

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**SAID HAMDON**  
Registration number: 11274

**DECISION OF THE HEARING TRIBUNAL**

January 22, 2024

## I. INTRODUCTION

The Hearing Tribunal of the Alberta College of Pharmacy (the “College”) held a hearing into the conduct of Said Hamdon. In attendance on behalf of the Hearing Tribunal were Kevin Kowalchuk (pharmacist and chair), Kory Sloan (pharmacist), Sarita Dighe-Bramwell (public member), and Diana Jossa (public member). Kimberly Precht attended as independent legal counsel to the Hearing Tribunal.

The hearing took place virtually on December 14, 2023. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

In attendance at the hearing were: James Krempien, Complaints Director of the College; Aman Costigan, legal counsel representing the Complaints Director; Said Hamdon; and Simon Renouf, legal counsel representing Mr. Hamdon.

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, Elizabeth Sebastianski, who was present.

Four members of the public attended as observers.

There were no objections to the composition of the Hearing Tribunal, the jurisdiction of the Hearing Tribunal to proceed with the hearing, or the timelines for service of the Notice of Hearing on Mr. Hamdon, and the parties did not raise any preliminary issues.

## II. ALLEGATIONS

The allegations against Mr. Hamdon, as set out in the Revised Notice of Hearing, were as follows:

IT IS ALLEGED THAT, between November 7, 2017 to May 11, 2022, while you were both a registered pharmacist (ACP Practice Permit #11274) and the licensee of Plaza 160 Pharmacy, you:

1. [Withdrawn]
2. [Withdrawn]
3. Dispensed medications for your family members that were not for minor conditions, required in an emergency or where another practitioner was not readily available, including:
  - a. For [REDACTED]
    - i. [REDACTED]
    - ii. [REDACTED] 1 g;

- iii. [REDACTED] 500 mg; and
- iv. 28 capsules [REDACTED] 500 mg.

- b. For [REDACTED]
  - i. 100 tablets of [REDACTED] 7 mg and 5 mg;
  - ii. 100 tablets of [REDACTED] 10 mg; and
  - iii. 100 tablets of [REDACTED] 0.4 mg.

4. Provided medications to patients before obtaining the original prescriptions, including:

	Patient	Medications	Date
i.	[REDACTED]	[REDACTED] 500 mg [REDACTED] 500 mg	August 3, 2021
ii.	[REDACTED]	[REDACTED] 7 mg and 5 mg [REDACTED] 0.4 mg [REDACTED] 10 mg	August 3, 2021
iii.	[REDACTED]	150 tablets of [REDACTED] 7 mg and 5 mg 150 tablets of [REDACTED] 10 mg 150 tablets of [REDACTED] 0.4 mg	May 9, 2022
iv.	[REDACTED]	[REDACTED] 21	September 2, 2020
v.	[REDACTED]	[REDACTED] 21	May 11, 2022

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 licensee;
- b. Undermined the integrity of the profession;
- c. Decreased the public's trust in the profession; and
- d. Failed to fulfil professional and ethical judgment expected and required of an Alberta pharmacist and licensee.

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

- Standards 1 and 6 and sub-standards 1.1, 1.2, and 6.3 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standard 1 and sub-standards 1.1 and 1.2 of the Standards for the Operation of Licensed Pharmacies;
- Principle 3(4) of the Alberta College of Pharmacy's Code of Ethics;
- Sub-section 10(1)(a), 10(1)(b) and 10(1)(d)(iv) of the Pharmacy and Drug Act;

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

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

At the hearing Mr. Hamdon confirmed, via his legal counsel, that he admitted Allegations 3 and 4, as set out above.

### **III. PRELIMINARY MATTERS**

There were no objections to the composition of the Hearing Tribunal or the jurisdiction of the Hearing Tribunal to proceed with a hearing.

There was no application to close the hearing to the public.

### **IV. EVIDENCE**

#### *Agreed Statement of Facts*

The Complaints Director and Mr. Hamdon presented the Hearing Tribunal with an Agreed Statement of Facts, setting out the information and documentation they considered relevant to the allegations against Mr. Hamdon. The Agreed Statement of Facts was entered as **Exhibit 1**, which also included the Revised Notice of Hearing and Mr. Hamdon's Admission of Unprofessional Conduct.

By way of background information, the Agreed Statement of Facts provided that Mr. Hamdon was a registered member of the College on the clinical pharmacist register and the licensee of Plaza 160 Pharmacy (ACP Licence #2386) (the "Pharmacy") at all relevant times. The College received a complaint (the "Complaint") about Mr. Hamdon on March 3, 2023, from Mr. [REDACTED] pharmacist, and co-owner and proprietor's representative of the Pharmacy. The Agreed Statement of Facts outlined the focus of the

Complaint and the investigative steps taken by the Complaints Director before referring the matter to a hearing.

Although the Agreed Statement of Facts itself was brief (just 15 paragraphs), it included extensive attachments relevant to the agreed facts, including copies of: (A) the Complaint, with enclosed relevant prescriptions or notes regarding prescriptions, (B) the Complaints Director's decision to refer the matter to a hearing, (C) correspondence from the Complaints Director to Mr. Hamdon about the investigation of the Complaint, (D) a memo of the Complaints Director's initial discussion with Mr. Hamdon about the Complaint, (E) a written statement provided by Mr. Hamdon during the investigation, with enclosed documents, and (F) the primary investigator's notes regarding her meeting with Mr. Hamdon during the investigation.

The Agreed Statement of Facts noted the investigator's finding that an allegation that Mr. Hamdon had falsely documented prescriptions for [REDACTED] members under the names of doctors and Mr. [REDACTED] was unfounded. The Agreed Statement of Facts also noted the investigator's finding that the allegation that Mr. Hamdon provided pharmacy services to his family members, in the instances set out in Allegations 3 and 4 of the Revised Notice of Hearing, were undisputed.

Although Allegation 3 alleged that Mr. Hamdon dispensed medication to family members that were not for minor conditions, required in an emergency or where another practitioner was not readily available, the Agreed Statement of Facts did not directly address whether the events in issue occurred for conditions that were not minor, or in an emergency, or in the absence of another readily available practitioner. This is further addressed in the "Submissions" portion of this decision.

Allegation 4 alleged that Mr. Hamdon provided medications to patients before obtaining the original prescriptions. The Agreed Statement of Facts provided cross-references identifying the relevant prescriptions or notes regarding prescriptions, which were included in the attachments to the Agreed Statement of Facts.

Mr. Hamdon acknowledged in the Agreed Statement of Facts that he received legal advice before entering the Agreed Statement of Facts, and that he understood the Hearing Tribunal could use the Agreed Statement of Facts as proof of the allegations set out in the Revised Notice of Hearing.

#### *Admission of Unprofessional Conduct*

In the Admission of Unprofessional Conduct, Mr. Hamdon acknowledged and admitted the allegations set out in the Revised Notice of Hearing. Mr. Hamdon also agreed and acknowledged his conduct breached his statutory and regulatory obligations to the College, undermined the integrity of the profession, decreased the public's trust in the profession,

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

Mr. Hamdon further agreed and acknowledged his admitted conduct constituted unprofessional conduct under sub-sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) of the HPA, and constituted misconduct under sub-sections 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*, and breached standards 1 and 6 and sub-standards 1.1, 1.2 and 6.3 of the Standards of Practice for Pharmacists and Pharmacy Technicians, standards 1 and sub-standards 1.1 and 1.2 of the Standards for the Operation of Licensed Pharmacies, principle 3(4) of the College's Code of Ethics, and sub-sections 10(1)(a), 10(1)(b) and 10(1)(d)(iv) of the *Pharmacy and Drug Act*.

## **V. SUBMISSIONS REGARDING MERIT**

On behalf of the Complaints Director, Ms. Costigan provided the Hearing Tribunal with an overview of the Revised Notice of Hearing, the Admission of Unprofessional Conduct, the Agreed Statement of Facts which, she noted, included references to supporting documents from the investigation, and extracts of statutory authorities relied on by the Complaints Director.

Ms. Costigan emphasized that Allegations 3 and 4 were admitted by Mr. Hamdon. Ms. Costigan explained that additional information came forward during discussions about the consent documents which led to the withdrawal of Allegations 1 and 2. As well, although the charges range from November 7, 2017 to May 11, 2022, Ms. Costigan clarified that only one particular occurred in 2017 and the other particulars all occurred in 2021 and 2022. All the particulars occurred while Mr. Hamdon was a licensed pharmacist and the licensee for the Pharmacy.

Ms. Costigan explained that Allegation 3 related to pharmacy services Mr. Hamdon provided to his [REDACTED] ([REDACTED] and [REDACTED] ([REDACTED] which did not meet any of the three circumstances set out in the College's Code of Ethics for when a pharmacist may provide pharmacy services to an immediately family member. Principle 3(4) of the Code of Ethics requires a pharmacist to "limit treatment of [themselves] or family members to [their] immediate family only to minor conditions, emergency circumstances or when another appropriate health professional is not readily available." Ms. Costigan submitted that dispensing for family members was not clinically sound because of the difficulty of obtaining an objective assessment of the appropriateness of services.

Ms. Costigan explained that Allegation 4 related to pharmacy services Mr. Hamdon provided to his [REDACTED] [REDACTED] and [REDACTED] ([REDACTED] Ms. Costigan submitted that regardless of how a prescription gets to a pharmacy, the pharmacist is required to obtain and review the original prescription before dispensing any medication, under Standard 6.3 of the Standards of Practice for Pharmacists and Pharmacy Technicians. As set out more broadly in Standard 6, the pharmacist must confirm that the prescription is current, authentic, complete, and appropriate. Failing to obtain the original prescription creates an environment of risk, including risks of errors, diversion of medication, or record-keeping issues. Ms. Costigan

clarified that the Complaints Director was not alleging that errors or diversion occurred in this case.

As for Mr. Hamdon's failure to uphold his responsibilities as a licensee, Ms. Costigan noted that under the *Pharmacy and Drug Act*, a licensee is responsible for ensuring a licensed pharmacy operates in accordance with the *Pharmacy and Drug Act* (s. 10(1)(a)); for ensuring that due diligence is exercised in the dispensing of drugs in accordance with the standards of practice under the HPA for the practice of pharmacy (s. 10(1)(b)); and for ensuring that all required records are created and maintained in accordance with the *Pharmacy and Drug Act* (s. 10(1)(d)(iv)).

Ms. Costigan submitted that the Hearing Tribunal had a two-part task, to determine first whether the allegations were factually proven by the Complaints Director on a balance of probabilities, and second to determine whether the proven conduct was serious enough to constitute unprofessional conduct under the HPA and misconduct under the *Pharmacy and Drug Act*. Ms. Costigan submitted that the evidence set out in the Agreed Statement of Facts supported Mr. Hamdon's admissions, and as such his admissions should be accepted.

In addition to the standards already referenced above, Ms. Costigan made submissions on Standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians, and Standards 1.1 and 1.2 of the Standards for the Operation of Licensed Pharmacies, which speak to compliance with both the letter and the spirit of the laws that govern the practice of pharmacy. Ms. Costigan also referenced the definition of "misconduct" in the *Pharmacy and Drug Act*, which includes an act or omission that contravenes the *Pharmacy and Drug Act* (s. 1(p)(i)) or is detrimental to the best interests of the public (s. 1(p)(ii)), and conduct that harms the integrity of the profession of pharmacists (s. 1(p)(ix)). Finally, Ms. Costigan referenced the definition of "unprofessional conduct" in the HPA, which includes a contravention of the HPA, Standards of Practice, or the Code of Ethics (s. 1(1)(pp)(ii)), contravention of another enactment that applies to the profession, such as the *Pharmacy and Drug Act* (s. 1(1)(pp)(iii)), and conduct that harms the integrity of the regulated profession (s. 1(1)(pp)(xii)).

On this basis, Ms. Costigan asked the Hearing Tribunal to accept Mr. Hamdon's admissions and find that Allegations 3 and 4 are factually proven and constitute unprofessional conduct as set out in the Revised Notice of Hearing.

Mr. Renouf submitted that Mr. Hamdon had clearly accepted responsibility for Allegations 3 and 4 by signing the Agreed Statement of Facts and Admission of Unprofessional Conduct. Mr. Renouf described this as a "true joint submission" and advised that he did not take issue with Ms. Costigan's review of relevant principles of the Standards of Practice or Code of Ethics.

After an adjournment, the Hearing Tribunal asked the parties for further assistance in identifying the specific evidence and facts that support a conclusion that the particulars in Allegation 3 were not for minor conditions, required in an emergency or in circumstances

where another practitioner was not readily available, as this was not directly addressed in the Agreed Statement of Facts.

Ms. Costigan responded first by addressing the circumstances contemplated by Principle 3(4) of the Code of Ethics, as follows:

- Although the Code of Ethics does not define an “emergency”, the Standards of Practice include a definition of an “emergency” as a “circumstance where a patient urgently requires a professional service that includes a restricted activity for the purposes of preventing imminent mortality or morbidity”. Ms. Costigan reiterated that Mr. Hamdon has admitted it was not in the case of an emergency.
- As for the availability of another appropriate health professional, Ms. Costigan noted the Pharmacy is located in Edmonton, a major city centre. Further, Mr. Hamdon has admitted this was not an exception that applied in these circumstances.
- With respect to whether any of the particulars concerned minor conditions, Ms. Costigan stated there was no document to which she could point the Hearing Tribunal. Nevertheless, she submitted that based on the drugs listed and the way they were dispensed together, these were not for minor conditions, and she suggested the Hearing Tribunal rely on the expertise of the pharmacist members of the Hearing Tribunal in this regard. Ms. Costigan also emphasized, again, that Mr. Hamdon has admitted this allegation.

Mr. Renouf made a few additional comments, emphasizing that Mr. Hamdon had voluntarily entered into these admissions and was not seeking to negate the admissions he had made. Mr. Renouf noted that the allegations did not engage Standard 1.22 of the Standards of Practice for Pharmacists and Pharmacy Technicians, which specifically prohibits *prescribing* a drug or blood product to immediate family members except for minor conditions, in an emergency, or where another prescriber is not readily available. There is no allegation that Mr. Hamdon prescribed any drugs to immediate family members. However, Mr. Renouf acknowledged that Principle 3(4) of the Code of Ethics, which requires pharmacists to limit “treatment” of immediate family members except in these circumstances, is applicable. Mr. Renouf also submitted that the use of “or” in each of these provisions may indicate that only one of those circumstances need apply before a pharmacist may treat an immediate family member.

The Hearing Tribunal then asked the parties whether portions of the written responses provided by Mr. Hamdon during the investigation (which were attached to the Agreed Statement of Facts) were relevant to the allegations Mr. Hamdon had admitted. The parties requested a brief adjournment to consider this request. When the hearing resumed, Ms. Costigan explained the cross-references used by Mr. Hamdon in his written response to the Complaint, which allowed the Hearing Tribunal to identify which parts of his written response were specifically relevant to the admitted allegations. Mr. Renouf asked the Hearing Tribunal to appreciate that this was Mr. Hamdon’s initial reply to the Complaints Director before he had legal counsel, and there has subsequently been significant back and forth between legal counsel for Mr. Hamdon and for the Complaints Director.



The Complaints Director also made a few additional comments from a pharmacist's perspective. The Complaints Director submitted that Principle 3(4) of the Code of Ethics should be interpreted such that it is incumbent on the pharmacist who treats an immediate family member to demonstrate how one of the exemptions applies. The Complaints Director submitted that Mr. Hamdon had not done so. In the responses and documentation provided by Mr. Hamdon, there was no evidence to show that the events at issue in Allegation 3 involved an emergency or a minor condition. Nor was there any evidence about the availability of other health practitioners. The Complaints Director also stated he agreed with Mr. Renouf's interpretation of Principle 3(4) of the Code of Ethics that a pharmacist may treat an immediate family member if any one of the exemptions applies.

After hearing from the parties, the Hearing Tribunal adjourned to review the attachments to the Agreed Statement of Facts in further detail.

## VI. **FINDINGS REGARDING MERRIT**

### *Facts*

For the reasons that follow, the Hearing Tribunal found Allegations 3 and 4 in the Notice of Hearing were factually proven, and accepted Mr. Hamdon's admission that his conduct amounted to unprofessional conduct.

### ***Allegation 3***

Principle 3(4) of the Code of Ethics requires pharmacists not to treat themselves or immediate family members unless one of three circumstances exists:

- the treatment is for a minor condition;
- the treatment is in emergency circumstances; or
- another appropriate health professional is not readily available to provide the treatment.

It was clear from the Agreed Statement of Facts that Mr. Hamdon treated immediate family members (his [REDACTED] and his [REDACTED] in the instances identified in the particulars to Allegation 3. The treatments in question involved dispensing medications; the treatments did not involve prescribing.

The Agreed Statement of Facts did not explain the circumstances in which each of these treatments occurred. However, the Hearing Tribunal found the Complaints Director's submission helpful, that if a pharmacist treats an immediate family member it is incumbent on the pharmacist to document the circumstances that justified doing so. The Hearing Tribunal noted that in Mr. Hamdon's detailed written response to the Complaint, he explained the circumstances in which he dispensed medications to immediate family members, including on several occasions that were *not* in issue in Allegation 3 presumably because on those occasions Mr. Hamdon *was* able to demonstrate that one or more of the exemptions in Principle 3(4) of the Code of Ethics existed. With respect to the particulars

of Allegation 3, the explanations offered by Mr. Hamdon did not demonstrate that any of the exemptions applied.

In light of this, the Hearing Tribunal was satisfied that the information included in the Agreed Statement of Facts and its attachments was consistent with Mr. Hamdon's admission that Allegation 3 was factually proven, and he dispensed medications to immediate family members in the particularized instances that were not for minor conditions, required in an emergency or where another practitioner was not readily available.

The Hearing Tribunal was also satisfied that Mr. Hamdon's conduct constituted unprofessional conduct under the HPA and misconduct under the *Pharmacy and Drug Act*.

The Hearing Tribunal felt the behavior that was demonstrated by Mr. Hamdon in Allegation 3 is fraught with considerable risk, especially with no supporting documentation for the decisions he made. While the medications dispensed in question are not of an abuse potential, there is concern that this display of inappropriate judgement could have very significant consequences if narcotic medications were alternately involved under the same pretense.

#### ***Allegation 4***

The Standards of Practice require pharmacists to obtain original prescriptions before dispensing medication. This is critical to allow a pharmacist to properly assess whether the prescription is current, authentic, complete and appropriate.

The Agreed Statement of Facts and attached documents clearly demonstrated that Mr. Hamdon provided medications to patients before obtaining the original prescriptions on the dates set out in the particulars to Allegation 4, all of which involved circumstances where Mr. Hamdon was providing medication to immediate family members (his [REDACTED] his [REDACTED] and his [REDACTED]).

The Hearing Tribunal found that Mr. Hamdon's approach was, at best, sloppy and illustrated the risk in providing pharmacy services to family members even in circumstances where an exemption under Principles 3(4) of the Code of Ethics may apply.

Mr. Hamdon's decision to record these prescriptions as verbal prescriptions, when in fact the prescribing physician did not intend for these prescriptions to be delivered verbally to the pharmacist, was quite problematic. This displayed Mr. Hamdon's willingness to forgo the standard expected of a licenced pharmacist and disregard his regulatory obligations for the sake of convenience. This decision was not a single occurrence, but rather poor practice repeated multiple times.

Further, the Hearing Tribunal considered that not only was Mr. Hamdon the only pharmacist working at the Pharmacy when the particulars in Allegation 4 occurred, he was also the Pharmacy's licensee under the *Pharmacy and Drug Act*. This meant he had a higher

level of responsibility for ensuring that due diligence was exercised in the dispensing of drugs in accordance with the Standards of Practice for Pharmacists and Pharmacy Technicians and the Standards for the Operation of Licensed Pharmacies. In these circumstances, Mr. Hamdon should have ensured that appropriate checks and balances were in place with respect to dispensing to immediate family members. During the hearing, Mr. Renouf submitted that, as a pharmacy owner himself now, Mr. Hamdon considers it reasonable for a pharmacist to refer family members to a different pharmacy. The Hearing Tribunal agrees this would have been the prudent thing for Mr. Hamdon to have done as a pharmacist and licensee at the Pharmacy.

The Hearing Tribunal accepted Mr. Hamdon's admission that Allegation 4 was factually proven and that his conduct constituted unprofessional conduct under the HPA and misconduct under the *Pharmacy and Drug Act*. His conduct fell short of the Standards of Practice for Pharmacists and Pharmacy Technicians and the Standards for the Operation of Licensed Pharmacies, and his obligations as a licensee under the *Pharmacy and Drug Act*, and is conduct that harms the integrity of the pharmacy profession.

## **VII. SUBMISSIONS ON SANCTIONS**

### *Submissions on Behalf of the Complaints Director as to Sanction*

After receiving the Agreed Statement of Facts and Admission of Unprofessional Conduct, the Hearing Tribunal adjourned to deliberate. After the Hearing Tribunal deliberated, the Tribunal advised the parties it accepted the Admission of Unprofessional Conduct by Mr. Hamdon and determined the allegation was proven and constituted unprofessional conduct. The Hearing Tribunal then invited the parties to make submissions on sanction.

The parties provided the Hearing Tribunal with a Joint Submission on Sanctions and supporting materials, which were entered as **Exhibit 2**. The Joint Submission on Sanctions stated:

1. Mr. Hamdon shall, within 6 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the Centre for Personalized Education for Professionals (CPEP) Probe Ethics and Boundaries Course. Mr. Hamdon is responsible for the costs of the course.
2. Mr. Hamdon shall, within 6 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has successfully passed the College's Ethics and Jurisprudence Exam. Mr. Hamdon is responsible for the costs of the exam.
3. Mr. Hamdon shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which he applies to work or works as a pharmacist for a period of 3 years, commencing from the date of the Hearing Tribunal's written decision.

4. Mr. Hamdon shall not be a preceptor until he has completed Orders 1 and 2 above.
5. Mr. Hamdon shall pay for the costs of the investigation and hearing to a maximum of \$5,000. Payment will occur in accordance with a payment schedule as directed by the Hearings Director. Unless the Hearings Director otherwise agrees, the costs shall be paid in full within 24 months from the date of the Hearing Tribunal's written decision.

On behalf of the Complaints Director, Ms. Costigan noted that the Agreed Statement of Facts included several facts relevant to sanction, including that Mr. Hamdon has been registered with the College on the clinical pharmacist register since July 12, 2016, that he served as the licensee for the Pharmacy from July 1, 2017 to October 12, 2022, and that there have been no prior complaints or findings of unprofessional conduct against Mr. Hamdon.

Citing J.T. Casey's text, *Regulation of Professions in Canada*, Ms. Costigan submitted that the four main principles in sentencing were (1) protection of the public, (2) maintaining the integrity of the profession, (3) fairness to the member, and (4) deterrence to the member and to the profession at large.

Citing factors identified in *Jaswal v Medical Board (Newfoundland)* (1996), 42 Admin LR (2d) 233 (Nfld TD), Ms. Costigan submitted the following factors were relevant in determining an appropriate sanction in this case:

- ***Nature and gravity of the proven allegations:*** Although Mr. Hamdon's conduct was serious, it was not at the most serious end of the spectrum of unprofessional conduct. Mr. Hamdon was expected to be aware of and to comply with applicable legislation governing the practice of pharmacy and the operation of pharmacies.
- ***Age and experience:*** Mr. Hamdon has been registered with the College since 2016 and a licensee since 2017. Most of the conduct occurred in 2021 and 2022, such that lack of experience cannot be said to be a mitigating factor in this case.
- ***Character and prior findings of unprofessional conduct:*** Mr. Hamdon has no prior findings of unprofessional conduct. This is a mitigating factor.
- ***Number of times offence proven to have occurred:*** Mr. Hamdon engaged in the unprofessional conduct repeatedly, which is an aggravating factor. The College relies on members to comply with the HPA and the *Pharmacy and Drug Act*. Further, as a licensee, Mr. Hamdon had an additional onus to have known better.
- ***Taking responsibility:*** Mr. Hamdon's acknowledgment of his conduct is a significant mitigating factor, along with his cooperation in reaching an Agreed Statement of Facts and Joint Submission on Penalty.
- ***Impact on patients:*** There was no evidence of harm to patients in this case, but providing treatment to family members outside the exemptions in the Code of Ethics creates a greater risk of harm. Ms. Costigan noted that Mr. Hamdon's [REDACTED] [REDACTED] and submitted there is also greater risk in dispensing medication without the original prescription.

- **Deterrence:** The proposed sanctions achieve the goals of specific deterrence (aimed at ensuring Mr. Hamdon does not repeat the conduct) and general deterrence (aimed at the broader profession).
- **Public confidence:** It is important to send a clear message to the public and to legislators that the College takes its responsibilities seriously. The proposed sanctions achieve this.
- **Degree to which the conduct is clearly regarded as falling outside the range of permitted conduct:** Ms. Costigan submitted Mr. Hamdon's conduct was serious.
- **Range of sanctions in similar cases:** Although the Hearing Tribunal is not bound by previous cases, out of fairness to members, similar sanctions should be applied in similar cases. Ms. Costigan referred the Hearing Tribunal to the previous decision regarding the conduct of *Iherjirika*, which concerned more serious allegations of dispensing to family members than the allegations at issue in this case, noting that *Iherjirika* also had a prior finding of unprofessional conduct against him.

With respect to costs, Ms. Costigan advised the Hearing Tribunal that the total investigation and hearing costs to date, not including the costs of the hearing itself, were approximately \$24,000. As such, requiring Mr. Hamdon to pay a maximum of \$5,000 of the costs of the investigation and hearing meant that Mr. Hamdon would be responsible for only a small percentage of the actual investigation and hearing costs.

Ms. Costigan also referred to the Alberta Court of Appeal's decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336, in which the Court stated that professions should bear most of the costs of a discipline hearing unless a member has engaged in serious unprofessional conduct, is a serial offender, has failed to cooperate with investigators, or has engaged in hearing misconduct. Ms. Costigan submitted on behalf of the Complaints Director that *Jinnah* should be distinguished because it was fully contested, and alternatively submitted that although Mr. Hamdon's conduct was at the low end of the spectrum of serious unprofessional conduct, it was sufficiently serious to warrant a costs order. None of the other factors identified in *Jinnah* applied. In any event, Ms. Costigan submitted it was an appropriate case to order costs.

Finally, Ms. Costigan addressed the law on joint submissions, referring to the Supreme Court of Canada's decision in *R v Anthony-Cook*, 2016 SCC 43, where the Court held that joint submissions should be accepted unless doing so would lead reasonable and informed people to believe the functioning of the system had broken down. Ms. Costigan submitted that the Hearing Tribunal was not bound by the Joint Submission on Penalty but must give it serious consideration and, if the Hearing Tribunal found the proposed orders did not meet the public interest test set out in *Anthony-Cook*, the Hearing Tribunal should inform the parties and hear submissions from them before proceeding. Ms. Costigan urged the Hearing Tribunal to accept the Joint Submission on Penalty, which she submitted appropriately provided specific and general deterrence and protected the integrity of the profession.

On behalf of Mr. Hamdon, Mr. Renouf provided the Hearing Tribunal with some background about Mr. Hamdon, including that the Complaint was made only after Mr. Hamdon purchased his own pharmacy in October 2022 and left his employment at the Pharmacy.

As a matter of law, Mr. Renouf submitted that Mr. Hamdon's conduct was not "serious unprofessional conduct" but that for the purpose of assessing costs, the amount jointly proposed by the parties was low. Mr. Renouf submitted that the \$5,000 cap on costs was reasonable and had allowed Mr. Hamdon to agree to the Joint Submission on Penalty. Mr. Renouf also referred the Hearing Tribunal to the Alberta Court of Appeal's decision in *Alsaadi v Alberta College of Pharmacy*, 2021 ABCA 313.

## **VIII. ORDERS**

### *Order of the Hearing Tribunal*

After a consideration of the joint submission on sanction, the Hearing Tribunal orders the following, in accordance with the joint submission:

1. Mr. Hamdon shall, within 6 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has received an unconditional pass on the Centre for Personalized Education for Professionals (CPEP) Probe Ethics and Boundaries Course. Mr. Hamdon is responsible for the costs of the course.
2. Mr. Hamdon shall, within 6 months from the date the Hearing Tribunal issues its written decision, provide evidence to satisfy the Complaints Director that he has successfully passed the College's Ethics and Jurisprudence Exam. Mr. Hamdon is responsible for the costs of the exam.
3. Mr. Hamdon shall provide a copy of the Hearing Tribunal's written decision to any pharmacy employer or licensee of a pharmacy in which he applies to work or works as a pharmacist for a period of 3 years, commencing from the date of the Hearing Tribunal's written decision.
4. Mr. Hamdon shall not be a preceptor until he has completed Orders 1 and 2 above.
5. Mr. Hamdon shall pay for the costs of the investigation and hearing to a maximum of \$5,000. Payment will occur in accordance with a payment schedule as directed by the Hearings Director. Unless the Hearings Director otherwise agrees, the costs shall be paid in full within 24 months from the date of the Hearing Tribunal's written decision.

*Reasoning of the Hearing Tribunal*

The Hearing Tribunal acknowledged it should defer to the Joint Submission on Sanction unless it believed the proposed sanctions would bring the administration of justice into disrepute or would otherwise be contrary to the public of interest.

Having regard for the factors identified in the *Jaswal* decision, the Hearing Tribunal accepted the parties' submissions as to why the proposed sanctions were appropriate and served the purpose of sanctions in the professional discipline context.

With respect to the nature and gravity of the conduct, the Hearing Tribunal found that Mr. Hamdon's conduct in this case was on the less serious end of the spectrum of unprofessional conduct. At the same time, the Hearing Tribunal was mindful that similar conduct could be used to facilitate more serious actions such as diversion of drugs.

The Hearing Tribunal did not consider Mr. Hamdon's age or experience to be a mitigating factor. The fact that Mr. Hamdon was not only a clinical pharmacist but also the Pharmacy's licensee when he engaged in this conduct was concerning to the Tribunal. The fact that Mr. Hamdon engaged in the conduct repeatedly, with respect to both Allegations 3 and 4, was also an aggravating factor.

The Hearing Tribunal considered it a significant mitigating factor that Mr. Hamdon had taken responsibility for his conduct, by admitting his unprofessional conduct and working with the Complaints Director to reach an Agreed Statement of Facts and Joint Submission on Penalty. It was also mitigating that Mr. Hamdon has not had any previous complaints or findings of unprofessional conduct against him.

The Hearing Tribunal considered it highly appropriate in the circumstances that Mr. Hamdon not be permitted to be a preceptor until he has completed further education on professional ethics and boundaries and has passed the College's Ethics and Jurisprudence Exam. It is important that Mr. Hamdon fully understand his legal and ethical obligations as a pharmacist, particularly now that he owns his own pharmacy. It is appropriate that he remediate his own understanding before serving as a preceptor to an aspiring or junior member of the profession.


The Hearing Tribunal recognized that the requirement for Mr. Hamdon to provide a copy of its written decision to a pharmacy employer or licensee will only become relevant if Mr. Hamdon does not continue working at his own pharmacy, and was satisfied that such a condition appropriately protects the public if that were to happen.

Taken as a whole, the Hearing Tribunal is satisfied that the proposed orders will achieve the goals of specific and general deterrence, will signal to the public that the College takes its disciplinary function seriously, and will protect the public from further misconduct of this nature. Moreover, there is nothing in the Joint Submission on Penalty so unhinged that the Hearing Tribunal would consider rejecting it.

*Specific Reasoning on Costs*

On the issue of costs, the Hearing Tribunal considered the amount of costs proposed by the parties to be reasonable in the circumstances, despite Mr. Hamdon's conduct falling at the less serious end of the spectrum of unprofessional conduct. It was clear from the parties' submissions that the College will bear most of the costs of the investigation and hearing in this case. It is appropriate for the Hearing Tribunal to defer to the parties' joint submission that Mr. Hamdon should pay a modest portion of the total costs of the investigation and hearing.

Signed on behalf of the Hearing Tribunal by the Chair on January 22, 2024.

  
Kevin Kowalchuk (Jan 22, 2024 12:55 MST)

Per: \_\_\_\_\_  
Kevin Kowalchuk, Chair