

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING THE
CONDUCT OF

MEHRNOUSH SOHRABIRAD

Registration Number 6814

DECISION OF THE HEARING TRIBUNAL ON MERITS

June 27, 2022

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of pharmacist Mehrnoush Sohrabirad, from February 1 to 3, 2022. The Hearing Tribunal members were Anita MacDonald, Pharmacist and Chair, Kory Sloan, Pharmacist, Naz Mellick, Public Member and James Lees, Public Member. The hearing was held under the terms of Part 4 of the *Health Professions Act*, RSA 2000, c. H-7.

In attendance at the hearing were Ms. Annabritt Chisholm, legal counsel from Shores Jardine LLP for the Complaints Director and James Krempien, Complaints Director for the Alberta College of Pharmacy. Ms. Mehrnoush Sohrabirad attended the hearing without a representative.

Gregory Sim of Field LLP attended as independent legal counsel for the Hearing Tribunal. The hearing was held virtually. Margaret Morley attended as the virtual hearing administrator but took no part in the hearing.

Ms. Sohrabirad confirmed she understood her right to engage legal counsel to assist her. She said she was prepared to proceed with the hearing without legal representation. There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with the hearing.

II. ALLEGATIONS

The Notice of Hearing listed the following allegations that were referred to hearing concerning Ms. Sohrabirad:

IT IS ALLEGED THAT while you were a registered Alberta pharmacist and providing professional services through your company Rx to Beauty, which was established in 2017 and is not a licensed pharmacy, you:

1. Failed to understand or comply with your obligations to uphold the Standards of Practice of Pharmacists and Pharmacy Technicians and the Alberta College of Pharmacy's Code of Ethics when you provided professional services outside of a licensed pharmacy, the particulars of which include when you:
 - a. Provided services a pharmacist is not authorized to provide when you provided patients with Platelet-Rich Plasma (PRP) injections, including the drawing of venous blood for that purpose.
 - b. Sold and administered Botox, a Schedule 1 medication, to patients of Rx to Beauty even though:
 - i. the medication was not prescribed,
 - ii. the medication was not stored in a pharmacy,

- iii. the medication was not dispensed from a pharmacy,
 - iv. patient records were not stored at a pharmacy or another approved offsite location,
 - v. patient records were not easily accessible to other health care providers, and
 - vi. you did not collaborate with other health care providers.
- c. Relied on your registration as a pharmacist with Advanced Prescribing Authority to act as the Medical Director of Rx to Beauty when you knew that pharmacists cannot purchase or dispense the brand of Botox sold to medical spas.
- d. Offered inducements for the provision of professional services and the sale of Botox, a Schedule 1 medication, on the Instagram page for @rx_to_beauty, including but not limited to:
- i. “limited time offer mini lips (1/2 syringe) \$250, Botox/dysport \$8 per unit, any full syringe \$500 (including cheeks, chin, jawlines, non-surgical nose job) PRP \$500, medical grade micro needling \$400, vampire facial \$800, hair restoration \$500 and more, To book your appointment call or message @ (780) 934-4359 tag 10 friends to get a chance to win 10 units Botox/dysport”, and
 - ii. “Black Friday sale! \$250 1/2 syringe Restylane any kind of injections, \$490 any full syringe injection, \$7.50 per unit Botox/Dysport Black Friday weekend only! Message or call 780-934-4359 to book your appointment.”
2. Advertised yourself in a manner that was misleading to the public, the particulars of which include when you:
- a. Relied on your registration as a pharmacist with Advanced Prescribing Authority when you advertised on the @rx_to_beauty Instagram page your ability to administer medications by injection as part of performing cosmetic services that do not fall within the practice of pharmacy or are provided contrary to the Standards of Practice, and
 - b. Advertised your registration as a pharmacist with Advanced Prescribing Authority in conjunction with the operation of the company Rx to Beauty, which, when read together, incorrectly suggests a connection between the practice of pharmacy and the cosmetic services you provide through Rx to Beauty.

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist,

- b. Undermined the integrity of the profession,
- c. Decreased the public's trust in the profession,
- d. Created the potential for patient harm, and

Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist.

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

- Standards 1, 17 and 18 and Sub-sections 1.1, 1.2, 1.4, 1.7, 1.18, 17.4, 18.2(b) and 18.7(b) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Section 102 and section 3 of Schedule 19 of the *Health Professions Act*;
- Principles 1(1,2,13,14 and 15), 10(1) and 12(2 and 6) of the Alberta College of Pharmacy's Code of Ethics; and
- Sections 3 and 31(2)(a) of the *Pharmacy and Drug Act*.

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

III. PRELIMINARY MATTERS

The parties each provided exhibits books. Ms. Chisholm produced the Complaints Director's Exhibit Book with 29 tabs. This was marked as Exhibit 1. Ms. Sohrabirad produced her exhibits in two volumes. Volume 1 was marked as Exhibit 2. Volume 2 was marked as Exhibit 3. Exhibit 4 was an excerpt prepared by Ms. Sohrabirad from the website www.alberta.ca/personal-services-regulation-and-standards.aspx#jumplinks-1 with a definition of personal services. Exhibit 5 was a document prepared by Ms. Sohrabirad and produced as a further response to the allegations.

Ms. Sohrabirad also sought to introduce three letters between Ms. Chisholm and Ms. Sohrabirad's former legal counsel. Ms. Chisholm described these letters as without prejudice correspondence and said the Complaints Director did not agree that they should be introduced into evidence. Ms. Chisholm submitted that the letters could be provided to the Hearing Tribunal as argument instead of as evidence. Ms. Sohrabirad explained that the letters were relevant because they contained links and references that would prove her point. She then said she could explain the matter and provide the links and references herself.

The Hearing Tribunal declined to receive the three letters as evidence and advised that it would consider any further applications to admit any documents into evidence on a case-by-case basis.

IV. OPENING STATEMENTS

Ms. Chisholm made an opening statement. She explained that the hearing would address the College's ability to regulate members who do not comply with the Standards of Practice for Pharmacists and Pharmacy Technicians (Standards of Practice) and the College's Code of Ethics. Ms. Sohrabirad is a registrant of the College who relied on her registration to buy and sell drugs through her business, Rx to Beauty, even though her business is not a licensed pharmacy. The hearing would also address concerns that Ms. Sohrabirad's advertising created a misleading perception that her business involved the practice of pharmacy. Ms. Chisholm said she would argue that it defies logic that a college registrant could advertise an affiliation with the practice of pharmacy but fail to comply with the College's standards.

Ms. Chisholm explained that the Hearing Tribunal would have to weigh the evidence and determine whether the allegations in the Notice of Hearing are proven on a balance of probabilities and whether the conduct amounts to unprofessional conduct under the *Health Professions Act* and/or professional misconduct under the *Pharmacy and Drug Act*, RSA 2000, c. P-13. Ms. Chisholm explained that she would call three witnesses, Mr. Krempien the Complaints Director of the College, Ms. Jennifer Mosher the co-investigator and Mr. Jeff Whissell, Deputy Registrar of the College.

Ms. Sohrabirad also made an opening statement. Ms. Sohrabirad explained she has been a practicing pharmacist in Alberta for 15 years. She has her Advanced Prescribing Authorization ("APA") from the College. She has also practiced in the US and Iran. Ms. Sohrabirad reviewed a number of statutory definitions and then explained that her APA allows her to act as the "Medical Director" for a facility offering personal care services. She said that when she is providing these services she is not engaged in the practice of pharmacy or subject to regulation by the College.

V. EVIDENCE

James Krempien, Complaints Director

Ms. Chisholm first called Mr. James Krempien, Complaints Director for the College. Mr. Krempien graduated from the University of Alberta Faculty of Pharmacy in 1991 and subsequently practiced as a pharmacist in the Canadian Forces and in community pharmacy as a pharmacist and as a licensee before joining the College.

Mr. Krempien reviewed Exhibit 1 and identified documents including investigation documents, the Standards of Practice, excerpts from the *Health Professions Act* and *Pharmacy and Drug Act* and his Record of Decision referring the matter to the College's Hearings Director for a hearing. Mr. Krempien explained that the matter began when he received an email inquiry from Dr. [REDACTED] on September 10, 2020 about Rx to Beauty and who the "Pharmacist with APA" was behind it. This led him to make inquiries and to learn that Ms. Sohrabirad was associated with Rx to Beauty. Ms. Sohrabirad responded to Mr. Krempien's inquiries and explained that she offered cosmetic injections.

Mr. Krempien reviewed screenshots taken from the Rx to Beauty Instagram account and explained that a number of services beyond the scope of typical pharmacy practice were being advertised. These included Platelet Rich Plasma or “PRP” therapy, vampire facials which involve PRP therapy to the face, Botox provided outside of a licensed pharmacy, non-surgical face lift procedures as well as time limited offers and other inducements. Mr. Krempien also noted Instagram posts for Rx to Beauty that referred to Ms. Sohrabirad as an Obstetrician, Pharmacist with APA, Advanced Aesthetic Injector and as a Medical Director.

Mr. Krempien documented his decision to treat the information he received by email on September 10, 2020 and that he subsequently obtained as a complaint and to conduct an investigation. He appointed two co-investigators, Mr. Monty Stanowich and Ms. Mosher to conduct an investigation with him. Mr. Krempien then had an initial telephone discussion with Ms. Sohrabirad on September 15, 2020. Mr. Krempien reviewed the memorandum he prepared following this discussion.

Mr. Krempien advised Ms. Sohrabirad that he was treating the information as a complaint and that he would be acting as the complainant. He said he would send her a letter outlining the complaint and requesting her response. Mr. Krempien said that Ms. Sohrabirad expressed her concern that the September 10, 2020 email from Dr. [REDACTED] was a retaliatory measure because he had lost patients to Rx to Beauty. Mr. Krempien explained that he decided to initiate the complaint and investigate based on the Rx to Beauty’s social media. His decision was not based on Dr. [REDACTED] concerns.

Mr. Krempien wrote to Ms. Sohrabirad on September 15, 2020 setting out his concerns to be investigated. Mr. Krempien requested Ms. Sohrabirad’s written response to each concern, a description of the professional services and restricted activities she provides, a description of where and how patient records for Rx to Beauty were created, maintained and accessed, and any other materials that could assist in resolving the identified issues.

Mr. Krempien next spoke with Ms. Sohrabirad on September 16, 2020. Ms. Sohrabirad suggested that dermal filler products are not scheduled drugs and the College should have no concerns with her using them as part of Rx to Beauty. Ms. Sohrabirad also suggested that “cosmetic Botox” is different than “medical Botox” and there is no need for the cosmetic variety to be prescribed or dispensed or for records of its administration to be uploaded to Netcare. In response Mr. Krempien told the Hearing Tribunal that cosmetic Botox and medical Botox have different Drug Identification, or “DIN” numbers but they are the same product. They both contain the same Schedule 1 drug on the National Association of Pharmacy Regulatory Authorities drug schedules, and both are required to be treated as such. They both require a prescription, and both must be dispensed from a licensed pharmacy.

Mr. Krempien described reviewing the investigation records compiled by Ms. Mosher and then deciding to refer this matter to this hearing. He identified his April 8, 2021 Record of Decision concluding that there was no basis to dismiss the complaint and there was sufficient evidence of unprofessional conduct to refer the allegations in the Notice of Hearing.

Mr. Krempien then explained his reasons for referring each of the allegations in the Notice of Hearing. He said that Allegation 1(a) was referred because pharmacists are not authorized by Health Canada to provide PRP therapy. He said only physicians and dentists are permitted to do this.

Allegation 1(b) was referred because Ms. Sohrabirad had been selling and administering a Schedule 1 drug without the safety precautions that are mandated when Schedule 1 drugs are prescribed and dispensed according to the legislation and standards. There were no assessments, prescriptions, storage in a licensed pharmacy dispensary or other approved location and no dispensing records were uploaded for other health professionals to be aware of.

Allegation 1(c) was referred because Ms. Sohrabirad relied on her registration with the College and her APA to order drugs, but she then failed to comply with the College's standards.

Allegation 1(d) was referred because Ms. Sohrabirad had offered inducements for her services and the sale of Schedule 1 drugs through Rx to Beauty. Her social media posts included time limited offers which were restricted or prohibited inducements.

Allegation 2(a) was referred because Ms. Sohrabirad's advertising for Rx to Beauty was misleading. It relied on her registration as a pharmacist and her APA. It would cause the public to conclude that services such as the administration of medications by injection were part of cosmetic services within the practice of pharmacy. Mr. Krempien explained that the public would conclude that pharmacists can offer PRP therapy.

Allegation 2(b) was referred because Ms. Sohrabirad's advertising for Rx to Beauty was also misleading in that it referred to her registration and her APA and would cause the public to conclude that the cosmetic services she offered were regulated pharmacy services.

Mr. Krempien then explained that in his view this is a clear case. The legislation authorizing pharmacists to possess, store and provide Schedule 1 drugs requires that this be done from a licensed pharmacy. Pharmacists are required to create records and upload them to Netcare. This cannot be done from a home business, but that is what Ms. Sohrabirad was doing. She relied on her registration with the College to acquire Schedule 1 drugs, but she stored and used them to treat patients in her own home. Records were also stored in her home, contrary to the College's Standards of Practice. There are very good reasons for the requirements of the *Pharmacy and Drug Act*. Those requirements ensure that the College and inspectors know where pharmacy services are being provided and can inspect and enforce standards.

Mr. Krempien testified that the public should expect professional health services to be advertised and offered only by authorized professionals, safely in accordance with regulated standards set by the College. In this case there was no oversight. The College was not aware of Ms. Sohrabirad's activities through Rx to Beauty and was unable to provide regulatory oversight.

Mr. Krempien was asked about Ms. Sohrabirad's position that her services were personal services under the Alberta Personal Services Regulation, Alta Reg. 1/2020. Mr. Krempien said

that he considered this but in his view nothing in the Regulation excused Ms. Sohrabirad's obligations to comply with the legislative framework for pharmacists in Alberta. Nothing in the Regulation permitted her to acquire Schedule 1 drugs using her registration as a pharmacist and then ignore the College's Standards of Practice.

Ms. Sohrabirad cross-examined Mr. Krempien, including about issues that were not alleged in the Notice of Hearing. Mr. Krempien confirmed he had an understanding of PRP therapy, but not a comprehensive one since he said it is not part of pharmacy practice. He denied being aware of any difference between cosmetic and medical PRP therapy. Mr. Krempien agreed that all pharmacists can perform intradermal injections provided they are not otherwise prohibited from performing them.

Mr. Krempien was then asked about his understanding of how pharmacists acquire drugs. He explained that generally pharmacists acquire them from a wholesaler with a drug establishment license. The drugs are then required to be stored in a licensed pharmacy and dispensed according to the College's Standards of Practice for dispensing and record keeping. For example, pharmacists are required to confirm that a prescription is current, complete and appropriate before they can dispense drugs. Mr. Krempien was also asked how medical spas acquire drugs. He said he generally understood they would need a drug establishment license to sell drugs but the College is not involved in regulating this.

Mr. Krempien was asked about his definition of an "inducement". He said this is defined by the Standards of Practice, but generally it is a commercial benefit to a patient. Mr. Krempien was also asked if he had ever seen a record of a patient receiving Botox uploaded to Netcare. He said he had not, but that he had not practiced since 2007.

Mr. Krempien was asked to review a website description of the Alberta Personal Services Regulation and the Personal Services Standards and to correlate a reference in the description to Botox injections with the regulatory regime for pharmacists. Mr. Krempien noted that the description was a summary of the legislation and not the legislation itself. Mr. Krempien also explained that when a pharmacist is holding themselves out as a pharmacist and provides an injection of Botox, they are required to comply with the legislation that applies to the pharmacy profession and the College's Standards of Practice. If there is additional applicable legislation the pharmacist must also comply with it, but the pharmacist cannot choose which legislation to follow.

Mr. Krempien said he was aware that some other pharmacists provide cosmetic injections within licensed pharmacies, but he said he had not contemplated what the College's response to that might be. This case involves the provision of cosmetic injections outside of a licensed pharmacy and Mr. Krempien said a similar previous case had been referred to hearing.

Regarding PRP therapy Mr. Krempien confirmed that pharmacists are prohibited from providing it. He explained that Health Canada has outlined that PRP is only to be provided by physicians and dentists. This specific Health Canada directive overrides any more general ability for pharmacists to administer blood and blood products.

Jennifer Mosher, Investigator

Ms. Chisholm next called Ms. Jennifer Mosher. Ms. Mosher is a College registrant and worked in community pharmacy before beginning work for the College as a practice consultant and then as a contract investigator. She has completed basic and specialized investigation training.

Ms. Mosher was engaged by the Complaints Director to investigate Ms. Sohrabirad's conduct. She met with Ms. Sohrabirad and prepared a memorandum. Ms. Mosher also identified the investigation records that she compiled, including Ms. Sohrabirad's response to the complaint.

Ms. Mosher acknowledged she had met Ms. Sohrabirad before during an assessment of a pharmacy where Ms. Sohrabirad served as licensee in 2018. Ms. Mosher acknowledged receiving Botox injections from Ms. Sohrabirad in 2018. At that time Ms. Sohrabirad had provided the injections in the licensed pharmacy and the Botox had been stored in the dispensary. Ms. Mosher said this previous experience with Ms. Sohrabirad did not affect her objectivity.

In cross-examination Ms. Mosher acknowledged the Botox injections she received from Ms. Sohrabirad in 2018 had been free. She said she had tried to pay but Ms. Sohrabirad would not let her. Ms. Mosher said she believed the Botox injections were a pharmacy service and that Ms. Sohrabirad would have prescribed the Botox for her before administering the injections. Ms. Mosher acknowledged that she received no health benefit from the injections other than an increase to her self-confidence. She denied that receiving the injections placed her in a conflict of interest because her assessment of the pharmacy was already complete when she received them.

Jeff Whissell, Deputy Registrar

Ms. Chisholm next called Mr. Jeff Whissell. Mr. Whissell obtained his pharmacy degree in 1998 followed by a one-year hospital residency. He then obtained an MBA from Royal Roads University in 2013. He practiced community pharmacy and then served as a Clinical Practice Leader, Manager and Director at AHS. He served as Director of Professional Practice for the Pharmacists Association of Alberta and currently serves as the Deputy Registrar of the College. He is a regulated member of the College.

Mr. Whissell's responsibilities include the Complaints and Professional Practice Departments of the College. He is involved in the development of standards for review by the College's Council and for implementing and monitoring standards that are approved.

Mr. Whissell confirmed that Onabotulinum Toxin A, or Botox is a Schedule 1 drug. The fact that Botox is a Schedule 1 drug means that it can only be provided pursuant to a prescription. It cannot be sold as an unscheduled drug. The College has never authorized pharmacists to purchase and acquire Schedule 1 drugs outside of a licensed pharmacy. Pharmacists may only purchase, possess or provide Botox on behalf of a licensed pharmacy. Pharmacists are also required to store Schedule 1 drugs in a licensed pharmacy, and to dispense them only pursuant

to a prescription with appropriate dispensing records that are also stored in the licensed pharmacy. These requirements are all set out in the Standards of Practice.

Mr. Whissell explained that cosmetic and medical Botox are two products with two DINs, but they both contain Onabotulinum Toxin A, which is the substance that appears on the Schedule 1 drug list. The different DINs are not relevant to the drug's scheduling; it just means the products can be marketed differently. Mr. Whissell also explained that pharmacists' obligations do not change depending on which Botox product is purchased. Pharmacists who purchase either product may do so only on behalf of a licensed pharmacy. Both products must be stored in a licensed pharmacy's dispensary. Pharmacists may administer Schedule 1 drugs outside of a pharmacy, but the drugs must still be purchased on behalf of the licensed pharmacy, appropriately transported from the dispensary and dispensing and administration records must be created and returned to the licensed pharmacy where they will be stored, all in accordance with the College's Standards of Practice.

Mr. Whissell said that pharmacists who inject Botox are subject to standards that require collaboration with other members of the patient's healthcare team. There is an expectation that dispensing and administration records will be made available so other members of the healthcare team are aware of the care the patient is receiving.

Mr. Whissell was asked about inducements. He said that pharmacists must not offer inducements to encourage patients' use of drugs or professional pharmacy services. Mr. Whissell said he was familiar with the allegations in this case and agreed that Ms. Sohrabirad's advertising included time-limited offers of products and professional services which were inducements.

Mr. Whissell also commented on PRP therapy. He said that Health Canada has indicated that PRP meets the definition of a drug. He was not aware of any exclusion of PRP therapy as a drug in Alberta. He also said that the College has not authorized its members to practice PRP therapy. The College's standards of practice do not consider or contemplate its use.

On cross-examination Mr. Whissell said that he was aware of the Personal Services Regulation and the Personal Services Standards as the College had commented on them when they were being developed. He was asked if Botox injections were listed as a personal care service, and he said they were not. Mr. Whissell explained that he was aware that the website where the Personal Services Regulation and the Personal Services Standards are published mentions Botox, but he said that was an error. Drugs are federally regulated, and Botox is a Schedule 1 drug. No Alberta regulation can change that.

Mr. Whissell was not aware of how Medi spas obtain Botox. He said he could only comment on the legislation that applies to regulated pharmacists. He said that regulated pharmacists are not authorized to purchase or possess Schedule 1 drugs like Botox outside of a licensed pharmacy. Mr. Whissell also said that individuals who are not associated with a licensed pharmacy should not be contacting drug wholesalers or manufacturers to purchase Schedule 1 drugs because they are not authorized to do this.

Mr., Whissell was asked to distinguish “clients” who seek personal services from “patients” who seek health services, but he did not agree. Mr. Whissell explained that the term “patient” is defined in the College’s Standards of Practice for Pharmacists and Pharmacy Technicians and means any person to whom a regulated member of the College provides a service within the scope of pharmacy practice. Providing a Schedule 1 drug would be a pharmacy service provided to a patient and this would be the case whether the actual provision of the drug happens inside the licensed pharmacy or outside of it.

Mr. Whissell was asked about PRP therapy. He reiterated that Health Canada defines PRP therapy as a drug whether it is used therapeutically or cosmetically. Ms. Sohrabirad pointed to a Health Canada bulletin entitled “Health Canada clarifies position on Platelet Rich Plasma treatments” and asked Mr. Whissell to agree that the term “practitioners” in the bulletin could include pharmacists. Mr. Whissell said that pharmacists could not perform PRP therapy because the College had not established the necessary legislative framework to enable this. Mr. Whissell distinguished PRP therapy from the compounding and administration of blood products, which regulated pharmacist members of the College may be authorized to perform. He said those activities are listed in the Pharmacists and Pharmacy Technicians Profession Regulation, Alta Reg. 129/2006 but they are supplemented by specific standards of practice. The College’s Standards of Practice are enabling. They establish what a pharmacist may do. The standards do not in any way enable PRP therapy. The standards do not provide for pharmacists to safely handle blood, centrifuge it and reinject any part of it.

Mr. Whissell was also asked about inducements and whether publishing prices would constitute an inducement. Mr. Whissell said that it would if the price was published as a limited time offer for a patient to seek a pharmacy service or drug.

On re-direct examination Mr. Whissell clarified that the restricted activities that pharmacists may be authorized to perform under the Pharmacists and Pharmacy Technicians Profession Regulation may only be performed “in accordance with the Standards of Practice”, referring to Section 16(1) of that Regulation. Mr. Whissell also explained that to “compound” means to mix two or more ingredients of which one or more is a drug, referring to the definition of “compound” in the *Government Organization Act*, Schedule 7.1, Section 1(b). Mr. Whissell then explained that PRP therapy would not involve the compounding of drug products.

On April 13, 2022, after the merits stage of the hearing but before the Hearing Tribunal issued this decision, Ms. Chisholm wrote to the Tribunal. She advised that following his testimony, on March 11, 2022 Mr. Whissell wrote to Alberta Health to confirm that the reference to Botox on the Alberta Health website was erroneous. Mr. Whissell received a response on March 23, 2022 from [REDACTED] of Alberta Health’s Public Health Standards and Regulations, Health Protection Branch, Public Health and Compliance Division. Ms. [REDACTED] explained that when administered for cosmetic reasons, Botox is considered by Alberta Health to be a cosmetic product and Botox injections are a personal service subject to the Personal Services Regulation and the Personal Services Standards except where administered in an exempt facility. She added that a regulated health professional like a pharmacist who administers Botox injections would fall under the Personal Services Regulation and Standards together with any College imposed requirement. Ms. Chisholm explained that Alberta Health’s response did not alter the

Complaints Director's position. As Ms. Sohrabirad is a regulated member of the College she must comply with the Personal Services Regulation, the *Pharmacy and Drug Act* and the College's Standards of Practice and Code of Ethics.

Mehrnoush Sohrabirad

Ms. Sohrabirad testified on her own behalf. She said she was an Obstetrician before immigrating to Canada in 1998. Previously she lived in Iran and in Washington state. She said she remains licensed to practice pharmacy in Iran and Washington. She served as a pharmacy licensee in Alberta until 2016 when she was laid off. This posed a hardship for Ms. Sohrabirad as she supports three families in Alberta and overseas.

Ms. Sohrabirad began taking courses to administer Botox and dermal fillers. She also trained at a Calgary Medi spa and learned about the Personal Services Regulation. She began contracting herself to Medi spas. She then decided to open her own clinic from her home. It is in a designated treatment room in the basement and has been approved by AHS, which recognizes home-based service providers. There is a dedicated fridge for cosmetic products that require cold storage. Ms. Sohrabirad added that she was honored last year as one of the best businesses in Canada. She said she hasn't done anything unsafe.

Ms. Sohrabirad then reviewed her written response to the complaint with the Tribunal. She agreed that Botox is a Schedule 1 drug that can be sold only to health professionals through a licensed pharmacy. She said to purchase it you have to contact a wholesaler and provide your pharmacy license and the wholesaler then checks with the College before completing the sale. The wholesaler sends the drugs directly to the pharmacy.

Ms. Sohrabirad said that acquiring cosmetic Botox to provide personal services is different. There is a different DIN and different packaging for cosmetic Botox. When you contact the wholesaler, you tell them you want cosmetic Botox. Ms. Sohrabirad testified that cosmetic Botox is not available to licensed pharmacies, but it is still a Schedule 1 drug. She said that to buy it you have to be a healthcare provider and a prescriber, so as a regulated pharmacist with her APA she can buy it and supervise its use.

Ms. Sohrabirad then explained that when she is practicing from her home clinic she is not practicing as a pharmacist. She is a personal services worker. She said she was not engaged in dispensing a Schedule 1 drug. She said that she never dispensed or sold drugs to anyone in her home clinic because she just sells her services, not the actual drugs. She said that no one goes home with a bottle of Botox. The exception to this was the handful of patients she has seen for hyperhidrosis. For these patients Ms. Sohrabirad would prescribe Botox or refer them to their physicians for a prescription; that prescription would then be filled at a pharmacy and the patient would bring their Botox to her clinic for administration.

Ms. Sohrabirad also explained the PRP therapy she provides. She said the PRP therapy kits she uses come with a tube and an anticoagulant. This is mixed with the patient's blood and the process therefore falls within the meaning of compounding. Plasma and platelets are separated from other blood components and injected or applied to the patient's face using micro needling.

Ms. Sohrabirad said that she does not inject the PRP into muscles or joints like they do in medicine. She referred to the Health Canada bulletin and said that the term “practitioners” could include pharmacists like her. Ms. Sohrabirad also said that in 2018 she had contacted the College’s Practice Advisor to ask about providing PRP therapy. She said she was told there were not regulations or restrictions on it. Ms. Sohrabirad could not remember the practice advisor she spoke to.

Ms. Sohrabirad then discussed her business name and inducements. She said that Rx to Beauty has nothing to do with pharmacy as she does not give prescriptions or sell drugs. She said she doubted the public knew what “Rx” means. Her time-limited offers were just for dermal fillers, not for Botox. She said she just listed the price for Botox. Ms. Sohrabirad also said that she was not offering inducements for her home-based Rx to Beauty because she doesn’t sell drugs, just personal services. Finally, Ms. Sohrabirad said that no Medi spa she has worked at uploads information about cosmetic Botox injections to Netcare.

On cross-examination Ms. Sohrabirad agreed she has been on the College’s clinical practice register since 2005. She also agreed she had served as pharmacy licensee for several pharmacies, including Shoppers Drug Mart, Zellers, Loblaws, Manning Pharmacy and Onoway Pharmacy. She agreed she was familiar with the requirements for the storage of drugs and records imposed on pharmacy licensees. She agreed that Rx to Beauty is not a licensed pharmacy, and it is located within her home.

Ms. Sohrabirad did not deny the overlap in the qualifications needed to acquire Schedule 1 drugs like Botox for medical use and the “cosmetic Botox” she said she purchases for Rx to Beauty. She agreed she is the Medical Director of Rx to Beauty and said that she is qualified for this because of her registration with the College and her APA, but she said that the College’s requirements do not apply to her when she is not engaged in the practice of pharmacy, and she is not engaged in pharmacy practice when she provides personal services pursuant to the Personal Services Regulation. She agreed that as the Medical Director for Rx to Beauty she purchases cosmetic Botox and PRP therapy kits to be sent directly to her home. She agreed that she does not store any records of services provided through Rx to Beauty in a pharmacy or upload them to Netcare. She said she is not required to collaborate with other health professionals when providing personal services. Ms. Sohrabirad did not agree that as a Schedule 1 drug, the Botox she obtains and injects can only be given pursuant to a prescription, or that her customers were “patients”.

Ms. Sohrabirad denied that the services she provides through Rx to Beauty involved the “sale” of drugs as defined in the *Pharmacy and Drug Act*. She maintained she does not sell drugs because she does not give anyone a bottle of Botox to take with them. She said she offers a service such as streaming media from Netflix, not a product such as a TV from BestBuy. She said she provides personal care services and not pharmacy services.

Ms. Sohrabirad acknowledged the printouts from her Rx to Beauty social media account. She agreed that she advertises that she is a pharmacist with APA. She said the “Rx” refers to a physician’s order to dispense drugs, but she did not agree that the public would expect her services to be regulated by the College.

In response to questions from the Hearing Tribunal Ms. Sohrabirad described her understanding of Medi spas. She said these are locations where personal services are provided, such as cosmetic Botox injections, dermal fillers, PRP therapy, and facial peels. Ms. Sohrabirad said that Medi spas have regulated health professionals to oversee the services, but she believed that none of these professionals would be following the regulations of their own professions. She said she believed they would just be following the Personal Services Regulation.

Ms. Sohrabirad also said that on the occasions that she injects medical Botox, the patient obtains it pursuant to a prescription. The dispensing records are kept at a pharmacy that dispenses the Botox. She makes records of injecting the Botox, but she keeps these records in her own filing system and not in a pharmacy.

V. SUBMISSIONS

Complaints Director

Ms. Chisholm said the Hearing Tribunal would need to determine whether the allegations are proven on a balance of probabilities and if so, whether Ms. Sohrabirad's proven conduct amounted to unprofessional conduct under the *Health Profession Act* or professional misconduct under the *Pharmacy and Drug Act*. Ms. Chisholm submitted that the Complaints Director has the onus of proof.

Ms. Chisholm submitted that Ms. Sohrabirad's position defies logic. Ms. Sohrabirad has been purchasing, storing and administering Schedule 1 drugs to her customers from her home business, Rx to Beauty instead of from a licensed pharmacy. Ms. Sohrabirad's actions contravene the legislation and standards applicable to regulated pharmacists, but Ms. Sohrabirad believes she is exempt from that legislation and those standards because she is operating from her home business rather than from a licensed pharmacy.

Allegation 1 alleged that Ms. Sohrabirad failed to understand or comply with her professional obligations when she provided professional services outside of a licensed pharmacy. Ms. Chisholm explained that a "professional service" is defined in section 1(1)(ff) of the *Health Professions Act* to mean a service that comes within the practice of a regulated profession. The term "practice" is defined in Section 1(1)(z) to mean the practice of a regulated profession within the meaning of Section 3 of a schedule to the *Health Professions Act*. The Pharmacy profession is addressed in Schedule 19 of the *Health Professions Act*. Section 3 of Schedule 19 defines the practice of pharmacy. The practice of pharmacy is broad and may be seen as inclusive of cosmetic services, but this is a red herring or a distinction without a difference. This is because Ms. Sohrabirad clearly relies on and advertises her authority as a regulated member of the College with APA in order to purchase and supply drugs to her patients. Ms. Chisholm explained that Ms. Sohrabirad can only purchase Schedule 1 drugs like Botox from a drug wholesaler because she is a regulated pharmacist. She must therefore comply with the standards, duties and responsibilities that apply to regulated pharmacists with respect to Schedule 1 drugs.

Ms. Chisholm said that Ms. Sohrabirad's position was an attempt to exploit what she perceived to be a grey area. It does not make sense to allow Ms. Sohrabirad to acquire Schedule 1 drugs using her qualifications as a regulated member of the College, but then act as if she is subject only to an entirely different legislative scheme for personal services workers. When there are multiple pieces of legislation that apply it is not up to Ms. Sohrabirad to choose which of them she will meet. Ms. Sohrabirad must comply with all of the legislation, and that means meeting the more restrictive of their requirements.

Allegation 1(a) alleged that Ms. Sohrabirad failed to understand or comply with her professional obligations when she provided professional services outside of a licensed pharmacy by providing services a pharmacist is not authorized to provide when she provided patients with PRP therapy injections, including the drawing of venous blood for that purpose.

There was no dispute that Ms. Sohrabirad had provided PRP therapy through Rx to Beauty. Ms. Chisholm referred to Mr. Whissell's evidence that Health Canada classified PRP therapy as a drug and that pharmacists can only acquire or possess a drug within a licensed pharmacy. Section 3 of the *Pharmacy and Drug Act* states that subject to an inapplicable exemption, no person shall provide a pharmacy service unless the service is provided from a licensed pharmacy with an appropriate category of pharmacy license. Section 31(2) states that Schedule 1 drugs may be compounded, dispensed or sold only pursuant to a prescription, and only in a licensed pharmacy's dispensary.

In response to a question from the Tribunal Ms. Chisholm confirmed that drawing venous blood is not in and of itself a restricted activity, but pharmacists are not authorized to administer blood products to patients. Section 16(5) of the *Pharmacists and Pharmacy Technicians Profession Regulation* permits pharmacists to be authorized to administer anything by injection below the dermis but only in accordance with the Standards of Practice. She confirmed there are no such standards of practice for PRP therapy. In response to a question about the Health Canada bulletin, Ms. Chisholm said that the bulletin only contemplates the use of PRP therapy in medicine and dentistry and that PRP therapy is a drug, but Ms. Sohrabirad was not prescribing PRP therapy when she provided it.

Allegation 1(b) alleged that Ms. Sohrabirad failed to understand or comply with her professional obligations when she provided professional services outside of a licensed pharmacy by selling and administering Botox, a Schedule 1 medication, to patients of Rx to Beauty even though the medication was not prescribed, it was not stored in a pharmacy or dispensed from a pharmacy, patient records were not stored at a pharmacy or another approved location and even though the patient records were not easily accessible to other healthcare providers and Ms. Sohrabirad did not collaborate with other healthcare providers.

Ms. Chisholm submitted that Botox is a Schedule 1 drug and requires a prescription. Ms. Sohrabirad admitted that she provided and administered Botox through Rx to Beauty without a prescription, except in a few cases of patients with hyperhidrosis. This constituted a pharmacy service. The definition of "sell" in the *Pharmacy and Drug Act* is broad and Ms. Sohrabirad's provision of Botox to patients constitutes selling Schedule 1 drugs. It is not necessary that she give them extra Botox to take home to be selling the drug to them. Ms. Sohrabirad had also

admitted the Botox was stored outside of a licensed pharmacy in her home, contrary to Section 3 of the *Pharmacy and Drug Act* and that the required pharmacy records were not kept or easily accessible to other healthcare providers by uploading them to Netcare. Ms. Sohrabirad had denied that collaboration was necessary.

Allegation 1(c) alleged that Ms. Sohrabirad relied on her registration as a pharmacist with APA to act as the Medical Director of Rx to Beauty when she knew that pharmacists cannot purchase or dispense the brand of Botox sold to medical spas. Ms. Chisholm explained that this particular allegation was based on Ms. Sohrabirad's position that the "cosmetic Botox" that she purchased for Rx to Beauty could not be sold to a regulated pharmacist. Ms. Chisholm explained that Ms. Sohrabirad was using her authority as a regulated member of the College to do something that she now claims is outside the scope of pharmacy practice. This harms the integrity of the pharmacy profession and constitutes unprofessional conduct.

Allegation 1(d) alleged that Ms. Sohrabirad offered inducements for the provision of professional services and the sale of Botox, a Schedule 1 medication on the Instagram page for Rx to Beauty. Ms. Chisholm said that the Instagram posts were time-limited offers. Regardless of what Ms. Sohrabirad says they do not read as if they are advertising regular prices. These were prohibited inducements. In response to a question from the Tribunal Ms. Chisholm said that the Tribunal could consider the prohibitions on inducements in the Standards of Practice and the Code of Ethics. Both should be interpreted according to their letter as well as their spirit. An inducement includes any statement made to get someone to obtain a service or a drug earlier than when it may otherwise have been indicated.

Allegation 2 alleged that Ms. Sohrabirad advertised herself in a manner that was misleading to the public. Allegation 2(a) referred to relying on her registration as a pharmacist with APA when advertising on the Rx to Beauty Instagram page her ability to administer medications by injection as part of providing cosmetic services that do not fall within the practice of pharmacy or are provided contrary to the Standards of Practice. Ms. Chisholm explained that Ms. Sohrabirad advertised her registration as a pharmacist with APA when offering services such as PRP therapy as "vampire facials" as well as dermal filler injections. These services do not fall within the practice of pharmacy, so this was misleading to the public.

Allegation 2(b) alleged that Ms. Sohrabirad advertised her registration as a pharmacist with APA in conjunction with the operation of Rx to Beauty, which, when read together, incorrectly suggests a connection between the practice of pharmacy and the cosmetic services provided through Rx to Beauty. Ms. Chisholm suggested that advertising Ms. Sohrabirad's registration as a pharmacist with APA along with "Rx" in the name Rx to Beauty suggests the provision of regulated pharmacy services. Ms. Sohrabirad may not believe that the public would see "Rx" as referring to prescription drug services, but the test is what the public would believe.

Ms. Chisholm concluded that Ms. Sohrabirad's conduct undermined the integrity of the pharmacy profession. Her conduct suggested that pharmacists can ignore their professional obligations when it suits them, by providing services outside of a licensed pharmacy. It is then unclear to the public whether the pharmacist is acting as a regulated pharmacist or not. Ms. Sohrabirad relied on her registration as a pharmacist to purchase Schedule 1 drugs but then denied she was subject to regulations about their storage, use or record keeping. The legislation,

Standards of Practice and Code of Ethics that apply to regulated pharmacists are not optional. Ms. Sohrabirad's conduct represented a lack of professional judgment and increased the risk of patient harm. It was contrary to the public interest.

Ms. Chisholm referred to provisions of the *Health Professions Act*, the *Pharmacy and Drug Act*, the Standards of Practice and the Code of Ethics.

Ms. Sohrabirad

Ms. Sohrabirad submitted that she is subject to different regulations when she is in a different work setting. She said that none of the witnesses who testified for the Complaints Director had proper knowledge of personal services. She said the Complaints Director was acting selectively by looking only at the College's regulations while ignoring others, like the Personal Services Regulation. She said the College does not have proper regulations.

Ms. Sohrabirad said that when working in a Medi spa you do need to be a licensed practitioner, but you also need additional training and certifications. She gave as an example a pharmacist who is also a realtor. She said that there may be overlap but when you go to buy a house you don't expect the realtor to have to comply with pharmacy regulations. She said that when she is providing personal services, she is not doing things that require her to comply with pharmacy standards. She just follows the rules that apply to her, which are AHS and City of Edmonton regulations. She further explained that Medi spas offer injectables, vitamin drips, chemical peels, facials, laser work, body contouring, fat dissolving cold therapy, microneedling, permanent makeup, dermaplaning, and oxygen therapy but just like haircuts none of these services are health altering. There is no need for records of these services to be uploaded to Netcare.

Ms. Sohrabirad submitted that the Complaints Director does not accept that there are two types of Botox. In response to a question from the Tribunal Ms. Sohrabirad clarified that she never said pharmacists are not allowed to order cosmetic Botox. She said pharmacists are allowed to order it, but they are asked to prove that they have the necessary training to administer it. She said she did not order Botox using her pharmacist license.

Ms. Sohrabirad said that she does not sell drugs, just services. She uses products that come direct from a manufacturer. The manufacturer knows her training and qualifications and they send the drugs to her home business which is not a licensed pharmacy.

Regarding inducements Ms. Sohrabirad said that the sale pricing only applied to dermal fillers, not Botox. She said she is allowed to offer sale prices for her personal services. She also said she had removed the references to herself as a pharmacist with APA and her authorization to administer drugs by injection from the Instagram account.

Ms. Sohrabirad referred the Tribunal to Exhibit 5 which included a copy of the text of an email to Ms. Sohrabirad from [REDACTED] Prolenium Medical Technologies Inc. Ms. Sohrabirad said that Ms. [REDACTED] was offering to check with the College about pharmacists' ability to purchase PRP therapy kits and offer the therapy. Ms. Sohrabirad said that the fact

that she was able to buy the PRP therapy kits must mean that the College authorized it. She acknowledged that there is no evidence of the College responding to Ms. [REDACTED]. She said it was done through a phone call.

In response to the Tribunal's questions about PRP therapy Ms. Sohrabirad referred to the Health Canada bulletin. She noted that Health Canada did not limit PRP therapy to physicians and dentists. She also noted that Alberta is the only province where pharmacists can prescribe and do injections, so it is safe for her to perform PRP therapy in Alberta.

VI. FINDINGS

Allegation 1 alleged that Ms. Sohrabirad failed to understand or comply with her obligations to uphold the Standards of Practice and the Code of Ethics when she provided professional services outside of a licensed pharmacy.

ALLEGATION 1(a)

Allegation 1(a) alleged that the particulars of this included when Ms. Sohrabirad provided services a pharmacist is not authorized to provide when she provided patients with PRP therapy injections, including the drawing of venous blood for that purpose

The Hearing Tribunal found Allegation 1(a) not proven. The Tribunal carefully considered the allegation, the witnesses' evidence, the parties' arguments, the legislation, the Standards of Practice and the Code of Ethics. The Tribunal found it was not sufficiently clear that the PRP therapy Ms. Sohrabirad was providing was a "professional service" in the practice of pharmacy, or that pharmacists were prohibited from offering PRP therapy to find Allegation 1(a) proven on a balance of probabilities.

The term "professional service" is defined in section 1(ff) of the *Health Professions Act* to mean a service coming within the practice of a regulated profession. The term "practice" is defined in Section 1(z) as the practice of a regulated professional within the meaning of Section 3 of a schedule to the *Health Professions Act*. Schedule 19 of the *Health Professions Act* applies to the pharmacy profession. Section 3 of Schedule 19 describes pharmacy practice. It states that pharmacists promote health and prevent and treat diseases, dysfunction and disorders through proper drug therapy and non-drug decisions, including by providing blood products.

The Health Canada bulletin describes PRP. It explains that PRP is obtained by spinning a sample of the patient's blood at high speed to separate the red blood cells from the plasma and obtaining a platelet-rich plasma fraction or fibrin matrix. The bulletin states that PRP is used in the practice of medicine and dentistry to promote wound healing, relieve joint pain or for cosmetic purposes. Ms. Sohrabirad testified that you can inject PRP but she said that she mainly uses microneedling and applies the PRP to the face. She said she does not inject PRP into joints or muscles as they do in medicine.

In his evidence Mr. Krempien testified that PRP therapy was not a service that would typically be offered by a pharmacist. He said PRP therapy was out of Ms. Sohrabirad's scope of practice, but the administration of a drug by injection would be a professional service. Mr. Whissell said that PRP is a drug, but he also said that drugs can be provided in a licensed pharmacy or outside of a licensed pharmacy. The Tribunal was provided with Standard of Practice 18.10 which describes record keeping requirements for pharmacists who provide professional services outside of a pharmacy.

It was not clear to the Tribunal that Ms. Sohrabirad engaged in providing professional services outside of a licensed pharmacy contrary to her professional obligations. Mr. Krempien's evidence was that PRP therapy itself was not part of the practice of pharmacy. Mr. Krempien said that administering a drug by injection would be a professional service within the practice of pharmacy, but Ms. Sohrabirad testified that she used microneedling rather than injections when applying PRP. Mr. Whissell also confirmed that pharmacists can provide professional services outside of a pharmacy in some circumstances.

It was also unclear that pharmacists are prohibited from providing PRP therapy. The Health Canada bulletin states that PRP meets the definition of a "drug" under the federal *Food and Drugs Act*, but the "preparation of PRP falls under the scope of the practice of medicine and dentistry and is regulated provincially and territorially when it is a) conducted by "practitioners," including physicians and dentists; b) obtained from a patient; and c) administered back to the same patient in a single procedure." The bulletin also stated that a "practitioner" is a person who is entitled under the laws of a province or territory to treat patients with prescription drugs in that province or territory.

Ms. Sohrabirad submitted that the Health Canada bulletin did not limit PRP therapy to physicians and dentists in Alberta. We agree. The bulletin says that "practitioners" of PRP therapy include physicians and dentists. In Alberta pharmacists can also treat patients with prescription drugs. Alberta pharmacists can obtain APA and the authority to administer drugs by injection so they can also be "practitioners" according to the Health Canada definition. Ms. Sohrabirad had her APA and the authority to administer drugs by injection.

The College may decide to prohibit its members from offering PRP therapy, but currently this is not sufficiently clear. Drawing venous blood from a patient or client is not a restricted activity listed in Schedule 7.1 of the *Government Organization Act*. Ms. Sohrabirad was not prohibited from doing it or assisting with it. Ms. Sohrabirad explained that the PRP therapy kits included a tube and an anticoagulant medication that is mixed with the patient or client's blood and then spun to separate the PRP. Even if this constitutes compounding blood products, clinical pharmacists are authorized to perform this activity under section 16(1)(c) of the *Pharmacists and Pharmacy Technicians Profession Regulation*. Clinical pharmacists like Ms. Sohrabirad with authorization to administer drugs by injection are also authorized by section 16(5) of the Regulation to administer anything by subcutaneous injections.

Section 16(1) of the Regulation states that clinical pharmacists may perform restricted activities within the practice of pharmacists and in accordance with the Standards of Practice. Mr. Whissell explained that the College has not authorized regulated pharmacists to practice PRP

therapy through Standards of Practice. While there are no Standards of Practice that mention PRP therapy, there are standards such as Standard 17 that refers to pharmacists administering blood products. Mr. Whissell testified that Standard 17 may have been intended to refer to immunoglobulins. He said it does not authorize pharmacists to administer PRP therapy. Even if Standard 17 was intended to be limited to immunoglobulin treatment the Tribunal found that the Regulation and the Standards were not sufficiently clear to find Allegation 1(a) proven.

ALLEGATION 1(b)

Allegation 1(b) alleged that Ms. Sohrabirad failed to understand or comply with her obligations to uphold the Standards of Practice and the Alberta College of Pharmacy's Code of Ethics when she provided professional services outside of a licensed pharmacy, including when she sold and administered Botox, a Schedule 1 medication, to patients of Rx to Beauty even though the medication was not prescribed, not stored in a pharmacy, not dispensed from a pharmacy, patient records were not stored at a pharmacy or another approved offsite location, patient records were not easily accessible to other health care providers, and she did not collaborate with other health care providers.

The Tribunal found Allegation 1(b) proven. Providing a Schedule 1 drug is a professional pharmacy service. As above, the practice of pharmacy includes drug therapy. The term "drug" is defined in the *Pharmacy and Drug Act* Section 1(e) to include Schedule 1 drugs.

Ms. Sohrabirad and the Complaints Director agreed that Onabotulinum Toxin A, or Botox is a Schedule 1 drug. There are different DINs and packaging for Botox sold for cosmetic purposes and therapeutic purposes, but both products contain the same active ingredient.

The *Pharmacy and Drug Act* states at Section 31(2) that Schedule 1 drugs may only be stored in a licensed pharmacy dispensary or another secure site authorized by the Standards for the Operation of Licensed Pharmacies. Section 31(2) also states that Schedule 1 drugs may only be dispensed or sold pursuant to a prescription and from a licensed pharmacy dispensary. The term "sell" is defined broadly by Section 1(cc) of the *Pharmacy and Drug Act*. It includes distributing, trading or bartering in exchange for money or other valuable consideration, distributing or giving away without expectation of compensation or reward, keeping for sale, and advertising or offering for sale. Ms. Sohrabirad maintained that she does not sell Schedule 1 drugs as her customers only pay for her services. Her advertisements through Rx to Beauty include offers of Botox in exchange for financial compensation such as "Botox/Dysport \$8/Unit". The broad meaning of "sell" in the *Pharmacy and Drug Act* applies to Ms. Sohrabirad's provision of Botox as part of the services she offers through Rx to Beauty.

As described above, pharmacists who provide professional services outside of a pharmacy must create, store and maintain patient records in compliance with the Standards for the Operation of Licensed Pharmacies. Patient records must be kept in a manner that facilitates sharing, ease of use and retrieval of patient information by authorized individuals, such as other health providers. These requirements are found in the Standards of Practice for Pharmacists and Pharmacy Technicians, Standards 18.7 and 18.10.

Ms. Sohrabirad's business Rx to Beauty is based out of her home. It is not a licensed pharmacy. Ms. Sohrabirad provides Botox injections to her customers from her home-based clinic in exchange for payment. She confirmed that she purchases the Botox from a supplier, receives it directly to her home and stores it in a fridge in her home-clinic. She does not supply the Botox pursuant to a prescription. It is not dispensed from a pharmacy. She does not store any records of the Botox injections at a licensed pharmacy, or another location approved by the College or upload them to Netcare where any other healthcare providers could readily access them. She confirmed she does not collaborate with other healthcare providers about her customers' care.

The *Pharmacy and Drug Act* is a provincial statute that applies to all Albertans. Ms. Sohrabirad is a regulated member of the College and subject to the College's Standards of Practice and its Code of Ethics. The requirements of the *Pharmacy and Drug Act* and the College's Standards of Practice are unambiguous. Ms. Sohrabirad is prohibited from selling and administering Botox injections from her home-based clinic.

Ms. Sohrabirad testified that she operates Rx to Beauty pursuant to AHS regulations that permit her to offer personal services to the public. She said that outside of a pharmacy she no longer has to comply with pharmacy Standards of Practice. She said she obtains cosmetic Botox with a unique DIN and packaging. She testified that pharmacies cannot purchase cosmetic Botox. This was also set out in Ms. Sohrabirad's response to the complaint in Exhibit 1 and in her supplemental response in Exhibit 5. Later in the hearing she clarified that pharmacies can purchase cosmetic Botox, but the supplier will ask for proof of training to administer it.

Ms. Sohrabirad referred the Tribunal to the Personal Services Regulation, Alta Reg 1/2020 made pursuant to the *Public Health Act*, RSA 2000, c. P-37. The Personal Services Regulation defines "personal service" to include applying or injecting cosmetic products. The term "cosmetic product" is defined to mean a substance or mixture of substances that is manufactured, sold and represented for use by application on or injection into the body for the purpose of enhancing, preserving or altering the appearance of the skin, hair, nails or teeth, or cleansing them. The Personal Services Regulation and the related Personal Service Standards contain no references to Schedule 1 drugs like Botox, but the letter from Ms. [REDACTED] of Alberta Health to Mr. Whissell confirmed that Alberta Health views Botox as a "cosmetic Product". To the extent Ms. Sohrabirad is engaged in personal services through Rx to Beauty she must comply with the Personal Services Regulation and the *Pharmacy and Drug Act*. The two pieces of legislation are not inconsistent. It is possible to comply with both of them and Ms. Sohrabirad is not permitted to choose which legislation she prefers. As a pharmacist, Ms. Sohrabirad may apply or inject cosmetic products like dermal fillers, provided those cosmetic products are not drugs regulated by other legislation like the *Pharmacy and Drug Act*. Botox is a Schedule 1 drug and its use by pharmacists is regulated. Ms. Sohrabirad may not provide from her home-based clinic without a prescription.

The Hearing Tribunal concluded that Ms. Sohrabirad's conduct was unprofessional conduct under the *Health Professions Act* and misconduct under the *Pharmacy and Drug Act*. Ms. Sohrabirad contravened legislation that applies to the profession of pharmacy. The *Pharmacy and Drug Act* sets strict requirements for the storage, handling, dispensing and sale of Schedule 1 drugs like Botox. The College's Standards of Practice set strict requirements for record

keeping concerning the administration of Schedule 1 drugs. These requirements are intended to protect the public's health and safety from potentially dangerous drugs and to ensure appropriate records are readily available for other healthcare professionals to access if necessary. Ms. Sohrabirad ignored the requirements of the *Pharmacy and Drug Act* and the Standards of Practice. Her conduct represented a lack of judgment and harmed the integrity of the pharmacy profession. It was unprofessional pursuant to section 1(1)(pp)(i), (ii), (iii) and (xii) of the *Health Professions Act*. It was also "misconduct" pursuant to section 1(1)(p)(i), (ii) and (ix) of the *Pharmacy and Drug Act*.

ALLEGATION 1(c)

Allegation 1(c) alleged that Ms. Sohrabirad failed to understand or comply with her obligations to uphold the Standards of Practice and the Alberta College of Pharmacy's Code of Ethics when she provided professional services outside of a licensed pharmacy by relying on her registration as a pharmacist with APA to act as the Medical Director of Rx to Beauty when she knew that pharmacists cannot purchase or dispense the brand of Botox sold to medical spas.

The Hearing Tribunal found Allegation 1(c) not proven. Ms. Chisholm explained that this allegation was based on Ms. Sohrabirad using her registration with the College to act as the Medical Director for Rx to Beauty and purchase cosmetic Botox from her suppliers, when she had represented to the College that pharmacists cannot purchase cosmetic Botox. The Tribunal was not presented with evidence that pharmacists are prohibited from purchasing cosmetic Botox. Ms. Sohrabirad had testified that this was the case, and it was set out in her response to the complaint and in Exhibit 5, but she clarified in her argument that pharmacists could purchase cosmetic Botox, but they would be asked to prove they have training to administer it.

ALLEGATION 1(d)

Allegation 1(d) alleged that Ms. Sohrabirad failed to understand or comply with her obligations to uphold the Standards of Practice and the Alberta College of Pharmacy's Code of Ethics when she provided professional services outside of a licensed pharmacy by offering inducements for the provision of professional services and the sale of Botox, a Schedule 1 medication, on the Instagram page for Rx to Beauty.

The Hearing Tribunal received printouts from Ms. Sohrabirad's Instagram page for Rx to Beauty, including:

- i. "limited time offer mini lips (1/2 syringe) \$250, Botox/disport \$8 per unit, any full syringe \$500 (including cheeks, chin, jawlines, non-surgical nose job) PRP \$500, medical grade micro needling \$400, vampire facial \$800, hair restoration \$500 and more. To book your appointment call or message @ (780) 934-4359 tag 10 friends to get a chance to win 10 units Botox/disport..."
- ii. "Black Friday sale! \$250 1/2 syringe Restylane any kind of injections, \$490 any full syringe injection, \$7.50 per unit Botox/Dysport Black

Friday weekend only! Message or call 780-934-4359 to book your appointment...”

The Tribunal found Allegation 1(d) to be proven. The printouts from the Instagram page included offers to sell Botox, which is a Schedule 1 drug regulated under the *Pharmacy and Drug Act* through her home-based business Rx to Beauty. The first printout is expressly a limited time offer and mentions Botox by name. It also encourages people to “tag 10 friends” presumably on Instagram to get a “chance to win 10 units Botox/Dysport...” The second printout describes a limited-time Botox pricing offer with “\$7.50 per unit Botox/Dysport Black Friday weekend only!”

Ms. Chisholm submitted that an inducement is anything that a pharmacist does to encourage obtaining or using a Schedule 1 drug when it would otherwise not be needed or wanted. The College’s Code of Ethics does not define an “inducement” for the purposes of the Code, but Principle 1(13) states that pharmacists do not enter into any arrangement with a patient whereby the pharmacist provides an inducement to the patient that is conditional on the patient obtaining a drug or professional service from the pharmacist.

The Hearing Tribunal found that the Instagram posts constituted prohibited inducements contrary to Principle 1(13) of the College’s Code of Ethics. The posts read as offers of limited-time pricing on products and services including a Schedule 1 drug, Botox. If a member of the public were to call, book and proceed with an appointment they would be entering an arrangement with Ms. Sohrabirad whereby she provides the limited-time pricing for services including a Schedule 1 drug upon the patient obtaining and paying for the service, including the Schedule 1 drug.

The Standards of Practice also address inducements, but the Standards include a definition narrowing their application to rewards, gifts including gifts of cash, prizes, coupons and incentive or loyalty points that can be redeemed. Standard 1.18 states that this definition applies for the purposes of Standards 1.19 and 1.20. The Tribunal concluded the limited-time pricing referred to in Allegation 1(d) did not meet this narrower definition of inducement.

The Tribunal was also satisfied that Ms. Sohrabirad’s conduct was unprofessional conduct. Inducements undermine the public’s need and ability to weigh the risks and benefits of using Schedule 1 drugs. This is particularly concerning when inducements are used to encourage the public to receive cosmetic services that involve the use of Schedule 1 drugs.

Ms. Sohrabirad testified that she didn’t encourage anyone to fill prescriptions or obtain other pharmacy services from her. No one was required to enter her draws for free services. She testified that the time-limited offers in her posts were just for dermal fillers, not for Botox. She said she only listed the price for Botox. The Tribunal considered this but was unable to accept it. The second printout describes a limited-time Botox pricing offer with “\$7.50 per unit Botox/Dysport Black Friday weekend only!” The first printout read as time-limited offer of discounted pricing on all of the listed products and services. These may have been Ms. Sohrabirad’s usual prices, but the public would have no way of knowing that.

ALLEGATION 2

Allegation 2 alleged that Ms. Sohrabirad advertised herself in a manner that was misleading to the public, the particulars of which included when she:

- a) relied on her registration as a pharmacist with APA when she advertised on the Rx to Beauty Instagram page her ability to administer medications by injection as part of performing cosmetic services that do not fall within the practice of pharmacy or are provided contrary to the Standards of Practice, and
- b) advertised her registration as a pharmacist with APA in conjunction with the operation of the company Rx to Beauty, which, when read together, incorrectly suggests a connection between the practice of pharmacy and the cosmetic services you provide through Rx to Beauty.

ALLEGATION 2(a)

The Hearing Tribunal found allegation 2(a) not proven. Ms. Sohrabirad’s Instagram posts described her as a “Pharmacist with APA...Medical Director #Botox...” and as an “Advanced Aesthetic Injector”. Her posts included links to her Instagram page for Rx to Beauty and for her website www.rxtobeauty.ca. In her posts she also described herself as a “prescribing clinical pharmacist” who is “fully trained and certified in all injections I do.”

Ms. Sohrabirad provided the Hearing Tribunal with examples of other Alberta business advertising cosmetic injections. These included advertisements for pharmacists offering cosmetic injections such as Botox in the Edmonton area. In her submissions, Ms. Chisholm advised the Hearing Tribunal that the College’s Council is still contemplating whether cosmetic injections should be included in the practice of pharmacy. There was insufficient evidence that the cosmetic injections Ms. Sohrabirad offers through Rx to Beauty are clearly outside the practice of pharmacy. The Tribunal was not satisfied that it was misleading for Ms. Sohrabirad to refer to her registration and APA and her ability to administer medications by injection in her advertising.

ALLEGATION 2(b)

The Hearing Tribunal found Allegation 2(b) proven. Ms. Sohrabirad’s advertising clearly associated her registration as a pharmacist with the College and her APA with the services of her company Rx to Beauty. The materials provided to us demonstrate that Rx to Beauty offers a number of services that have no relation to professional services within the practice of pharmacy. These include “medical grade dermaplaning”, “Medical grade micro needling” and “derma lift ultrasonic facelifts”. Ms. Sohrabirad’s advertising suggests a connection between her training and qualifications as a regulated pharmacist and these services of Rx to Beauty. This suggested connection would mislead the public to believe that the cosmetic services offered through Rx to Beauty are the regulated practice of pharmacy. The Tribunal found that

Ms. Sohrabirad's advertising of her registration with the College and her APA combined with the "Rx" in her business name contributed to this. Ms. Sohrabirad suggested the public would not know that "Rx" refers to prescriptions for drugs. The Tribunal disagrees. The term "Rx" is commonly understood to refer to a prescription for drugs.

The Tribunal concluded that Ms. Sohrabirad's advertising in Allegation 2(b) contravened section 102 of the *Health Professions Act*. Section 102 prohibits regulated members of the College from engaging in advertising that is untruthful, inaccurate or otherwise capable of misleading or misinforming the public. The Tribunal considered Ms. Sohrabirad's misleading advertising unprofessional because the public are not equipped to distinguish between regulated pharmacy services and unregulated cosmetic services. When a regulated member of the College refers to themselves as a pharmacist with APA in advertising products and services, the public can and should expect that those products and services are within the scope of the profession and will be provided according to the College's legislation and standards.

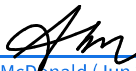
To conclude, the Hearing Tribunal found the following allegations to have been proven and to constitute unprofessional conduct: 1(b), 1(d), and 2(b). Allegations 1(a), 1(c), and 2(a) were found not proven.

VI. ORDERS

The Hearing Tribunal will receive submissions on sanction. If the Complaints Director or Ms. Sohrabirad believes that an oral hearing on sanctions is necessary, they may write to the Hearing Tribunal to request an oral hearing and the Tribunal will consider such requests.

If no oral hearing is requested the Tribunal will receive written submissions on sanction. The Tribunal requests the Complaints Director to provide written submissions on sanctions within 30 days and Ms. Sohrabirad to provide any reply-submissions on sanction within 45 days. If either party anticipates difficulties complying with these timeframes, they may write to the Tribunal seeking an extension.

Signed by the Chairperson on behalf of the Hearing Tribunal on June 27, 2022.



Anita MacDonald (Jun 27, 2022 08:11 MDT)

Anita MacDonald

June 27, 2022