

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 SANCTIONS

January 18, 2023

I. INTRODUCTION

The Hearing Tribunal consisting of Anita McDonald, Pharmacist and Chair, Kory Sloan, Pharmacist, Naz Mellick, Public Member and James Lees, Public Member held a hearing into the conduct of Mehrnoush Sohrabirad, Pharmacist from February 1 to 3, 2022.

On June 27, 2022 the Hearing Tribunal issued its decision finding Ms. Sohrabirad to have engaged in unprofessional conduct under the *Health Professions Act*, RSA 2000, c. H-7 (*Health Professions Act*) and misconduct under the *Pharmacy and Drug Act*, RSA 2000, c. P-13 (*Pharmacy and Drug Act*) as alleged in the following allegations:

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:
 - 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.
 - 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/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", 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:
 - 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.

The Hearing Tribunal requested submissions on sanctions and offered to consider requests for an oral hearing on sanctions from either party. The parties exchanged written submissions with each other. On August 29, 2022, prior to either submission being provided to the Tribunal, Ms. Chisholm, counsel for the Complaints Director wrote to the Tribunal objecting to Ms. Sohrabirad’s written submissions. Ms. Sohrabirad responded to the objection and the Hearing Tribunal issued a separate decision on the objection dated September 13, 2022. The Tribunal’s September 13, 2022 decision gave directions including that Ms. Sohrabirad could revise and resubmit her submissions and that the Complaints Director could reply.

Ms. Sohrabirad provided her revised written submissions on sanctions dated October 1, 2022. The Complaints Director provided his reply submissions dated October 14, 2022.

II. SUBMISSIONS ON SANCTION and COSTS

Complaints Director

The Complaints Director’s written submissions on sanctions were dated July 27, 2022. The Complaints Director reviewed the Hearing Tribunal’s powers to make orders under the *Health Professions Act* and the purposes of orders in professional discipline proceedings: protection of the public; maintaining the integrity of the profession; fairness to the regulated member; and deterrence, including specific deterrence of the regulated member from repeat conduct and general deterrence of the profession’s other regulated members.

The Complaints Director then reviewed relevant factors from *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin L.R. (2d) 233, the first of which is the nature and gravity of the proven allegations. The Complaints Director argued that each of the proven allegations constituted unprofessional conduct and are serious. Ms. Sohrabirad’s proven unprofessional conduct harmed the integrity of the profession and demonstrated a failure to meet the high standards of professional and ethical judgment expected and required of an Alberta pharmacist.

The Complaints Director referred to the Hearing Tribunal’s finding that Ms. Sohrabirad ignored the strict requirements of the *Pharmacy and Drug Act* and the College’s Standards of Practice for Pharmacists and Pharmacy Technicians (Standards of Practice) for the storage, handling, dispensing and sale of Schedule 1 drugs and for record keeping concerning Schedule

1 drugs. The Tribunal held that 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 providers to access if necessary. The Complaints Director similarly referenced the Tribunal's reasons for finding Ms. Sohrabirad's use of inducements and her misleading advertising to be unprofessional conduct.

The Complaints Director submitted that Ms. Sohrabirad was an experienced Alberta pharmacist and pharmacy licensee at the time of her proven unprofessional conduct. Inexperience was therefore not a mitigating factor. While she had received previous complaints, they were unrelated and had been resolved. The Complaints Director submitted that this should not be considered an aggravating factor.

The Complaints Director submitted that Ms. Sohrabirad had not just engaged in a single incident of unprofessional conduct. Rather, she had continued to operate her business in contravention of her statutory and regulatory obligations for some time.

In relation to Ms. Sohrabirad's role in acknowledging her conduct, the Complaints Director submitted that this was not a mitigating factor. Ms. Sohrabirad had not acknowledged that any of her conduct was unprofessional or of a serious nature. The Complaints Director noted that Ms. Sohrabirad was entitled to contest the allegations and so her decision to do so should not be considered an aggravating factor.

The Complaints Director submitted that there was no evidence of any actual harm to Ms. Sohrabirad's patients, but there was the potential for patient harm. The risk of patient harm is relevant to the seriousness of the proven unprofessional conduct and the need to protect the integrity of the profession moving forward.

In relation to the need for specific and general deterrence, the Complaints Director submitted that the sanctions should reflect the importance of Ms. Sohrabirad upholding the obligations expected and required of Alberta pharmacists. The sanctions should also show other regulated members that the College will respond to this type of unprofessional conduct with significant sanctions.

The Complaints Director submitted that Ms. Sohrabirad's proven unprofessional conduct could decrease the public's trust in the pharmacy profession. If not sanctioned, it would suggest to the public that pharmacists can ignore their professional obligations, resulting in a loss of public confidence. The College must be able to demonstrate that it is willing and able to regulate the profession and to sanction proven unprofessional conduct so that it does not reoccur.

In relation to the degree to which Ms. Sohrabirad's proven unprofessional conduct went beyond the range of permitted conduct, the Complaints Director submitted that she ignored unambiguous requirements of the *Pharmacy and Drug Act* and the College's Standards of Practice.

The Complaints Director then proposed the following orders:

1. Ms. Sohrabirad's practice permit shall be suspended for 2 months to be served on dates acceptable to the Complaints Director and completed within 3 months from the date that this decision is issued.
2. Ms. Sohrabirad shall pay a \$5,000 fine for each of the proven particulars (allegations 1(b), (d) and 2(b)), for a total fine of \$15,000, within 90 days of receiving the Hearing Tribunal's written decision.
3. Ms. Sohrabirad's practice permit shall be subject to the condition that she is prohibited from ordering or storing drugs outside of a pharmacy and from storing patient records outside of a pharmacy.
4. Ms. Sohrabirad shall transfer any drugs or patient records she is currently storing outside of a pharmacy to a pharmacy within 30 days from the date of the Hearing Tribunal's written decision. The Complaints Director proposed that for the purposes of this order, "drugs" means "drug" as defined in the *Pharmacy and Drug Act* and "patient records" means "patient records" under the College's Standards of Practice. The Complaints Director also proposed that the order provide that Ms. Sohrabirad shall notify all individuals affected by the transfer of their patient records as to where their records shall be maintained within 30 days from the date of the Hearing Tribunal's written decision.
5. Ms. Sohrabirad's Additional Prescribing Authorization (APA) shall be revoked, commencing from the date the Hearing Tribunal issues its written decision and Ms. Sohrabirad shall be prohibited from applying for her APA for a period of one year from the date of the Hearing Tribunal's written decision.
6. Ms. Sohrabirad shall not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 3 years from the date of the Hearing Tribunal's written decision.
7. Ms. Sohrabirad shall provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee of a pharmacy in which she applies to work or works as a pharmacist for 3 years, commencing on the date she receives a copy of the Hearing Tribunal's written decision.
8. Ms. Sohrabirad shall pay 50% of the costs of the investigation and hearing, with monthly payments on a schedule directed by the Hearings Director with payment in full to be made within 24 months of the date Ms. Sohrabirad receives a copy of the Hearing Tribunal's written decision.

The Complaints Director submitted that while any suspension is serious, the proposed 2-month suspension would serve to deter the proven unprofessional conduct and maintain the integrity of the profession by demonstrating that the College takes the unprofessional conduct very seriously. The suspension and the proposed fines of \$5,000 per proven particular would also appropriately reflect the severity of Ms. Sohrabirad's conduct. The Complaints Director emphasized that Ms. Sohrabirad used her registration with the College and her APA in order to purchase the drugs she used in Rx to Beauty.

The Complaints Director submitted that a condition prohibiting Ms. Sohrabirad from ordering or storing drugs outside of a pharmacy and from storing patient records outside of a pharmacy is not strictly necessary because the *Pharmacy and Drug Act* does not permit registered pharmacists to order or store drugs outside of a pharmacy. The Complaints Director said that the condition was requested in this case to make clear to Ms. Sohrabirad, other regulated members of the College, and the public that the College will not allow such behaviour.

The Complaints Director submitted that the proposed order requiring Ms. Sohrabirad to transfer any drugs or patient records she is currently storing to a pharmacy within 30 days would ensure the proper storage of drugs and the retention of records according to the College's Standards of Practice. This was said to be necessary for the protection of the public, the awareness of affected patients and to maintain the integrity of the profession and the drug distribution system.

The APA is a privilege that carries a corresponding responsibility to meet statutory and regulatory obligations. The Complaints Director submitted that the proposed order revoking Ms. Sohrabirad's APA is necessary because she failed to uphold those obligations. Ms. Sohrabirad relied on her APA in her advertising of services through Rx to Beauty. Revoking the APA and requiring her to reapply for it means that she will have to repeat the prerequisites to obtain it. This will ensure Ms. Sohrabirad has a current understanding of her obligations.

The Complaints Director also submitted that Ms. Sohrabirad's demonstrated lack of understanding or unwillingness to meet her professional obligations justifies an order prohibiting her from serving as a pharmacy owner, proprietor, or licensee for a period of 3 years. A 3-year period would maintain the integrity of the profession and allow Ms. Sohrabirad a sufficient period of time to demonstrate that she can conduct herself appropriately if entrusted with responsibility for a licensed pharmacy.

The Complaints Director acknowledged that Ms. Sohrabirad's unprofessional conduct occurred outside of a licensed pharmacy but submitted that an order requiring her to provide a copy of the Hearing Tribunal's decision to pharmacy employers or licensees would be important because her conduct relied on her registration with the College and her APA. Notifying future pharmacy employers or licensees would ensure they are aware of her conduct and that it is not repeated.

On the issue of costs, the Complaints Director submitted that the College's other regulated members should not bear the full costs of the investigation and hearing which arose from Ms. Sohrabirad's proven unprofessional conduct and misconduct. The Complaints Director's July

27, 2022 written submission stated that those costs were \$54,311.94 to June 29, 2022, which did not include the costs of the sanctions stage. The final costs could therefore exceed \$60,000.

The Complaints Director referred to *Dr. Ignacio Tan III v. Alberta Veterinary Medical Association*, 2022 ABCA 221, where the Alberta Court of Appeal affirmed previous case law that costs orders in professional discipline cases are discretionary with the discretion to be exercised judicially. Full indemnity costs should not be the default, nor should costs be determined through a mathematical calculation based on the number of proven allegations. Rather, the Hearing Tribunal should consider the parties' success or failure, the seriousness of the allegations, the conduct of the parties and the reasonableness of the amounts. Costs should not be ordered as a penalty. The Tribunal should also carefully scrutinize any proposed order for costs that would deliver a "crushing financial blow", as these types of costs orders may deny an investigated person a fair chance to dispute the allegations they face.

The Complaints Director then submitted that Ms. Sohrabirad has been found guilty of three out of the six alleged particulars of unprofessional conduct and misconduct. Each of those proven particulars was serious and demonstrated Ms. Sohrabirad's failure to meet the high standards of professional and ethical judgment expected of a pharmacist. Ms. Sohrabirad was entitled to defend herself, but her decision to contest the allegations resulted in two and a half days of hearings. There was no information that would suggest that an order requiring Ms. Sohrabirad to pay 50% of the investigation and hearing costs over 24 months would amount to a crushing financial blow.

Ms. Sohrabirad

Ms. Sohrabirad's October 1, 2022 written submission addressed the Complaints Director's sanctions submissions and made submissions of her own. The Hearing Tribunal has carefully considered these aspects of Ms. Sohrabirad's submissions. Ms. Sohrabirad also attempted to refute the Hearing Tribunal's findings decision and referred to pre-hearing without prejudice-type communications. The Hearing Tribunal's September 13, 2022 decision confirmed that we would not reconsider our June 27, 2022 merits decision or consider without prejudice-type correspondence between the parties in anticipation of possible agreements. This decision will therefore not address those matters.

Ms. Sohrabirad submitted that she has been practicing as a clinical pharmacist, pharmacy manager, pharmacy owner and consultant pharmacist since graduating in 2005. Prior to that she worked as a pharmacy intern. She emphasized her passion for the profession and her involvement in training students and interns as well as accolades she received from the University of Alberta Faculty of Pharmacy for these contributions.

Ms. Sohrabirad submitted that she had "always respected all regulations" in her pharmacy practice. She referred to Ms. Chisholm's April 13, 2022 letter enclosing the response from Ms. [REDACTED] of Alberta Health and explained that she had honestly but mistakenly believed that she was following the law in providing personal services through Rx to Beauty. The Hearing Tribunal considered Ms. Sohrabirad's assertion of an honest but mistaken belief that she was complying with the law, to be her acknowledgment that her conduct did not comply with legal and regulatory standards.

Ms. Sohrabirad submitted that Rx to Beauty no longer exists, having been merged into a different medi-spa. She said her Instagram page was revised to delete her business name, her degrees, and her credentials immediately upon learning of the College's concerns. Ms. Sohrabirad also submitted that she had never received any complaints about her personal services and had never caused harm to anyone in providing personal services. She characterized the Complaints Director's proposed sanctions as incredibly harsh and unjust as a result.

Ms. Sohrabirad submitted that she had an honest but mistaken belief that she was dealing with Botox Cosmetic and that it was not a Schedule 1 drug. She did not believe that she was advertising inducements for a Schedule 1 drug because she did not think that Botox Cosmetic was a Schedule 1 drug. She said that if the College had contacted her about Rx to Beauty she would have worked with the College to ensure her practice was up to standard.

Ms. Sohrabirad responded to the Complaints Director's proposed sanctions. She submitted that she could not afford the financial sanctions. She reminded the Tribunal that she could not afford a lawyer. She said that she is the only support for three families in Canada and overseas and is paying for her son's university education at the University of Alberta. She said she is also a part-time student herself at Athabasca University and the University of Alberta. She said that her company is in debt with \$60,000 in unpaid government loans and \$260,000 in outstanding private loans. She is also responsible for her mortgage and car loan. Ms. Sohrabirad said that suspending her license would cause a crushing financial blow as she has no one to help with her expenses.

Ms. Sohrabirad submitted that her services were provided outside of a pharmacy, and she had no history of complaints or misconduct over her 17 years of pharmacy practice. Revoking her APA and her ability to serve as a pharmacy owner, proprietor, or licensee for 3 years, and requiring her to notify future pharmacy employers or licensees of her sanctions would be unprecedented, irrelevant, disproportionate, and unfair. She said she had never ordered or stored a Schedule 1 drug outside of a pharmacy or abused or caused harm to anyone, so there was no need to prohibit her from serving as a pharmacy owner, proprietor, or licensee. She said she was not in possession of any "drugs" or "patient medical records" so she had nothing to transfer to a pharmacy.

Ms. Sohrabirad submitted that this case is novel. There were no prior cases to use as a reference and her practice represents a fairly new area for pharmacists. The College has not published guidance for the area. She submitted that the Hearing Tribunal should consider the nature and gravity of the proven allegations to be limited, with virtually no negative impacts on patients. The proposed sanctions were excessive. A reprimand, or alternatively a 1-month suspension to be held in abeyance should be imposed instead. Ms. Sohrabirad said that the College's "warning has served its purpose". She had taken action to remove the information from Instagram and changed her business name.

Ms. Sohrabirad submitted that the proposed fines should be ordered on a per allegation basis instead of a per particular basis, but with deductions for the unproven particulars. She submitted that fines of \$2,500 for each of allegation 1 and 2(b) would be reasonable for a total fine of \$5,000.

Ms. Sohrabirad then referred to several previous College discipline decisions that she said demonstrated that the Complaints Director's proposed sanctions would only be appropriate for more severe unprofessional conduct.

Ms. Sohrabirad suggested that in the 2019 case of *Rajeh Abu Zahra and the Alberta College of Pharmacy* the Hearing Tribunal imposed a 3-month suspension for knowingly dispensing type 1 triplicate prescription medications contrary to triplicate program requirements. The *Abu Zahra* case involved three findings of unprofessional conduct related to Mr. Abu Zahra's compliance with the triplicate prescription program. The Hearing Tribunal imposed a 3-month suspension, a requirement to complete the Ethics and Jurisprudence exam, a requirement to provide a copy of the Hearing Tribunal's decision to any pharmacy employer for 1 year, a 2-year prohibition on serving as a pharmacy owner, proprietor or licensee, a \$5,000 fine, and an order to pay all of the costs of the investigation and hearing.

Ms. Sohrabirad submitted that in the case of *E. Joyce Chen Pon and the Alberta College of Pharmacy*, the Hearing Tribunal imposed only a reprimand for operating an unlicensed pharmacy for 10 years. The decision sets out that Ms. Pon admitted and was found guilty of three allegations of unprofessional conduct relating to the operation of an unlicensed pharmacy. The Hearing Tribunal then accepted a joint submission on sanctions and imposed a reprimand, a \$10,000 fine, a prohibition on acting as a pharmacy proprietor or licensee for 1 year, and an order that Ms. Pon pay the costs of the investigation and hearing within 6 months.

Ms. Sohrabirad also referred to the 2016 case of *Curtis Crough and the Alberta College of Pharmacy*, where she said the Hearing Tribunal imposed only a reprimand for injecting multiple patients over a 9-year period without authorization. Mr. Crough had admitted the allegations in the Notice of Hearing and was found guilty of unprofessional conduct for injecting patients without authorization and without the required administration records. The Hearing Tribunal imposed a written reprimand, but also a fine of \$2,000, an order to ensure no further injections would be provided at his pharmacy without authorization, and an order to pay the costs of the investigation and hearing.

Finally, Ms. Sohrabirad suggested that in the 2017 case of *Pouran Manzouri and the Alberta College of Pharmacy*, the Hearing Tribunal imposed a 3-month suspension for stealing oxycodone and providing it to a third party thereby jeopardizing public safety. Ms. Manzouri was found guilty of two allegations of unprofessional conduct. The Tribunal did impose a 3-month suspension, but also an order that she notify any pharmacy employer or licensee of the Tribunal's decision for 5 years, a 5-year prohibition on serving as a pharmacy owner, proprietor or licensee, and an order to pay the costs of the investigation and hearing to a maximum of \$20,000.

In relation to the Complaints Director's proposed order for costs Ms. Sohrabirad suggested that the Complaints Director's submissions were not fair or transparent because they omitted to state the actual costs to date. The Complaints Director's submissions had stated that costs up to June 29, 2022 were \$54,311.94. Ms. Sohrabirad also referred us to cases on the Ontario College of Pharmacists' website that she said demonstrated that the College's costs are typically \$10,000 or less. She proposed that the order for costs be limited to a maximum of \$10,000. Ms. Sohrabirad did not provide copies of the cases for review.

Complaints Director’s Reply Submissions

In reply-submissions, the Complaints Director refuted Ms. Sohrabirad’s suggestion that the College has no clear regulations or standards applicable to pharmacists engaged in cosmetic injections. The Complaints Director referred to the Hearing Tribunal’s conclusion that the *Personal Services Regulation* and the *Pharmacy and Drug Act* were not inconsistent, and Ms. Sohrabirad was required to comply with both.

The Complaints Director expressed concern that despite the Hearing Tribunal’s merits decision, Ms. Sohrabirad maintained that Botox Cosmetic was not a Schedule 1 drug and not subject to the legal and regulatory requirements for Schedule 1 drugs. The Complaints Director submitted this continued disregard for the legislative framework highlighted the need for the proposed sanctions, particularly to deter Ms. Sohrabirad in the future.

The Complaints Director also referred to new corporate searches for Rx to Beauty and Ms. Sohrabirad’s history of past complaints. The Hearing Tribunal has not considered this evidence as it was not placed before us in the evidence phase of the hearing. The Complaints Director had mentioned that Ms. Sohrabirad received complaints in the past, but they were said to be unrelated and had been resolved. There was no evidence of the details of any previous complaints.

On the issue of costs, the Complaints Director submitted that as of October 11, 2022 the investigation and hearing costs had increased to \$59,475.50 reflecting additional time spent on the sanctions phase of the hearing. The Complaints Director distinguished cases from Ontario as falling under a different legislative structure and then referred to the Alberta Court of Appeal’s recently released decision in *Jinnah v. Alberta Dental Association & College*, 2022 ABCA 336.

The Complaints Director submitted that in *Jinnah*, the Court of Appeal adopted a new approach to costs in discipline proceedings under the *Health Professions Act*. Investigation and hearing costs may be ordered against a regulated member of the profession found guilty of “serious unprofessional conduct”, against serial offenders, against those who have failed to cooperate, or who engage in hearing misconduct. Serious unprofessional conduct includes the performance of professional services in a manner that is a marked departure from the ordinary standard of care. Serious unprofessional conduct may be found where the regulated member knew or should have known that their behaviour was completely unacceptable. The Complaints Director submitted that Ms. Sohrabirad’s conduct was a marked departure from what is expected of an Alberta pharmacist so she knew, or should have known, that her behaviour was unacceptable. That knowledge or deemed knowledge justifies an order for Ms. Sohrabirad to pay some of the investigation and hearing costs.

II. DECISION and REASONS

The Hearing Tribunal makes the following orders against Ms. Sohrabirad in this case:

1. Ms. Sohrabirad's practice permit shall be suspended for 2 months to be served on dates acceptable to the Complaints Director and completed within 3 months from the date that Ms. Sohrabirad receives this written decision.
2. Ms. Sohrabirad shall pay a fine of \$2,500 for Allegation 1(b), \$2,500 for Allegation 1(d) and \$1,500 for Allegation 2(b) for a cumulative fine of \$6,500 to be paid within 90 days of receiving this written decision.
3. Ms. Sohrabirad shall transfer any drugs or patient records she is currently storing outside of a pharmacy to a pharmacy within 30 days of receiving this written decision. For the purposes of this order, "drugs" means "drug" as defined in the *Pharmacy and Drug Act* and "patient records" means "patient records" under the College's Standards of Practice. Ms. Sohrabirad shall notify all individuals affected by the transfer of their patient records as to where their records shall be maintained within 30 days from the date she receives this written decision.
4. Ms. Sohrabirad's Additional Prescribing Authorization shall be revoked effective as of the date of this written decision and Ms. Sohrabirad shall be prohibited from re-applying for her APA for a period of one year from the date she receives this written decision.
5. Ms. Sohrabirad shall not be permitted to serve as the owner, proprietor or licensee of a pharmacy for 1 year from the date she receives the Hearing Tribunal's written decision.
6. Ms. Sohrabirad must complete the College's Licensee Education Program at her cost within 1 year from the date she receives the Hearing Tribunal's written decision.
7. Ms. Sohrabirad shall provide a copy of the Hearing Tribunal's written decision in this matter to any pharmacy employer or licensee to whom she applies to work or works as a pharmacist for 3 years, commencing on the date she receives the Hearing Tribunal's written decision.
8. Ms. Sohrabirad shall pay 25% of the costs of the investigation and hearing, in monthly payments acceptable to the Hearings Director, with payment in full to be made within 36 months of the date Ms. Sohrabirad receives a copy of the Hearing Tribunal's written decision.

Suspension

A 2-month suspension is a significant sanction. It is warranted to denounce Ms. Sohrabirad's proven unprofessional conduct and misconduct in this case and to deter Ms. Sohrabirad as well as other members of the profession. It demonstrates that compliance with legal and regulatory standards is a serious matter.

Ms. Sohrabirad maintained that she honestly believed she was complying with the law and that she could choose to ignore the strict requirements of the *Pharmacy and Drug Act* and the College's Standards of Practice for the storage, handling, dispensing and sale of Schedule 1 drugs. Ms. Sohrabirad said she believed she could choose to comply instead with the *Personal Service Regulation*. Ms. Sohrabirad may have believed this, but she was clearly wrong. Onobotulinum Toxin A, or Botox is a Schedule 1 drug, despite the existence of different DINs and packaging for Botox sold for cosmetic and therapeutic purposes. It is a simple matter for experienced pharmacists like Ms. Sohrabirad to determine how drugs are Scheduled and which legal and regulatory requirements apply. The legal and regulatory requirements applicable to Schedule 1 drugs 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 providers to access, if necessary. Choosing to ignore legal and regulatory requirements that exist to protect the public's health and safety is a marked departure from the expectations of regulated members of the College. It is a very serious matter and warrants a serious sanction.

Using prohibited inducements of time-limited pricing for Schedule 1 drug services undermines the public's need and ability to weigh the risks and benefits of using those drugs, which is particularly concerning when the services being offered are cosmetic and not medically necessary. Advertising Rx to Beauty and its cosmetic services along with Ms. Sohrabirad's registration with the College and her APA is also misleading to the public. Members of the public are not equipped to distinguish between regulated pharmacy services and unregulated cosmetic services. Together these findings also suggest a need for significant sanctions to maintain public confidence in the regulation of the pharmacy profession. If Ms. Sohrabirad's proven unprofessional conduct is not strongly sanctioned, then Ms. Sohrabirad and other pharmacists would not be adequately deterred from similar future conduct.

A 2-month suspension appropriately reflects the seriousness of ignoring the legal and regulatory requirements that regulated members of the College must meet regarding Schedule 1 drugs, using prohibited inducements, and misleading advertising. Ms. Sohrabirad's suggestion of a 1-month suspension held in abeyance would not adequately reflect the seriousness of her proven unprofessional conduct and misconduct.

Ms. Sohrabirad referred to the 2019 case of *Rajeh Abu Zahra and the Alberta College of Pharmacists* and suggested the conduct in that case was much more severe than her own. In the *Abu Zahra* case, the regulated member failed to comply with regulatory requirements, namely requirements of the triplicate prescription program and dispensed triplicate medications contrary to those requirements. Ms. Sohrabirad also failed to comply with requirements applicable to regulated drugs. Like Mr. Abu Zahra, her conduct was not an isolated incident. It occurred over a period of time. The Hearing Tribunal in the *Abu Zahra* case imposed a 3-month suspension, a requirement to complete the Ethics and Jurisprudence exam, a requirement to provide a copy of the Hearing Tribunal's decision to any pharmacy employer for 1 year, a 2-year prohibition on serving as a pharmacy owner, proprietor or licensee, a \$5,000 fine and an order to pay all of the costs of the investigation and hearing. We note that in the *Abu Zahra* case the suspension imposed was longer at 3 months. The *Abu Zahra* case does not demonstrate that the Complaints Director's proposed sanctions would be inappropriate.

Fines

For the reasons described above the Tribunal also believes that orders for Ms. Sohrabirad to pay fines are warranted. Section 82(1)(k) of the *Health Professions Act* provides that the Hearing Tribunal may direct Ms. Sohrabirad to pay a fine for each finding of unprofessional conduct, or an aggregate fine. Schedule 19, section 4 of the *Health Professions Act* provides that Column 3 of the unprofessional conduct fines table in section 158 of the *Health Professions Act* applies to the profession of pharmacy. The maximum fine for each finding of unprofessional conduct is \$10,000 and the maximum aggregate fine for all findings of unprofessional conduct arising from a hearing is \$50,000.

The Complaints Director proposed a \$5,000 fine for each proven particular for a total fine of \$15,000 payable within 90 days of this decision. Ms. Sohrabirad submitted that fines should be ordered on a per allegation basis instead of a per particular basis, but with deductions for the unproven particulars. She submitted that fines of \$2,500 for each of Allegation 1 and 2(b) would be reasonable for a total fine of \$5,000. The Hearing Tribunal considered the Complaints Director's proposed fines but considered them to be high. The Hearing Tribunal took into account Ms. Sohrabirad's submissions about her financial obligations and the previous discipline decisions she provided. The Tribunal determined that a fine of \$2,500 for each of allegation 1(b) and 1(d) would be appropriate. The Tribunal determined that a somewhat smaller fine of \$1,500 for Allegation 2(b) would also be appropriate for a cumulative fine of \$6,500. The fines must be paid within 90 days of Ms. Sohrabirad receiving this written decision.

Transfer of Drugs and Patient Records

The Complaints Director proposed a condition prohibiting Ms. Sohrabirad from ordering or storing drugs outside of a pharmacy and from storing patient records outside of a pharmacy. The Complaints Director acknowledged that the *Pharmacy and Drug Act* already prohibits this, so the condition is not strictly necessary. The Hearing Tribunal declines to impose an unnecessary order. While the condition may have had some educational and deterrent effects these purposes are adequately served by other orders.

The Hearing Tribunal orders Ms. Sohrabirad to transfer any "drugs" within the meaning of the *Pharmacy and Drug Act* and "patient records" with the meaning of the College's Standards of Practice that she is currently storing outside of a pharmacy to a licensed pharmacy within 30 days of Ms. Sohrabirad's receipt of this written decision. Ms. Sohrabirad submitted that she was not in possession of any drugs or patient records and had nothing to transfer, but she has also maintained that Botox Cosmetic is not a Schedule 1 drug and her customer records are not patient records. The Tribunal considered this order to be necessary to ensure proper regulatory oversight of any Schedule 1 drugs and the associated records in Ms. Sohrabirad's possession.

The Complaints Director also proposed that this order provide for Ms. Sohrabirad to notify all individuals affected by the transfer of their patient records as to where their records shall be maintained. The Hearing Tribunal so orders. If Ms. Sohrabirad has any patient records within the meaning of the College's Standards of Practice outside of a pharmacy, she must notify those patients of the transfer of their records and the location of the licensed pharmacy to which they

have been transferred within 30 days of her receipt of this decision. Patients must be aware of where their personal health information may be accessed.

Additional Prescribing Authorization

The Complaints Director proposed the revocation of Ms. Sohrabirad's APA. The APA is a privilege with the corresponding obligation to meet statutory and regulatory obligations. Ms. Sohrabirad referenced her APA in advertising Rx to Beauty, but she failed to meet her legal and regulatory obligations. Revoking her APA is a proportionate and justifiable sanction. In order to obtain her APA again Ms. Sohrabirad will have to repeat the educational requirements which will ensure her understanding of her legal and regulatory obligations.

Ms. Sohrabirad submitted that her impugned conduct occurred outside of a pharmacy and was unrelated to pharmacy practice. She also cited her lack of prior discipline history and submitted that she had never abused or harmed anyone so an order revoking her APA would be disproportionate, unprecedented, irrelevant, and unfair. The Hearing Tribunal disagreed. In her testimony Ms. Sohrabirad acknowledged the overlap in qualifications needed to obtain Schedule 1 drugs like Botox for medical use and the Botox she purchased for Rx to Beauty. She acknowledged that she served as the Medical Director for Rx to Beauty and that she was qualified for this by virtue of her registration with the College and her APA.

Ms. Sohrabirad acquired a Schedule 1 drug using her registration with the College and her APA and then sold and administered it to patients outside of a licensed pharmacy contrary to the *Pharmacy and Drug Act* and the College's Standards of Practice. Revoking Ms. Sohrabirad's APA so that she must re-apply and re-qualify for it, completing remedial education in the process, is not disproportionate, irrelevant or unfair.

Owner, Proprietor or Licensee and College Licensee Education Program

The Complaints Director submitted that Ms. Sohrabirad's demonstrated lack of understanding or unwillingness to meet her professional obligations justifies an order prohibiting her from serving as a pharmacy owner, proprietor or licensee for a period of 3 years. This period of time was suggested to allow Ms. Sohrabirad to demonstrate that she can conduct herself appropriately.

Ms. Sohrabirad submitted that this would also be disproportionate, unprecedented, irrelevant, and unfair. Her conduct did not occur in a pharmacy so there was no need to prohibit her from serving as a pharmacy owner, proprietor or licensee.

The Hearing Tribunal agrees that the prohibition is appropriate, but 3 years is longer than necessary for Ms. Sohrabirad to demonstrate the necessary knowledge. Ms. Sohrabirad's conduct did not occur in a licensed pharmacy, but that was the problem in Allegation 1(b). The Hearing Tribunal orders that Ms. Sohrabirad is prohibited from serving as a pharmacy owner, proprietor, or licensee for a period of 1 year from the date she receives a copy of this written decision. The Hearing Tribunal also orders Ms. Sohrabirad to complete the College's Licensee Education Program at her own cost within 1 year of receiving this written decision. This

program will require Ms. Sohrabirad to demonstrate her understanding of the legal and regulatory obligations applicable to scheduled drugs, records, and pharmacies.

Employer or Licensee Notification

The Complaints Director submitted that an order for Ms. Sohrabirad to notify any pharmacy employer or licensee of the Hearing Tribunal's decision for 3 years would ensure future employers and licensees are aware of Ms. Sohrabirad's past unprofessional conduct and misconduct and the need for oversight. Ms. Sohrabirad maintained that this would be irrelevant, disproportionate, and unfair.

The Hearing Tribunal makes this order. The Tribunal agrees that it is important for any pharmacy employer or licensee to be aware of this Hearing Tribunal's decision and the need for oversight. Ensuring future pharmacy employers or licensees are aware is not disproportionate, irrelevant or unfair.

Costs

The Complaints Director sought an order for Ms. Sohrabirad to pay 50% of the costs of the investigation and hearing, which were said to have reached \$59,475.50 as of October 11, 2022. Ms. Sohrabirad suggested that the costs be capped at \$10,000 based on summaries of cases she referenced from Ontario.

The Alberta Court of Appeal adopted a new approach to costs in discipline proceedings under the *Health Professions Act* in *Jinnah v. Alberta Dental Association & College*. In *Jinnah* the Court of Appeal held that the profession as a whole is presumed to bear the costs of investigations and hearings in most cases. Costs are not another penalty and should not be imposed as such. Costs orders are discretionary. Before making an order for costs the Tribunal should consider whether a costs order is warranted at all. If it is then the Tribunal should consider how to calculate an appropriate amount, what to include and whether all or only some of the included expenses should be ordered. The Tribunal must also consider whether the overall amount ordered is reasonable having regard to the success or failure of the parties, the seriousness of the allegations, and the conduct of the parties.

The Court held that it is generally inappropriate to require a disciplined health professional to pay a significant portion of the investigation and hearing costs without a compelling reason. A compelling reason will exist in four scenarios, including where the proven unprofessional conduct is serious. The Court gave examples of serious unprofessional conduct including a marked departure from the ordinary standard of care. The Court said that in those serious cases a Hearing Tribunal can justifiably order the disciplined professional to indemnify the College for all or a substantial portion of its expenses. The Court reasoned that in serious cases the disciplined professional must have known that their behaviour was unacceptable and would be unprofessional.

In describing another scenario in which a compelling reason would exist, where the professional is a serial offender, the Court differentiated between serious cases and other "not serious" cases in which "a small amount of costs – something less than twenty-five percent" might be justifiable.


The Hearing Tribunal has considered that the College and the profession as a whole should generally bear the costs of regulation. We have also considered that some of the allegations were not proven, and the profession should bear all of the costs relating to those allegations.

The Hearing Tribunal considered the seriousness of the proven allegations. Ms. Sohrabirad's proven unprofessional conduct and misconduct was a marked departure from the expectations of regulated Alberta pharmacists. She ignored clear legal and regulatory requirements that applied to her and her use of Schedule 1 drugs. She advertised inducements contrary to the Code of Ethics, and she advertised referring to her registration and her APA in a misleading way, contrary to the *Health Professions Act*. Whether or not she believed that she could do this, she should have known that she was wrong. Her conduct was serious and represents a compelling reason to order that she pay some of the costs of the investigation and hearing.

The Hearing Tribunal has also considered Ms. Sohrabirad's submissions as to her financial circumstances. Ms. Sohrabirad did not introduce evidence of her actual financial circumstances at the sanctions phase, but the Tribunal accepts that the suspension, fines and any costs order will have a significant financial impact. Taking all these factors into account the Tribunal decided to order that Ms. Sohrabirad pay a relatively small portion of the investigation and hearing costs at 25%. The Hearing Tribunal was not provided with a breakdown of the costs incurred to date or their amounts, so we are not in a position to assess what is reasonable to include and the reasonableness of those amounts. The Hearing Tribunal understands that the College incurred costs of \$59,475.50 to October 11, 2022 but that the final costs tally will be somewhat higher once the full costs of the sanctions phase are included. The Tribunal feels that 25% of this final sum will be a reasonable amount for Ms. Sohrabirad to pay.

The Complaints Director proposed that Ms. Sohrabirad make monthly payments as directed by the Hearings Director with the costs to be paid in full within 24 months. To ease the financial burden of the costs order the Hearing Tribunal has chosen a period of 36 months from the date that Ms. Sohrabirad receives this written decision.

Signed by the Chairperson on behalf of the Hearing Tribunal on January 18, 2023.


Anita McDonald (Jan 18, 2023 16:05 MST)

Anita McDonald,
Pharmacist, Chairperson