Individual A "would know that it was going to happen. I would have to stay and do that."

The Hearing Tribunal notes that these details of the sexual assaults bear a striking resemblance to the details shared by Individual B. ...

- [155] The Panel sees no reason to interfere with this analysis. Individual A was upfront about the gaps in her memory. The Hearing Tribunal took note of the flaws in Individual A's evidence and concluded that, in all the circumstances, those flaws were not fatal to Individual A's credibility. Given the passage of time and Individual A's testimony that she "blocked out" a lot of information from the relevant time, the Hearing Tribunal was right not to place excessive weight on the flaws in Individual A's memory. In addition, the

⁷ Merits Decision, paragraphs 485, 486 and 493 to 496.

Hearing Tribunal noted that Individual A's account was largely consistent with Individual B's.

- [156] The Panel did not agree with the characterizing by counsel for Mr. Parikh that one version of Individual A's evidence, where the events occurred in one sequence was a much more violent and jarring version of events than if the events happened on two separate occasions. Regardless, Individual A gave evidence that the notes she took closer to the time in question were more reliable than her memory at the hearing. The Panel finds no reviewable error in how the Hearing Tribunal assessed the discrepancies in Individual A's testimony.
- [157] The Panel also considered the submissions raised regarding the evidence of Dr. Acton regarding the importance of credibility. The Panel notes that the Hearing Tribunal was the trier of fact, tasked with making findings of credibility. Dr. Acton was not called as an expert witness, and it was not his role to make the ultimate findings of credibility regarding witness testimony. The Hearing Tribunal committed no error by making its own findings of credibility.
- [158] Second, Mr. Parikh argues that it was implausible that both Individual A and Individual B — who allegedly had sex with Mr. Parikh over 200 times, collectively — said that they never saw Mr. Parikh's penis and could not accurately describe Mr. Parikh's penis. The Hearing Tribunal's analysis on this issue was as follows:⁸

... Individual A testified that she and Mr. Parikh had sexual intercourse 2-3 times per week over the course of approximately one year. This would amount to, at minimum, over 100 episodes of sexual intercourse. However, despite this number of interactions, Individual A testified that she had never seen Mr. Parikh's penis. The Hearing Tribunal questioned whether this was ultimately plausible. However, Individual A did testify that it was always dark in the room where the intercourse occurred, so the Hearing Tribunal accepts that it is ultimately likely that Individual A did not see Mr. Parikh's penis at any point.

Along similar lines, Individual A, despite testifying that she had never seen Mr. Parikh's penis, was able to relay to the investigator that Mr. Parikh was circumcised. This was not consistent with Mr. Parikh's evidence that he was not circumcised. When asked on cross-examination why she believed Mr. Parikh was circumcised if she never saw his penis, Individual A explained "It's a different feeling." In other words, Individual A was explaining that she came to her conclusion based on how intercourse felt. This was only a very brief exchange during cross-examination and after providing this answer the questions moved onto another area. If we assume that Mr. Parikh was being truthful about not being circumcised, then this means that Individual A made a mistake and misinterpreted what she was feeling during intercourse. This is a tangential matter and does not affect the core part of Individual A's testimony about sexual intercourse taking place on many occasions. We do not find that any mistake by Individual A that she

⁸ Merits Decision, paragraphs 504 to 506.

was feeling a circumcised penis during intercourse affects our overall conclusion that Individual A was credible, and Mr. Parikh was not.

While these issues raised some questions in the mind of the Hearing Tribunal, it did not view these issues to be significant enough to detract from the overall credibility of Individual A's evidence that there did exist a sexual relationship between her and Mr. Parikh.

- [159] Again, the Panel is not satisfied that this analysis reveals any reviewable errors. The Hearing Tribunal heard evidence that the room was dark whenever sexual activity occurred. Individual A and Individual B also indicated that, when they had sex with Mr. Parikh, they would lie down on the floor and Mr. Parikh would climb on top of them. This would give Individual A and Individual B limited opportunities to examine Mr. Parikh's penis. Individual B testified that when she gave Mr. Parikh oral sex, she did not see his penis because her eyes were closed. In addition, it is worth noting that Individual A and Individual B were found to be unwilling participants in sexual intercourse with Mr. Parikh. The Hearing Tribunal accepted that Individuals A and Individual B had not seen Mr. Parikh's penis. Against this backdrop, it is entirely plausible that Individual A and Individual B had a limited ability to describe Mr. Parikh's penis. The Panel finds no reason to interfere with the Hearing Tribunal's finding on this point.
- [160] Third, Mr. Parikh highlights that Individual A and Individual B owed money to the Pharmacy, giving them a clear motivation to fabricate allegations against Mr. Parikh. The Hearing Tribunal heard evidence that Individual A and Individual B both had a charge account at the Pharmacy. On their charge accounts, they could charge items from the Pharmacy store and pay back the amounts later. It was not disputed that both Individual A and Individual B had accumulated sums on their charge accounts that they did not pay back. For Individual A, this amount appears to be somewhere between \$6,000 and \$19,000. For Individual B, the Hearing Tribunal could only conclude that she owed no more than \$5,000.
- [161] With respect to Individual A, the Hearing Tribunal was not satisfied that she had an ulterior motive in filing her complaint with the ACP. In its view, the evidence suggested that Individual A was not aware until January 2020 that she might be in jeopardy with respect to her debts. It also referred to the text messages Mr. Parikh and Individual A exchanged in December 2019. In one message, Mr. Parikh offers to clear Individual A's charge account, write her a cheque for \$6,000, and/or make \$500 payments towards her credit card debt each month. In response, Individual A sent a message stating "It's not about the money at all. You have to accept the fact that what you did was wrong and that it cannot happen again." In light of these messages, the Hearing Tribunal held that:⁹

... it does not make sense to the Hearing Tribunal that Individual A would have fabricated the allegations and brought them to the ACP's attention to leverage relief from her debt when Mr. Parikh had already offered to clear off her debt in their December text messages. If clearing her debt was her end game, then Individual A

⁹ Merits Decision, paragraph 471.

could have simply accepted Mr. Parikh's offer to make her debt-free rather than become involved in the ACP complaint process and proceedings. Further, in one of the December text messages, Individual A states "And take me to collections for all I care." In other words, the possibility of being called to account for her unpaid charge account is not overly significant to Individual A in the circumstances. That being the case, why would she fabricate an ACP complaint in an effort to obtain debt relief from Mr. Parikh?

[162] The Panel agrees with this analysis. If Individual A was motivated to obtain debt relief from Mr. Parikh, one would expect her to accept Mr. Parikh's offer of payment or at least make further inquiries about it. Individual A does neither. This severely weakened the strength of Mr. Parikh's claim that Individual A acted with an ulterior motive in filing her complaint with the ACP. It was open to the Hearing Tribunal to reject this argument.

[163] Likewise, the Hearing Tribunal did not accept that Individual B had an ulterior motive in participating in the ACP proceedings. It held that:¹⁰

In the circumstances, it does not appear to the Hearing Tribunal that Individual B had any knowledge or understanding in or around March 2020 when the ACP complaint was filed that she was in any jeopardy with respect to the money she owed to the Pharmacy or Mr. Parikh. Accordingly, it does not make sense to the Hearing Tribunal that Individual B would have joined forces with Individuals A and C, as alleged, in an attempt to leverage Mr. Parikh into forgiving her debts.

Mr. Parikh has not pointed to any evidence in the record to challenge the Hearing Tribunal's findings in this respect.

[164] In fact, during the oral hearing, counsel for Mr. Parikh highlighted that the *Limitations Act*, RSA 2000, c L-12, would have barred any debt claim Mr. Parikh or the Pharmacy would have had against Individual B when the ACP complaint was filed in early 2020. This reinforces the conclusion that, at the time the ACP proceedings commenced, Individual B did not feel as though she was in any legal jeopardy with regards to her charge account. Accordingly, the Hearing Tribunal did not err in rejecting Mr. Parikh's claim that Individual B's debt to the Pharmacy made her a less credible witness.

[165] Finally, Mr. Parikh claims that the Hearing Tribunal erred by taking note of his failure to deny the allegations of sexual misconduct against him in direct examination. However, the Panel does not give effect to this argument. The Hearing Tribunal merely observed that "the denial only came when the question was specifically put to him on cross-examination and by the Hearing Tribunal."¹¹ The Hearing Tribunal's reasons do not suggest that it placed inappropriate weight on this factor.

[166] In sum, Mr. Parikh has not identified any errors in the Hearing Tribunal's approach to credibility assessment that would justify appellate intervention.

¹⁰ Merits Decision, paragraph 567.

¹¹ Merits Decision, paragraph 421.

D. Ground 4 – Timing of the Alleged Sexual Abuse

- [167] Mr. Parikh highlights that Individual A gave no evidence regarding any specific instance of sexual intercourse occurring after the April 1, 2019, amendments to the *HPA* came into force. Hence, he claims that the Hearing Tribunal erred in accepting that those legislative amendments applied to the misconduct alleged in Allegation 1(c).
- [168] The Panel disagrees. Although Individual A did not give a detailed account of any specific instance of sexual abuse after April 1, 2019, the Hearing Tribunal found that “it is more likely than not that the sexual activity occurred as described by Individual A.” Before the Hearing Tribunal, Individual A testified that the first instance of sexual intercourse between her and Mr. Parikh occurred in early 2019. Mr. Parikh continued to have sexual intercourse with her “two or three times a week for that entire year,” until about mid-December 2019. This means that, on the evidence the Hearing Tribunal accepted, there were dozens of instances of sexual abuse occurring between April 1, 2019, and the end of September 2019.¹²
- [169] On this issue, Mr. Parikh highlights the Hearing Tribunal’s analysis of Allegation 4(b). The Hearing Tribunal noted that there were no specific timelines attached to that allegation. Accordingly, it could not conclude whether any of the conduct alleged in Allegation 4(b) occurred after the April 1, 2019, amendments to the *HPA* came into force. Mr. Parikh claims that the Hearing Tribunal should have adopted a similar approach to Allegation 1(c).
- [170] In the Panel’s view, Mr. Parikh’s reliance on the Hearing Tribunal’s analysis of Allegation 4(b) is misguided. As for the timing of Allegation 4(b), all the Hearing Tribunal could say was that, while Individual C was employed at the Pharmacy from March 2018 to March 2020, Mr. Parikh stared at the name tag on her chest “repeatedly” (i.e., more than once). The Hearing Tribunal did not hear evidence that Mr. Parikh stared at Individual C’s chest on a consistent basis. In contrast, the Hearing Tribunal accepted that the misconduct alleged in Allegation 1(c) occurred *regularly* (i.e., several times per week). It could therefore conclude that, on balance, some sexual abuse occurred after April 1, 2019.
- [171] In conclusion, the Panel does not believe that the Hearing Tribunal erred in holding that the April 1, 2019, amendments to the *HPA* captured some of the sexual abuse that it found Mr. Parikh had committed. Even applying a standard of review of correctness to this ground of appeal, as suggested by Mr. Parikh, the Panel finds that the decision of the Hearing Tribunal on the application of the April 1, 2019, amendments to the *HPA* to the allegation met the standard of correctness.

E. Ground 5 – Assessing the Potential for Collusion

- [172] The Hearing Tribunal heard evidence that Individual A and Individual B discussed their shared experiences with Mr. Parikh before Individual A made her complaint to the ACP. Individual A and Individual B had maintained an on-and-off friendship since Individual B left the Pharmacy in 2016. One day, Individual A messaged Individual B on Facebook and

¹² As stated, Allegation 1(c) only alleged sexual abuse between October 2018 and September 2019.

asked her if Mr. Parikh behaved sexually towards her. Individual B was initially standoffish and told Individual A that she had no idea what Individual A was talking about.

[173] Then, sometime after February 20, 2020, Individual A went to Individual B's house and asked Individual B about her relationship with Mr. Parikh. Individual B knew what Individual A was getting at but did not want to answer her. Individual B then described Individual A dropping to her knees, crying, and saying that she had been repeatedly raped by Mr. Parikh. This caused Individual B to start crying as well. Eventually, she admitted to Individual A that the same thing had happened to her.

[174] The Hearing Tribunal stated the following:¹³

Under cross-examination, Individual B described the details of her encounters that she shared with Individual A. She stated that she told Individual A that Mr. Parikh would call her the boss in the day and then the sexual encounter would happen at night. If Individual B tried to leave the Pharmacy, Mr. Parikh would get ignorant and physical with her and call her names. She told Individual A that Mr. Parikh would lay a sweater down in a small, dark room where it was pitch black and tell her to lie down on the sweater. She indicated that Mr. Parikh would go in the bathroom and wash himself up and spray Axe body spray all over himself and then come in and shut the door. Then it would be black, and he would climb on top of her. At that point, Individual A started crying because she stated that that was exactly how it had happened to her too. Individual A then shared details with Individual B about what happened between her and Mr. Parikh and then Individual B "was, like, oh my god, that's what happened to me".

Individual A and Individual B did not discuss their charge accounts when they met at Individual B's house.

[175] The Hearing Tribunal also noted that Individual B testified that she and Individual A were close friends at the beginning of Individual B's time working at the Pharmacy, but they did not maintain a friendship after Individual B stopped working at the Pharmacy. Further, Individual B testified that she did not discuss the testimony that she planned to give at the hearing with Individual A or any other employees of the Pharmacy.

[176] The Hearing Tribunal acknowledged that Individual A and Individual B had an opportunity to collude on their experiences and "line up their stories." Nevertheless, it was satisfied that the testimony of Individual A and Individual B was not tainted by collusion:¹⁴

... the Hearing Tribunal notes that not every single detail was aligned as between Individual A and Individual B. For example, Individual B stated that she knew she would be required to have sex with Mr. Parikh when he referred to her as "Slave [Individual B]." However, Individual A did not suggest that she was referred to in the same manner.

¹³ Merits Decision, paragraphs 570 and 571.

¹⁴ Merits Decision, paragraphs 499 to 503 and 573, 574.

Further, in Mr. Parikh's evidence, he gave as an explanation for wearing the deodorant spray the fact that Individual A had a smell on her from all her animals. To this extent, Mr. Parikh appears to acknowledge that he was wearing body spray which lends credence to Individual A and Individual B's accounts that he used a body spray.

Similarly, Mr. Parikh gave an explanation as to why Individual A and Individual B were referring to sweaters being placed on the floor. He testified that he used to place sweaters or jackets on the floor to sleep after he had been drinking. Again, while he is offering an alternate explanation for the existence of jackets or sweaters on the floor, this also appears to be a tacit acknowledgement that there was a circumstance where jackets or sweaters were being placed on the floor as described by Individual A and Individual B.

In addition, Individual A testified that Individual B was initially reluctant to speak to her and was "standoffish" to the point that Individual A actually had to go to Individual B's home to speak to her. Individual B confirmed in her testimony that her first response to Individual A's inquiries was to tell Individual A to leave her alone. Even when Individual A came to Individual B's house, Individual B did not want to answer her. It took Individual A's dropping to her knees and crying about her experiences with Mr. Parikh for Individual B to feel compelled to share her own experiences. Similarly, Individual B was reluctant to participate with the ACP investigation and would not engage in a second interview with the investigator. Individual B's expressed reluctance to get involved and her initial "standoffish" behavior towards Individual A do not appear consistent with a desire to collude against Mr. Parikh.

In the result, the Hearing Tribunal is not prepared to accept that Individual A and Individual B lined up their stories in order to conspire against Mr. Parikh. We reject the suggestion that Individual A and B colluded.

...

The Hearing Tribunal finds that this conclusion is bolstered when one considers that Mr. Parikh's narrative would mean that Individual B, who appears to have had little to do with Mr. Parikh since 2017, either socially or terms of debts owing to the Pharmacy, would all of a sudden come out of the woodwork and conspire with Individual A in February 2020 (with whom she had not maintained a regular friendship since leaving the Pharmacy) to fabricate a story about sexual abuse, and to do so in circumstances where she didn't even appear to have any knowledge that she might have to face her debts owing to the Pharmacy.

The Hearing Tribunal does not find this to be plausible. Rather, in its view, the more plausible narrative is that Individual B was upset on learning that Individual A had undergone the same experiences that she had with Mr. Parikh, and she felt compelled to come forward to assist Individual A and so that she could prevent things "from getting to that point" for others.

- [177] Mr. Parikh argues that the Hearing Tribunal erred in failing to find that the similarity between Individual A and Individual B's accounts reflects a deliberate attempt to concoct evidence. He claims that not only was the evidence of Individual A and Individual B very similar, so too were their circumstances. Both employees had failed to repay the balance of their charge accounts with the Pharmacy, giving them a clear motive to lie.
- [178] The Panel does not give effect to this argument. As stated above, the Hearing Tribunal considered and rejected Mr. Parikh's claim that Individual A and Individual B participated in the ACP proceedings for material gain. The Panel has upheld the Hearing Tribunal's conclusions in this regard. For that reason, there is no basis on which to conclude that Individual A and Individual B attempted to align their stories. This conclusion is buttressed by the Hearing Tribunal's findings regarding Individual B's initial reluctance to speak to Individual A and by how upfront Individual A and Individual B were about their interactions. The Hearing Tribunal considered the fact that Individual A attended at Individual B's house and that they shared with each other their experiences with Mr. Parikh. The Hearing Tribunal considered the possibility of collusion and rejected this argument. The Hearing Tribunal expressed detailed and cogent reasons for its findings. The Panel sees no reason to interfere with the Hearing Tribunal's findings.
- [179] Moreover, as the Hearing Tribunal found, there were some important differences in the testimony of Individual A and Individual B regarding the sexual abuse. Accordingly, their testimony was not so similar and did not share such unique features that the coincidence would be objectively improbable. This is reinforced by the fact that some of Mr. Parikh's own evidence seemed to partly validate the shared parts of their testimony.
- [180] In sum, the Panel sees no reason to intervene with the Hearing Tribunal's conclusion that the testimony of Individual A and Individual B was not tainted by collusion.

F. Ground 6 – Allegation 4(b)

- [181] Mr. Parikh claims that the Hearing Tribunal erred in finding that Allegation 4(b) was made out on a balance of probabilities.
- [182] He argues that the Hearing Tribunal erred in relying on Individual C's March 13, 2020 text message to Mr. Parikh for the truth of its contents. In that text message, Individual C stated "You have no right to comment on my weight or my chest. [...]. I hated you look [sic] at my chest and saying, 'what's your name' when I would catch you."
- [183] The Panel does not give effect to this argument. The Hearing Tribunal explicitly stated that:¹⁵

... the Hearing Tribunal utilizes the text messages to rebut the allegation of recent fabrication by Individual C. We do not use these prior consistent statements by the witness as proof of the facts or to support the witness's overall reliability.

¹⁵ Merits Decision, paragraph 603.

The Panel sees nothing in the Hearing Tribunal's reasons to suggest that it relied on Individual C's text messages for an improper purpose.

- [184] Mr. Parikh also highlights several limitations in the Complaints Director's evidence regarding Allegation 4(b). For one, Individual C was unable to provide details about any specific incident in which Mr. Parikh inappropriately stared at her name tag. In addition, two witnesses who worked with Mr. Parikh and Individual C — ■■■ and ■■■ — testified that they never observed any inappropriate interactions between them.
- [185] In the Panel's view, a finding that Allegation 4(b) was made out was readily available on the evidence before the Hearing Tribunal. The Hearing Tribunal considered the conflicting testimony of Mr. Parikh and Individual C, and was clearly alive to the lack of clarity and precision in Individual C's testimony. It acknowledged that Individual A, who it identified as a credible witness, corroborated Individual C's account. It would have also been aware of the concerns it had identified with Mr. Parikh's credibility earlier in its reasons. Having had the benefit of hearing the testimony of the witnesses, the Hearing Tribunal's assessments of the parties' credibility are entitled to significant deference.
- [186] Relying on Individual C's March 13, 2020 text message, the Hearing Tribunal rejected Mr. Parikh's contention that Individual C recently fabricated her evidence. The Hearing Tribunal also considered the testimony of ■■■ ■■■ and ■■■ and gave reasons for downplaying the importance of that testimony.¹⁶

... None of ■■■ or ■■■ observed Mr. Parikh repeatedly staring at Individual C's chest. However, ■■■ was rarely at the Pharmacy at this time and ■■■ worked mainly in the front of the store. ■■■ would have been in the dispensary about half of the time and never observed any inappropriate interactions between Individual C and Mr. Parikh.

Moreover, as the Complaints Director points out, the fact that some employees may not have observed the alleged misconduct does not prove that it did not occur.

- [187] In the end, the Hearing Tribunal was satisfied that the Complaints Director had proven Allegation 4(b) on a balance of probabilities. This conclusion was reasonable on the evidence before the Hearing Tribunal, and the Panel sees no reason to intervene.

G. Ground 7 – Allegation 6

- [188] Mr. Parikh argues that the Hearing Tribunal erred in finding that he repeatedly drank alcohol at the Pharmacy when it was open to patients and he was the pharmacist in charge. He claims that it was improper for the Hearing Tribunal to rely on evidence that he was drunk one evening at 6:15 PM to conclude that he repeatedly drank when the Pharmacy was open. He also highlights that ■■■ — an employee at the Pharmacy who retired in August 2021 — testified that she never saw Mr. Parikh drinking alcohol in the Pharmacy.

¹⁶ Merits Decision, paragraph 598.

- [189] In the Panel’s view, these arguments represent an attempt to piecemeal the evidence. If the only evidence the Hearing Tribunal had for Allegation 6 was that Mr. Parikh was drunk one evening at 6:15 PM, this would have likely not been enough.
- [190] However, that is not the only evidence the Hearing Tribunal considered. It was undisputed that there was alcohol on the Pharmacy premises. According to Individual A and Individual C — who the Hearing Tribunal found to be credible witnesses — Mr. Parikh would usually start drinking one or two hours before the Pharmacy closed. While Mr. Parikh denied these claims, the Hearing Tribunal had expressed serious concerns about his credibility. As stated, the Hearing Tribunal’s assessments of credibility are entitled to significant deference.
- [191] Further, the Hearing Tribunal noted that the evidence, including the evidence of Mr. Parikh, demonstrated that he drank at the Pharmacy regularly and not just on special occasions. Indeed, according to a text that Mr. Parikh sent to Individual A on December 19, 2019, he was “mentally upset and drunk *all the time*” [emphasis added].
- [192] The Hearing Tribunal also gave cogent reasons for why it did not place much importance on M.B.’s testimony regarding Mr. Parikh’s alcohol consumption:¹⁷

... [REDACTED] testified that she never saw Mr. Parikh drinking alcohol at the Pharmacy. While M.B.’s shifts went until 6:00 p.m. and therefore she could have observed whether Mr. Parikh was drinking alcohol at the Pharmacy in the late afternoon, [REDACTED] worked in the front store and therefore may have had less opportunity to observe whether Mr. Parikh was drinking in the back kitchen area. Most likely, [REDACTED] would have only had the chance to observe Mr. Parikh drinking if he was drinking in the front store area.

On a similar note, the Hearing Tribunal heard evidence that Mr. Parikh would drink alcohol during the day out of an unassuming coffee mug.

- [193] Against this backdrop, the evidence that Mr. Parikh was intoxicated one evening at 6:15 PM formed only one part of the complete body of evidence regarding Allegation 6. Considering the totality of the evidence, the Hearing Tribunal was satisfied that it was more likely than not that Mr. Parikh repeatedly drank alcohol in the Pharmacy when it was open to patients and he was the pharmacist in charge. The Hearing Tribunal articulated clear reasons for its findings and the Panel sees no principled basis to intervene.

H. Appeal of the Sanctions Decision

- [194] As stated, Mr. Parikh’s appeal of the Sanctions Decision hinges on the success of his appeal of the Merits Decision. Given that the Panel has dismissed Mr. Parikh’s appeal of the Merits Decision in its entirety, the Panel sees no reason to interfere with the Sanctions Decision.

¹⁷ Merits Decision, paragraph 629.

I. Conclusion

- [195] The appeal is dismissed in its entirety. The Hearing Tribunal's Merits Decision and Sanctions decision is upheld.
- [196] The Complaints Director and Mr. Parikh may make further written submissions on the costs of the appeal. If the parties are unable to agree to a timeline for written submissions on costs, the Panel will provide further direction.

DATED this 3rd day of October 2024.

Signed by the Chair on behalf of the Panel of Council of the Alberta College of Pharmacy

Carmen Wyton
Carmen Wyton (Oct 3, 2024 08:19 MDT)

Carmen Wyton, Chair