

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING
REGARDING THE CONDUCT OF

BERNADETTE GALANG

Registration number: 7355

DECISION OF THE HEARING TRIBUNAL

December 19, 2022

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Bernadette Galang (“Ms. Galang”) on November 23, 2022. In attendance on behalf of the Hearing Tribunal were: Kevin Kowalchuk (pharmacist and chair), Gillian Hansen Schmidt (pharmacist), Sarita Dighe-Bramwell (public member) and Vince Paniak (public member). Maya Gordon acted as independent counsel to the Hearing Tribunal.

The hearing took place on November 23, 2022 by way of video-conference. The hearing was held under the terms of Part 4 of the *Health Professions Act*, RSA 2000, c. H-7 (“the *HPA*”).

In attendance at the hearing were Annabritt Chisholm (“Ms. Chisholm”) representing the Complaints Director of the Alberta College of Pharmacy (“College”), along with Monica Tran, a lawyer in Ms. Chisholm’s office; James Krempien, Complaints Director for the College; Ms. Galang, and her counsel Taryn Burnett (“Ms. Burnett”), accompanied by Sarah Aaron, an associate in her office.

Margaret Morley (“Ms. Morley”), Hearings Director for the College was also present. Ms. Morley did not participate in the hearing but was available to assist in administering the virtual hearing. There was also a Court Reporter, Terry Reid, who was present.

There were no objections to the composition of the hearing tribunal or the jurisdiction of the hearing tribunal to proceed with a hearing. The parties did jointly request that the names of third parties be initialized in the transcript and in the written decision.

II. ALLEGATIONS

The Hearing Tribunal held a hearing to inquire into the following allegations with respect to Ms. Galang (“the Allegations”), as set out in the Amended Notice of Hearing, which was entered as Exhibit 1, at Tab 1:

IT IS ALLEGED THAT, between June 26, 2020 and June 18, 2021, while you were a registered Alberta pharmacist and an owner and the proprietor’s representative of The Medicine Shoppe #416 (ACP Licence #3909) (the “Pharmacy”), you:

1. Directed or permitted the creation or operation of a system whereby the Pharmacy failed to employ the requisite number of staff with the training and qualifications to provide safe and effective pharmacy services such that on Fridays, one or more of the following occurred:
 - a. the Pharmacy was at times open to the public without a pharmacist present;

- b. one or more unregulated employees of the Pharmacy were scheduled to and did attend at the Pharmacy to perform pharmacy services and restricted activities without a pharmacist present;
 - c. [REDACTED] a registered pharmacist, attended the Pharmacy to perform checks and assessments required to be done by a pharmacist although [REDACTED] was not employed by the Pharmacy, did not document the professional services he provided at the Pharmacy, and did not have access to Kroll software at the Pharmacy;
 - d. pharmacy services were performed at the Pharmacy on a day that falls outside of the Pharmacy's hours of operation provided to the Alberta College of Pharmacy;
2. [REDACTED] Pharmacy and [REDACTED] Allowed your professional judgment to be impaired by commercial benefits when you directed or permitted the Pharmacy to open on Fridays, outside of the hours of operation provided to the Alberta College of Pharmacy and without a registered pharmacist being scheduled at the Pharmacy to prevent patients from calling [REDACTED] while the Pharmacy was closed;
 3. Knew or should have known that the licensee of the Pharmacy or yourself acting in an unofficial capacity as the pharmacist in charge of the Pharmacy, failed to provide appropriate supervision to the Pharmacy's unregulated employees, [REDACTED] and [REDACTED] such that:
 - a. [REDACTED] and [REDACTED] were permitted to carry out restricted activities without a regulated member present or scheduled to be present, including:
 - i. preparing prescriptions;
 - ii. providing prepared prescriptions to patients;
 - iii. accessing and disclosing health information;
 - iv. creating and maintaining patient records; and
 - v. securing drugs;
 - b. [REDACTED] and [REDACTED] had unsupervised access to patient health information;
 4. Failed to ensure the Pharmacy had security systems and procedures to prevent unauthorized individuals from obtaining access to drugs or patient information such that the Pharmacy did not have a security system that was independent from the other tenants on the shared premises.

IT IS ALLEGED THAT your conduct in these matters:

- a. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy owner and proprietor;

- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession;
- d. Created the potential for patient harm; and
- e. Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and pharmacy owner and proprietor.

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

- Sections 11(2)(c) and 11(2)(d) of the *Pharmacy and Drug Act*;
- Standards 2.3 and 14.2 of the Standards for the Operation of Licensed Pharmacies;
- Sections 23(1)(d), 23(1)(e), 23(1)(f), 23(2)(d), 23(1)(e)(i), 23(1)(e)(ii), 23(2)(f) and 23(2)(g) of the *Pharmacists and Pharmacy Technicians Profession Regulation*;
- Standards 1 (sub-sections 1.1, 1.2 and 1.15) and 20 (sub-sections 20.6 and 20.7) of the Standards of Practice for Pharmacists and Pharmacy Technicians; and
- Principles 1(1), 1(2), 1(12), 7(2), 7(3) [and] 10(1) ~~and 10(9)~~ of the Alberta College of Pharmacy's Code of Ethics;

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 misconduct pursuant to the provisions of sections 1(1)(p)(i), 1(1)(p)(ii) 1(1)(p)(vi), and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

Ms. Chisholm advised that the Complaints Director was withdrawing the allegation that Ms. Galang breached provision 10(9) of the Alberta College of Pharmacy's Code of Ethics ("Code of Ethics"), which is why it is struck out above.

The hearing proceeded by Admission of Unprofessional Conduct, an Agreed Statement of Facts, and a Joint Submission on Sanction.

Through the Admission of Unprofessional Conduct, Ms. Galang admitted the Allegations set out above, subject to the Complaints Director's withdrawal the allegation that she breached Principle 10(9) of the Code of Ethics. For clarity, Ms. Galang did not admit her conduct constituted a breach of Principle 10(9) of the Code of Ethics.

III. PRELIMINARY MATTERS

There were no preliminary matters put to the Hearing Tribunal.

IV. **EVIDENCE**

Agreed Statement of Facts

No witnesses were called to give testimony and evidence was entered by way of an Agreed Statement of Facts, which was entered as Tab 3 of Exhibit 1.

Ms. Chisholm went through the Agreed Statement of Facts for the Hearing Tribunal where Ms. Galang acknowledged and admitted to the Allegations in the Amended Notice of Hearing.

In addition to the Agreed Statement of Facts, Ms. Chisholm noted that there was also Exhibits A, B, and C which contained documents underlying the Allegations. These documents were also provided to the Hearing Tribunal.

Ms. Chisholm noted that Ms. Galang has no previous unprofessional findings against her, and that she has complied with the remediation efforts through subsequent audits at the pharmacy.

Ms. Burnett was afforded a response, and simply echoed what Ms. Chisholm had submitted, and noted Ms. Galang's continued cooperation in the investigation and admissions underlying this matter.

Admission of Unprofessional Conduct

In Exhibit 1, Tab 2, Ms. Galang has provided an Admission of Unprofessional Conduct ("the Admission"). The Hearing Tribunal must decide whether to accept the Admission in whole or in part, per the *HPA*.

In her submissions, Ms. Chisholm went through the Admission in detail for the Hearing Tribunal. She noted that this is a complete admission to the Allegations in the Amended Notice of Hearing.

Ms. Galang agreed that:

- her conduct in these matters have breached her statutory and regulatory obligations to the Alberta College of Pharmacy as both an Alberta pharmacist and as the pharmacy owner and proprietor,
- her conduct undermined the integrity of the profession, decreased the public's trust in the profession, and created the potential for patient harm,
- she failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and a pharmacy owner and proprietor,

- she agrees and acknowledges that her conduct breached sections of the statutes and the standards and the principles of the Code of Ethics that would govern the profession as they are set out in the Amended Notice of Hearing.

Ms. Chisholm added that, as confirmed in the Admission, Ms. Galang confirmed that she had received legal advice in the admission, and that if the Hearing Tribunal agrees to accept her admission, the Hearing Tribunal may proceed to issue one or more of the orders set out in section 82(1) of the *HPA*. In the admission, it was noted that there was a typographical error in referencing 82(2) in the Admission, but it was intended to be 82(1).

V. **SUBMISSIONS REGARDING MERIT**

Submissions on Behalf of the Complaints Director as to Merit

Ms. Chisholm began with the opening statement of the College. She advised that in Exhibit 1, there is the Amended Notice of Hearing, an Admission of Unprofessional Conduct, and an Agreed Statement of Facts.

Ms. Galang is a registered member of the College who is the owner and proprietor of The Medicine Shoppe #416 (“the Pharmacy”) who operates in Gleichen, Alberta.

Ms. Chisholm went through the Allegations, which are cited above in full. Ms. Chisholm confirmed the parties have worked together to create an Agreed Statement of Facts. The parties jointly are putting forth an Agreed Statement of Facts, and a joint submission on unprofessional conduct.

As the Hearing Tribunal, the role is to determine that the Allegations were proven in fact, on a balance of probabilities. If the Hearing Tribunal is satisfied, it must consider whether it constitutes unprofessional conduct under the *Health Professions Act* and/or misconduct under the *Pharmacy and Drug Act*.

Submissions on Behalf of Ms. Galang as to Merit

Ms. Burnett noted that they were proceeding today by way of a joint submission, and a significant effort has been spent in getting that joint admission before the Hearing Tribunal to prevent a contested hearing.

Ms. Galang has cooperated throughout the investigation and in the steps leading up to the hearing. With that, the parties opted to proceed with the evidence of the hearing.

VI. FINDINGS REGARDING MERIT

Facts

After hearing from both parties and being given time to review the Agreed Statement of Facts, the Admission, and the documents contained in Exhibit 1, the Hearing Tribunal accepts the following facts, on a balance of probabilities, which were admitted by Ms. Galang:

- I. At all relevant times, Ms. Galang was a registered member of the College on the clinical pharmacist register and was a staff pharmacist and the owner and proprietor's representative at The Medicine Shoppe #416 (ACP Licence #3909) (the "Pharmacy") in Gleichen, Alberta.
- II. Between April 7, 2021 and April 20, 2021, Ms. Galang was the sole pharmacist registered as practicing at the Pharmacy.
- III. ■■■ was never registered as a staff pharmacist at the Pharmacy but is a registered member of the College on the clinical pharmacist register and the licensee at a pharmacy in ■■■ Alberta.
- IV. On May 11, 2021, the Complaints Director received a report from Kerri O'Kane, acting in her capacity as a Professional Practice Consultant for the College, regarding information she had gathered from a former licensee of the Pharmacy and inspections she had conducted at the Pharmacy on April 13, 2021 and April 30, 2021.
- V. Ms. O'Kane's report stated that:
 - a. On Friday, March 26, 2021, ■■■ the then licensee of the Pharmacy, went to the Pharmacy and found the Pharmacy open to the public and staffed by an unsupervised pharmacy assistant. ■■■ was advised that ■■■ would come in to sign off on emergency prescriptions if need be.
 - b. During her tenure as licensee, ■■■ requested more hours at the Pharmacy. Ms. Galang denied ■■■'s request and ■■■ was only scheduled to work at the Pharmacy two days a week.
 - c. On April 13, 2021, Ms. O'Kane conducted a routine inspection of the Pharmacy. At this inspection, Ms. O'Kane observed that:
 - i. the Pharmacy did not have an independent security system from other tenants on the shared premises; and

- X. On May 13, 2021, Ms. O’Kane sent the Complaints Director copies of email correspondence between her and [REDACTED] and between [REDACTED] and Ms. Galang dated between March 31, 2021, and April 30, 2021. In this correspondence, [REDACTED] indicated:
- a. The Pharmacy was open to the public for pick up and emergency filling on Fridays, although she and the College were told it was closed.
 - b. Ms. Galang told [REDACTED] she is keeping an eye on the Pharmacy by Team Viewer and cameras.
 - c. Ms. Galang sent [REDACTED] an email in which she stated that she only has an assistant on Friday to answer calls because, when nobody is in the Pharmacy to answer calls, patients call [REDACTED] Pharmacy and [REDACTED] and the following Monday, the Pharmacy receives requests to transfer prescriptions.
 - d. [REDACTED] a pharmacy assistant at the Pharmacy, was using adaptations instead of extensions and was renewing prescriptions under [REDACTED]’s name even though there was a refill from an older prescription.
 - e. On Friday March 26, 2021, [REDACTED] found [REDACTED] taking a verbal order from a doctor.
 - f. [REDACTED] and [REDACTED] were both using Ms. Galang’s account in Kroll to create and maintain patient records.
- XI. On May 13, 2021, the Complaints Director spoke with Ms. Galang. The Complaints Director summarized the complaints process and next steps. Ms. Galang indicated that she had no questions about the investigation or complaints process during that time. On that same day, the Complaints Director provided Ms. Galang with a letter summarizing the information he had compiled and requested a written response to the complaint.
- XII. On June 7, 2021, the Complaints Director received correspondence from Ms. Galang attaching her written response to the investigation, dated June 5, 2021. In her written response, Ms. Galang stated:
- a. Because the Pharmacy would be inundated on Mondays with numerous faxes received on Fridays, Ms. Galang hired a pharmacy assistant on Fridays to field calls.
 - b. The pharmacy assistant only answered calls from patients and filled and billed blister packs.
 - c. [REDACTED] was readily available to attend at the Pharmacy when required and to provide supervision to pharmacy assistants. [REDACTED] was available for emergency

prescriptions on the very rare occasion that the physician attended the clinic on Fridays.

XIII. On Friday June 18, 2021, investigator Ashley Young visited the Pharmacy. Ms. Young confirmed that:

- a. The main door of the Pharmacy was open for any person passing by to enter, and the Pharmacy was open to the public. The front door of the pharmacy hours for Friday were displayed as “Closed”.
- b. When Ms. Young entered the Pharmacy, Female #1 was the only staff member visible. Female #1 was on the phone.
- c. When Ms. Young asked whether she could obtain a refill for her medication, Female #1 went to get the pharmacist. Ms. Young could hear Female #1 explaining the situation to an unidentified person, who stated that if the prescription were an emergency, it could be filled.
- d. Female #1 returned with Female #2 who stated that the Pharmacy was technically closed and that they could get in trouble from the College.
- e. When asked, Female #1 and Female #2 advised that they were doing COVID vaccinations that day by appointment only.

XIV. On June 23, 2021, Ms. Young spoke with [REDACTED] During the conversation, [REDACTED] indicated that:

- a. [REDACTED] was the pharmacy assistant usually at the Pharmacy on Fridays.
- b. Once the pharmacist is logged into Netcare or Kroll, the assistant can access patient records as required and provide information to the shared premises clinic when needed.
- c. New pharmacists were at the Pharmacy on Fridays to do COVID vaccinations.
- d. She no longer processed the adaptation and then had the pharmacist sign afterwards. She did not indicate when this changed.
- e. She does not work at the Pharmacy with no pharmacist present as there is “now always a pharmacist doing injections.” She did not indicate when this changed.

XV. On June 25, 2021, Ms. Young spoke with [REDACTED] During the conversation, [REDACTED] indicated that:

- a. On Fridays, the doctor will call [REDACTED] for emergency prescriptions. It is quite rare to have emergency medication. [REDACTED] will fill and bill the medication at the

█████ pharmacy, and that, in most situations, patients are fine to drive the ten minutes to the █████ pharmacy to pick up their medications on Friday.

- b. █████ does not work at the Pharmacy daily. █████ is a “backup” pharmacist.
- c. The phone calls to the Pharmacy from the physician are one of the main reasons that a pharmacy assistant is scheduled to be at the Pharmacy on some Fridays. The pharmacy assistant will organize prescription papers faxed into the Pharmacy on Fridays and put notes on the papers indicating that they need to be prepared on Monday. The pharmacy assistant will get blister packs ready and print the labels from Kroll.
- d. █████ opens Kroll for the pharmacy assistant and then the assistant logs in. Sometimes, the necessary information is printed the day prior for the assistant. Ms. Galang has remote access to Kroll.
- e. █████ cannot access Kroll at the Pharmacy.

XVI. On June 29, 2021, Ms. Young spoke with Ms. Galang. During the conversation, Ms. Galang indicated that:

- a. When she realized that there were calls and faxes coming into the Pharmacy on Fridays, she scheduled an assistant to manage this. When calls on Friday reduced, Ms. Galang advised █████ to fill and bill blister packs, and Ms. Galang would check the blister packs on Monday.
- b. On Fridays, the assistant was instructed to leave the Pharmacy entrance closed and locked, except that the assistant would open the door to allow █████ to come transfer stock.
- c. The assistant was to advise all people calling that they were to pick up medications on Monday.
- d. Starting May 2021, COVID shots were done on Fridays. Patients with appointments and patients who walked in for their first dose were able to access the Pharmacy.
- e. For adaptations, the assistant will ask the patient if the patient has a follow up with the doctor, and if the patient does not, then the assistant would alert the pharmacist. Ms. Galang would assess the patient and document the adaptation. For extensions, the assistant will ask Ms. Galang whether she was okay with an extension. Ms. Galang could log into Team Viewer remotely and complete the adaptation or extension as needed.

XVII. On July 4, 2021, Ms. Young spoke with █████ During the conversation, █████ indicated that:

- a. She worked at the Pharmacy on Fridays to pick up calls from patients, but she did not fill prescriptions. She would tell patients that they had to pick up their prescriptions on Monday.
- b. Sometimes she forgets to close the door to the Pharmacy.
- c. If a regular blister pack patient ran out of refills and the blister pack still needed to be prepared, she would call Ms. Galang and Ms. Galang would instruct her to print a refill prescription request to provide to the doctor. Ms. Galang would log into Team Viewer and do a prescription extension for these patients.

XVIII. On July 9, 2021, Ms. Young spoke with Ms. O’Kane. During the conversation, Ms. O’Kane indicated that:

- a. At the time of her visit, the pharmacy assistant would process the prescription and request that [REDACTED] attend the Pharmacy to check the prescription. [REDACTED] would leave the [REDACTED] Pharmacy and travel to the Pharmacy to check emergency prescriptions. [REDACTED] would remain at the Pharmacy when the medications were given out.
- b. She was told that, if a patient was counselled “ahead of time,” they were able to pick up a prescription on a Friday.
- c. The pharmacy assistants were told by Ms. Galang that the Pharmacy needed to be opened on Fridays to provide medication information to the physicians.
- d. On Friday, April 30, 2021, there was no receptionist at the front desk at the medical clinic on the shared premises when Ms. O’Kane accessed the Pharmacy, which was unlocked and open to the public.

XIX. On July 13, 2021, Ms. Young spoke with [REDACTED]. During the conversation [REDACTED] indicated that:

- a. When [REDACTED] asked Ms. Galang why prescriptions were processed on Fridays, Ms. Galang told her that [REDACTED] was billing blister packs on Fridays.
- b. [REDACTED] attended the Pharmacy on a Friday and observed patients picking up medications. When [REDACTED] asked [REDACTED] about this, [REDACTED] advised that [REDACTED] was coming to the Pharmacy to check medications as needed on Fridays.
- c. There was only one level of access for users in Kroll and this was the “Manager” level of access. The “Manager” level of access in Kroll allowed access to change inventory levels and to change patient information. There were no restrictions on Kroll system access with the Manager level. The pharmacy assistants did not have their own unique logins; they would login under Ms.

Galang's account or ask ■ to login and use the computer after she had logged in. ■ used Ms. Galang's login credentials.

- XX. Ms. Galang has no prior findings of unprofessional conduct against her.
- XXI. As far as the Complaints Director is aware, Ms. Galang cooperated with follow up audits and took the necessary steps to bring the Pharmacy into compliance.
- XXII. Ms. Galang acknowledges that she has received legal advice prior to entering the Agreed Statement of Facts and that she understood that the Hearing Tribunal may use this Agreed Statement of Facts as proof of the allegations set out in the Notice of Hearing.

Unprofessional Conduct

The Hearing Tribunal finds that the conduct admitted to amounts to unprofessional conduct as defined in s. 1(1)(pp) of the *HPA*, which includes the following:

- (pp) "unprofessional conduct" means one or more of the following, whether or not it is disgraceful or dishonourable:
 - (i) displaying a lack of knowledge of or lack of skill or judgment in the provision of professional services;
 - (ii) contravention of this Act, a code of ethics or standards of practice;
 - (iii) contravention of another enactment that applies to the profession;
 - (xii) conduct that harms the integrity of the regulated profession;

The Hearing Tribunal finds that the facts found, as expressed above, do constitute unprofessional conduct.

In her signed Admission of Unprofessional Conduct, Ms. Galang agreed and acknowledged that her conduct in these matters:

- Breached her statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy owner and proprietor;
- Undermined the integrity of the profession;
- Decreased the public's trust in the profession;
- Created the potential for patient harm; and

- Failed to exercise the professional and ethical judgment expected and required of an Alberta pharmacist and pharmacy owner and proprietor.

Ms. Galang demonstrated a lack of knowledge, skill, and judgment in the provision of professional services. Her conduct demonstrated a lack of judgment when she allowed the Pharmacy to operate in breach of the requirements relating to pharmacies, by failing to employ the requisite number of staff with the training and qualifications to provide safe and effective pharmacy services. This was a lack of judgment because it could have put the public at risk due to the lack of appropriate supervision and pharmaceutical knowledge during the hours when a pharmacist was not present. In addition, there was a failure of supervision of the Pharmacy's unregulated employees, including the allowance of carrying out restricted activities, which demonstrated a clear lack of knowledge and/or judgment.

In addition, the Hearing Tribunal agrees with both parties that the conduct constitutes breaches of the following statutes and standards governing the profession of pharmacy, which were expressly acknowledged as breached by Ms. Galang in her signed Admission of Unprofessional Conduct:

- Sections 11(2)(c) and 11(2)(d) of the *Pharmacy and Drug Act*;
- Standards 2.3 and 14.2 of the Standards for the Operation of Licensed Pharmacies;
- Sections 23(1)(d), 23(1)(e), 23(1)(f), 23(2)(d), 23(1)(e)(i), 23(1)(e)(ii) 23(2)(f) and 23(2)(g) of the Pharmacists and Pharmacy Technicians Profession Regulation;
- Standards 1 (sub-sections 1.1, 1.2 and 1.15) and 20 (sub-sections 20.6 and 20.7) of the Standards of Practice for Pharmacists and Pharmacy Technicians; and
- Principles 1(1), 1(2), 1(12), 7(2), 7(3) and 10(1) of the Alberta College of Pharmacy's Code of Ethics.

Finally, Ms. Galang's conduct also undermined the integrity of the profession because the public expects that pharmacies in operation in Alberta will be run in accordance with the applicable legislation, Standards, and Code of Ethics. Members of the public hold this expectation because pharmacies carry controlled substances and other items which could potentially be harmful and must be subject to the appropriate supervision and control. By failing to operate the Pharmacy properly, including by failure of supervision, issues with having a regulated member present at the required times, and by failing to have a security system in place to prevent unauthorized individuals from accessing drugs or patient information, Ms. Galang potentially jeopardized the integrity of the profession.

As such, the Hearing Tribunal finds that Ms. Galang is guilty of unprofessional conduct as defined by the *Health Professions Act*. Her conduct demonstrated a lack of knowledge, skill, and judgment in the provision of professional services. Her conduct was a contravention of the Code of Ethics, the Standards for Pharmacists and Pharmacy Technicians and the Standards for the Operation of Licensed Pharmacies, all applicable to her profession. Ms. Galang is also guilty of misconduct as defined by the *Pharmacy and Drug Act*. Her actions undermined the integrity of the profession.

VII. SUBMISSIONS ON SANCTIONS

Submissions on Behalf of the Complaints Director as to Sanction

As an initial matter, the parties submitted a document entitled “Joint Submission on Sanction” as Exhibit 2. It was entered as such.

Ms. Chisholm went through the joint submission on sanction, which included the following proposals:

1. Ms. Galang’s practice permit shall be suspended for 3 months, with 1 month to be served on dates acceptable to the Complaints Director and starting within 30 days of the date she receives a copy of the Hearing Tribunal’s written decision. The remaining 2 months shall be held in abeyance pending the completion of Order 2.
2. Ms. Galang shall, at her own expense, complete and provide the Complaints Director with evidence that she has successfully completed Part A of the ACP’s Licensee Education Program within 3 months from the date of the Hearing Tribunal’s written decision.
3. If Ms. Galang fails to complete Order 2, she shall be prohibited from being an owner, proprietor, or licensee of a pharmacy until such time as she completes Part A of the ACP’s Licensee Education Program.
4. Ms. Galang shall pay a total fine of \$6,000, to be paid within 90 days from the date Ms. Galang receives a copy of the Hearing Tribunal’s written decision.
5. Ms. Galang shall pay 50% of costs of the investigation and hearing to a maximum of \$10,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months of the date Ms. Galang receives a copy of the Hearing Tribunal’s written decision.

Ms. Chisholm went over the sentencing principles applicable to this case. She pointed to the text on the Regulation of Professions on the four purposes of sanctions:

- i. Protection of public;
- ii. Maintaining the integrity of the profession;

- iii. Fairness to the member; and
- iv. Deterrence.

In addition, she provided the *Jaswal* factors, which comes from the case of *Jaswal v. Medical Board of Newfoundland* (1996) 42 Admin L.R. (2d) 233 (Nfld. T.D.) which can assist a Hearing Tribunal in assessing a sanction in each particular case.

In this case, she made the following submissions on each of the *Jaswal* factors:

1. **The nature and gravity of the proven allegations:** Ms. Galang has acted as an owner and proprietor of a pharmacy, as well as a staff member. She failed to provide appropriate supervision and created circumstances where unregulated individuals were operating in the pharmacy without appropriate supervision, as well as leaving the pharmacy open to the public, creating security issues. Pharmacists and Pharmacy Owners cannot do these actions. The College takes these requirements seriously and it is the Complaints Director's position that it is serious misconduct, although it is not the *most* unprofessional conduct.
2. **Age and experience of the offending member:** Ms. Galang has been a regulated member since 2005. She is the owner and proprietor of the pharmacy in Gleichen, Alberta.
3. **Previous character of the member (presence or absence of any prior complaints or convictions):** Ms. Galang has no prior findings of unprofessional conduct. This factor is important, as then there would be more severe sanctions being put forth by the Complaints Director.
4. **Age and mental condition of the offended patient:** In this case, patients were not detrimentally affected, but there was the potential for patient harm due to the lack of supervision and the actions taken by unregulated individuals working in the pharmacy.
5. **The number of times the offence was proven to have occurred:** There was a pattern of repeated conduct. In para 5(e) of the Agreed Statement of Facts, the Pharmacy's daily and monthly totals for the years of 2020 and 2021, which showed that the Pharmacy consistently processed prescriptions on Fridays, between July 2020 and March 2021. Unsupervised practice by unregulated employees was occurring over an extended period of time.
6. **Role of the factor in acknowledging what had occurred:** This is a mitigating factor. Ms. Galang cooperated with the investigation, she admitted her conduct and she signed an Agreed Statement of Facts. By signing the joint submission on sanctions, Ms. Galang also acknowledges and accepts the sanctions proposed by Complaints Director.
7. **Whether member has suffered financial or other serious penalties:** Ms. Burnett was given an opportunity to speak to this factor however no evidence was put before

the Hearing Tribunal that Ms. Galang has suffered any penalties in relation to these Allegations, financial or otherwise.

8. **Impact on offended patient:** There is no evidence of any affected patients in this case.
9. **The presence or absence of any mitigating circumstances:** Ms. Galang acknowledged and formally admitted to her conduct during this hearing, which demonstrates that she understands the issues that arose in this hearing and why the conduct was not acceptable. It shows a level of accountability and responsibility for her actions.
10. **The need to promote specific and general deterrence and, thereby, to protect the public and ensure safe and proper practice:** The proposed sanctions are significant enough to impress upon Ms. Galang that she must not repeat this conduct. As proposed, the sanctions will also send a message to other members of the profession that this conduct is unacceptable to the Hearing Tribunal, and the College.
11. **Need to maintain the public confidence and integrity of the profession:** Self-regulation is a responsibility and a privilege. These proceedings must have the effect of sending a clear message to legislators and the public, that the College takes its legislation and standards seriously, and that the standards will be enforced. In this case, it is clear that the conduct of Ms. Galang was not appropriate, and the sanctions reflect that. In the proposed sanctions, Order 2 requires the completion of the College's Licensee Education Program. After completing that course, Ms. Galang will need to ensure that she has the knowledge to ensure that her conduct is in accordance with the legislative scheme. In addition, the joint submission should provide confidence to the public that Ms. Galang will operate her pharmacies in accordance with the applicable requirements, moving forward. And if she fails, she is prohibited from being the owner, proprietor or licensee until she completes the program.
12. **Degree to which the conduct falls outside the range of permitted conduct:** As noted above, this is not the most serious conduct that could occur, but the College takes this misconduct very seriously.
13. **Range of sentences in other similar cases:** The Joint Exhibit Book on Sanction included two cases with similar complaints where the sanctions are comparable to the ones being proposed here, allowing for some differences in the facts.
 - a. In the case of Ms. Joyce Chen Pon, the allegations in that case included that she owned and operated an unlicensed pharmacy, with various other allegations relating to that. In that case, which was from 2015, Ms. Pon received a fine of \$10,000, a reprimand, a restriction for 1 year that she not act as a licensee or proprietor, and she must pay the costs of the investigation and hearing within 6 months. This case involved a longer period of misconduct, but included similar sanction

requests, such as asking for a suspension. In this case, no issues that have arisen with regard to her pharmacy that she is a licensee.

- b. In the case of Mr. Osazuwa Kester Edomwonyi – in this case, the pharmacist was an owner and proprietor of a pharmacy that was failing to provide appropriate supervision on an unregulated employee, who was, among other things, administering injections without authorization. In this case, the individual received a 3 month suspension, fine of \$2,500, had to provide the decision to any employer or licensee, and payment of costs of the hearing to a maximum of \$10,000.00.

In this case, on the matter of costs, the Complaints Director is seeking that only part of the costs of the investigation and hearing be paid. The total costs could be up to \$30,000, but the Complaints Director is only seeking that 50% of the costs be paid, up to maximum of \$10,000, to be paid within 24 months of the date of Ms. Galang receiving a copy of the Hearing Tribunal's written decision.

Ms. Chisholm then advised that when it comes to joint submissions on sanction, the Supreme Court of Canada's decision in *R. v. Anthony Cook*, 2016 SCC 43, where the Court confirmed that the correct test "is whether the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest." If neither of those tests are met, the Hearing Tribunal must exercise a very high level of deference to the joint submission of the parties.

If the Hearing Tribunal wishes to alter the joint submission on sanction in any way, the *Timothy Edward Bradley v. Ontario College of Teachers*, 2021 ONSC 2303 case suggests that the Hearing Tribunal would be required to come back to the parties with the proposed alteration, to allow both parties to make submissions on it, prior to making such an order.

To conclude, in the submission of the Complaints Director, the proposed sanction meets the four purposes of sentencing, and it also meets the public interest test. The sanctions are serious enough to create deterrence, to protect the public, and to maintain the integrity of the profession, going forward.

Submissions on Behalf of Ms. Galang as to Sanction

Ms. Burnett was provided with an opportunity to respond.

She noted that Ms. Galang has been a regulated member of the College for a number of years and has no previous disciplinary actions. These actions were not a trend, it was a one-time circumstance. In addition, there is no evidence before the Hearing Tribunal of any actual complaints of harm from the public, just the potential of harm. Ms. Burnett also highlighted that Ms. Galang has made the admission demonstrating not only that she is taking full responsibility for her actions, but it has also obviated the necessity for a lengthy hearing that could be quite costly.

VIII. ORDERS

After a consideration of the joint submission on sanction, the Hearing Tribunal orders the following, in accordance with the joint submission and pursuant to section 82 of the *Health Professions Act*:

1. Ms. Galang's practice permit shall be suspended for 3 months, with 1 month to be served on dates acceptable to the Complaints Director and starting within 30 days of the date she receives a copy of the Hearing Tribunal's written decision. The remaining 2 months shall be held in abeyance pending the completion of Order 2.
2. Ms. Galang shall, at her own expense, complete and provide the Complaints Director with evidence that she has successfully completed Part A of the ACP's Licensee Education Program within 3 months from the date of the Hearing Tribunal's written decision.
3. If Ms. Galang fails to complete Order 2, she shall be prohibited from being an owner, proprietor, or licensee of a pharmacy until such time as she completes Part A of the ACP's Licensee Education Program.
4. Ms. Galang shall pay a total fine of \$6,000, to be paid within 90 days from the date Ms. Galang receives a copy of the Hearing Tribunal's written decision.
5. Ms. Galang shall pay 50% of costs of the investigation and hearing to a maximum of \$10,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director and the costs shall be paid in full within 24 months of the date Ms. Galang receives a copy of the Hearing Tribunal's written decision.

It is the opinion of Hearing Tribunal that this sanction is fair and appropriate in the circumstances.

It protects the public by ensuring that Ms. Galang is being educated about proper practices for licensees, which is being supported by the issuance of this decision and the hearing process. The Hearing Tribunal is satisfied that by her participation in the process, Ms. Galang is now aware and better educated about the importance of ensuring her practice and her Pharmacy meet the requirements established in the legislation, the Standards and the Codes of Ethics applicable to her. By ensuring this, the threat to the public caused by this conduct is significantly reduced.

In addition, these sanctions maintain the integrity of the profession. Ms. Galang is being given a significant suspension of 3 months during which she cannot practice as a pharmacist for a minimum of one month while two months are held in abeyance pending her compliance with a further order requiring her to complete Part A of the ACP Licensee

course at her own expense. This, along with, a fine, and having to pay partial costs of the hearing, is a significant financial sanction which demonstrates that the College takes this conduct seriously and that other members of the profession and the public are assured that this conduct shall not be taken lightly.

It is also a sanction which is fair to Ms. Galang. It was developed, ultimately, with her agreement, and so she has confirmed that she also feels it is fair to her.

And finally, it establishes both general and specific deterrence as it is significant sanction, as expressed above, which will show other members of the profession that this conduct will not be tolerated. It also specifically deters Ms. Galang, as given her involvement in the investigation and hearing of this matter, as well as her educational component, she is being deterred from this conduct occurring again.

In addition, the Hearing Tribunal has considered the factors in a *Jaswal* decision and the parties' submissions on those factors and has concluded that this is a fair and appropriate sanction in this case.

Signed on behalf of the hearing tribunal by the Chair on the 19th day of December 2022.

Per: 

Kevin Kowalchuk