

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

JEFF T. LUONG

Registration Number 5888

DECISION OF THE HEARING TRIBUNAL ON MERITS

March 1, 2024

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Jeff Luong, Pharmacist, on November 2, 2023. The Hearing Tribunal members were Anjali Acharya, Pharmacist and Chair, Yasir Iqbal, Pharmacist, Barbara Rocchio, Public Member and Doug Dawson, Public Member.

The hearing took place via 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: Ms. Annabritt Chisholm, legal counsel from Shores Jardine LLP for the Complaints Director and James Krempien, Complaints Director for the Alberta College of Pharmacy (the “College”). Jeff Luong was not in attendance, nor was any Counsel in attendance on his behalf.

Jason Kully of Field LLP attended as independent legal counsel for the Hearing Tribunal.

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

II. ALLEGATIONS

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

IT IS ALLEGED THAT as a registered clinical pharmacist and the licensee of JL Pharmacare Pharmacy (ACP Licence #3146) (the “Pharmacy”), you:

1. Failed to cooperate with an investigator appointed by the Complaints Director of the Alberta College of Pharmacy, when you refused:
 - a. to provide prescription and transaction records to Jennifer Mosher related to SunLife’s audit of the Pharmacy and the subject claims;
 - b. to confirm your relationship with [REDACTED] NL, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] all of whom were patients of the Pharmacy;
 - c. to confirm patient information regarding the need for diabetic supplies for NL and [REDACTED]
 - d. to confirm your relationship with Dr. [REDACTED]

- e. to confirm a complete list of pharmacies that the Pharmacy has a compounding and repackaging agreement with;
 - f. to answer questions about your practice of prescribing and dispensing medications and medical devices for yourself and your immediate family members.
2. Failed to cooperate with SunLife's audit of the Pharmacy, including when you refused to provide SunLife with requested information and documentation for approximately 61 of 72 audited claims.
 3. Failed to maintain a record keeping system at the Pharmacy that ensures the creation, maintenance and availability for retrieval of pharmacy records.
 4. Dispensed medications and medical devices for yourself and your immediate family members for conditions for conditions that were not considered minor, emergent or where another practitioner was not available.
 5. Dispensed diabetic supplies for yourself and your spouse in the absence of a documented history of diabetes.

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;
- d. Failed to fulfill professional and ethical judgement expected and required of an Alberta pharmacy licensee.

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

- Standard 1 (sub-standards 1.1 and 1.2) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1 and 8 (sub-standards 1.1, 1.2 and 8.1) of the Standards for the Operation of Licensed Pharmacies;
- Principle 3(4), 10(1), 10(2b), 10(2c) and 10(10) of the ACP's Code of Ethics; and

- Sections 10(1)(a) 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), 1(1)(pp)(vii)(B) and 1(1)(pp)(xii) of the *Health Professions Act* and misconduct under sections 1(1)(p)(i), 1(1)(p)(ii) and 1(1)(p)(ix) of the *Pharmacy and Drug Act*.

III. PRELIMINARY MATTERS

As Mr. Luong was not present when the hearing commenced, Ms. Chisholm made a submission to proceed with the hearing in the absence of the investigated member.

Ms. Chisholm stated s. 79(6) of the HPA allows a hearing to proceed in absence of the member if there is proof of service of the Notice of Hearing and Notice to Attend. The College took the position that Mr. Luong was made aware of the hearing and that he was served in accordance with the requirements of the HPA. The College submitted that given the nature of the hearing and the evidence being put forward to substantiate the allegations that it was important to proceed.

Ms. Chisholm called two witnesses to provide evidence regarding the attempts by the College to serve Mr. Luong with the Notice of Hearing, the Notice to Attend, and the disclosure package from the College's investigation file.

Ms. Chisholm first called Mr. James Krempien, Complaints Director for the College, to take the Hearing Tribunal through his attempts to serve Mr. Luong with documents related to the hearing. Mr. Krempien provided the following evidence:

- Mr. Krempien received a complaint against Mr. Luong and directed an investigation into that complaint. After the investigation, Mr. Krempien referred the complaint against Mr. Luong to a hearing, the reasons for which were outlined in the Record of Decision.
- Mr. Krempien then began the process of notifying Mr. Luong of the Record of Decision. Mr. Krempien first attempted to send notice via registered mail to the address for Mr. Luong on his file with the College, which was the address for his Pharmacy, JL Pharmacare Pharmacy (the "Pharmacy Address"). The registered mail was later returned to the College marked as "moved, return to sender, business closed".
- At the same time, Mr. Krempien attempted to send notice to Mr. Luong via email, to an email address that Mr. Luong had provided to the College during the course

of investigation and which he had used to corresponded with the College during the course of investigation. The College received notification that the email had been delivered to Mr. Luong, but did not receive confirmation from Mr. Luong that he had received the email.

- Mr. Krempien stated that Mr. Luong’s registration records included three residential addresses that Mr. Luong had provided to the College. One was the Pharmacy Address, one was in Southwest Edmonton (the “Southwest Address”), and one was in Northeast Edmonton (the “Northeast Address”). Mr. Krempien stated that a title search was conducted of the three addresses, and showed the Northeast Address was jointly owned by Mr. Luong.
- Mr. Krempien then engaged a process server to provide Mr. Luong with the Record of Decision. Ms. Chisholm entered Exhibit 1, Affidavit of Service – Disclosure, which Mr. Krempien identified as the statutory declaration of [REDACTED] regarding the steps taken to serve Mr. Luong with the Record of Decision and the investigation disclosure package. Mr. Krempien summarized the steps taken by Mr. [REDACTED] outlined in Exhibit 1 as follows:
 - On July 19, 2023, Mr. [REDACTED] attended the Northeast Address, which was understood to be Mr. Luong's home residential address and attempted to serve Mr. Luong with the documents. No one answered the door. Mr. [REDACTED] spoke with the neighbours and was advised that Mr. Luong did live at the Northeast Address.
 - On July 20, 2023, Mr. [REDACTED] returned to the Northeast Address and spoke with Mr. Luong's young [REDACTED] who stated that Mr. Luong was not home and they were unsure of when he would return.
 - On July 21, 2023, Mr. [REDACTED] again returned to the Northeast Address and again no one answered the door.
 - On July 25, 2023, Mr. [REDACTED] again returned to the Northeast Address and again no one answered the door. Mr. [REDACTED] posted a copy of the documents on the entry door of the Northeast Address.
- Mr. Krempien stated that he had never been contacted by Mr. Luong requesting a copy of the disclosure package and that Mr. Luong had made no attempt to attend the hearing by attending the College offices on the morning of the hearing.

Ms. Chisholm then called Ms. Margaret Morley, Hearings Director for the College, to take the Hearing Tribunal through her attempts to serve Mr. Luong with the Notice of Hearing. Ms. Morley provided the following:

- Ms. Morley first contacted Mr. Luong via email after she received the referral from the Complaints Director and provided Mr. Luong general information about the hearing process and informed him that she would be sending him a Notice of Hearing.
- Ms. Morley sent the Notice of Hearing and Notice to Attend the hearing via email to the email address on Mr. Luong's registration record (the "Email Address"). The email was delivered to an active email address, but there was no confirmation that the email was read. Ms. Morley provided that the Email Address was no longer active as of the day before the Hearing.
- At the same time, Ms. Morley sent the Notice of Hearing and Notice to Attend the hearing via registered mail to the address on Mr. Luong's College registration record, which was the Pharmacy Address. The registered mail was returned to the College and marked as "unclaimed".
- Ms. Morley then posted the Notice of Hearing to the College website and engaged a process server to attempt to serve the Notice of Hearing and the Notice to Attend to the Pharmacy Address, as that was the address on Mr. Luong's registration record. Ms. Chisholm entered Exhibit 2, Affidavit of Service – Notice of Hearing, which Ms. Morley identified as the Affidavit of Service of [REDACTED] [REDACTED] regarding the steps taken to serve Mr. Luong with the Notice of Hearing and Notice to Attend. Ms. Morley summarized the steps taken by Mr. [REDACTED] outlined in Exhibit 2, which provided the following:
 - On September 18, 2023, Mr. [REDACTED] attended the Pharmacy Address and found the storefront completely vacant.
 - Mr. [REDACTED] was provided the Northeast Address at which to serve Mr. Luong, and was in possession of a Land Titles Certificate showing Mr. Luong was the owner of the Northeast Address.
 - On September 21, 2023, Mr. [REDACTED] attended the Northeast Address and no one answered the door. He noted that he could hear what sounded like footsteps walking on the second floor.
 - On September 23, 2023, Mr. [REDACTED] attended the Northeast Address again and again no one answered the door.
 - On September 30, 2023, Mr. [REDACTED] attended the Northeast Address again. He observed that activity had happened around the property, indicating that people were living in the residence. Mr. [REDACTED] spoke to a neighbor who confirmed that a 50-year-old Asian male was living at the residence.

- On October 3, 2023, Mr. [REDACTED] attended the Northeast Address again. He again observed that activity had happened around the property, and he observed activity within the house which stopped when he rang the doorbell. No one answered the door. He posted the sealed envelope addressed to Mr. Luong to the front door of the Northeast Address.
- On July 25, 2023, Mr. [REDACTED] again returned to the Northeast Address and again no one answered the door. Mr. [REDACTED] posted a copy of the documents on the entry door of the Northeast Address.
- Ms. Morley provided that she attempted to call the phone number on Mr. Luong's registration record and the number was disconnected. Ms. Morley also provided that she had not received any response from Mr. Luong, and that he had not attempted to attend the hearing electronically.

Ms. Chisholm submitted that s. 72(1) of the HPA requires an investigated member to appear at the hearing, and s. 79(6) permits the hearing to proceed in the absence of the investigated member if the Hearing Tribunal is satisfied that the member has been given the Notice of Hearing and Notice to Attend. She further elaborated that s. 120(3) of the HPA states that if the Complaints Director or Hearings Director has to provide a document or notice to anyone as part of the discipline process, the document or notice can be given by personal service to the person or by registered mail to the address in the register of pharmacists or the record of the Registrar.

Ms. Chisholm then summarized the significance of Mr. Krempien and Ms. Morley's evidence regarding the notice given to Mr. Luong, specifically that Ms. Morley hired a process server to serve the Notice of Hearing to the Pharmacy Address, and when that was closed, the process server made four attempts to serve Mr. Luong at his home address (the Northeast Address), and the process server eventually left the Notice of Hearing posted to the front door of the Northeast Address. Ms. Chisholm submitted that Exhibit 1 showed that Mr. [REDACTED] had confirmed with neighbours and Mr. Luong's [REDACTED] that Mr. Luong did currently live at the Northeast Address, and the Land Title Certificate (Exhibit "A" to Exhibit 2) showed that Mr. Luong was the owner of the Northeast Address at the relevant time.

Ms. Chisholm then submitted that both the Complaints Director and the Hearings Director had attempted to reach Mr. Luong in accordance with the HPA and made all reasonable steps to serve Mr. Luong in advance of the hearing, including via email, phone, and posting to the College website, as well as the attempts to serve him personally. Ms. Chisholm argued that, based on the evidence and the requirements of the HPA, the Hearing Tribunal should find that Mr. Luong had been served with the Notice of Hearing in accordance with the HPA and that the Hearing Tribunal should elect to proceed in his absence pursuant to s. 79(6).

Although the investigated person has the right to attend the hearing, and is a compellable witness, the HPA does permit the Hearing Tribunal to proceed in the investigated person's absence, provided that there is proof that the investigated person was given a Notice to Attend. After considering the submissions of the College, the Tribunal was satisfied, based on the evidence presented, the Hearing Tribunal was satisfied that proper notice was given to Mr. Luong that complied with the requirements in s. 120 of the HPA, and that he was aware of the hearing date. The Hearing Tribunal noted that the College made multiple attempts to serve Mr. Luong in person and that it also emailed him, attempted to call him, and posted the information to the website. This was not a case where a single attempt was made and the Tribunal was satisfied that the College had taken more than sufficient steps to provide Mr. Luong with proper notice. In the circumstances, the Hearing Tribunal did not think that it was appropriate to adjourn the hearing, since it would result in further delay, and there was no indication that a further adjournment would result in Mr. Luong's attendance on a subsequent date.

Accordingly, pursuant to s. 79(6) of the HPA, the Hearing Tribunal decided it was prepared to proceed with the hearing in the absence of Mr. Luong.

IV. EVIDENCE

Ms. Chisholm proceeded to call Mr. Krempien, the College's Complaints Director, as a witness.

An Exhibit Book was introduced and marked as Exhibit 3, which contained at Tab A the Notice of Hearing dated August 24, 2023 and at Tab B the Record of Decision written by Mr. Krempien, dated June 15, 2023. This decision was reached after an investigation by Mr. Krempien into the matter, and the Record of Decision provided Mr. Krempien's reasons for referring the matter to a hearing.

Exhibit 3 also contained at Tab C the Investigation Records, containing 32 tabs and comprising of the investigation report and other relevant documentary evidence from Mr. Krempien's investigation:

1. Email from Mr. Krempien to Mr. [REDACTED] dated October 4, 2022 responding to request seeking support to obtain claims documentation.
2. Copy of letter from Mr. Luong to Mr. [REDACTED] dated October 6, 2022 received by Mr. Krempien.
3. Email from Ms. [REDACTED] to Mr. Krempien dated January 27, 2023 enclosing a letter from Ms. [REDACTED] to Mr. Krempien dated January 27, 2023 reporting unprofessional conduct.
4. Complaint Referral Form dated January 27, 2023.

5. Memo from Mr. Krempien to file dated January 30, 2023 regarding telephone conversation with Mr. Luong.
6. Memo from Mr. Krempien to file dated January 31, 2023 regarding telephone conversation with Ms. [REDACTED]
7. Letter from Mr. Krempien to Ms. [REDACTED] dated January 31, 2023 acknowledging receipt of complaint, initiation of complaint process and requesting relevant documentation.
8. Letter from Mr. Krempien to Mr. Luong dated January 31, 2023 requesting written response to complaint and enclosing copy of complaint.
9. Email from Ms. [REDACTED] to A. Pullin dated February 2, 2023 acknowledging receipt of letter for additional documentation.
10. Memo from Mr. Krempien to file dated February 24, 2023 regarding telephone conversation with Ms. [REDACTED]
11. Emails from Ms. [REDACTED] to Mr. Krempien dated February 27, 2023 regarding requested documentation and record.
12. Emails between Ms. [REDACTED] and Mr. Krempien dated February 27, 2023 regarding access to written response of the investigated member.
13. Emails from Ms. [REDACTED] to Mr. Krempien dated February 27, 2023 attaching requested documentation and record.
14. Written response to the complaint from Mr. Luong to Mr. Krempien dated March 2, 2023 along with supporting documents.
15. Emails between Ms. [REDACTED] and Ms. Mosher dated April 13, 2023 regarding scheduling virtual meeting.
16. Memo from Ms. Mosher to file dated April 17, 2023 regarding virtual interview with Ms. [REDACTED] Mr. [REDACTED] and [REDACTED]
17. Emails between Mr. Luong and Ms. Mosher dated April 21, 2023 regarding scheduling virtual meeting.
18. Memo from Ms. Mosher to file dated April 26, 2023 regarding virtual interview with Mr. Luong.

19. Letter from Mr. Krempien to Mr. Luong dated April 28, 2023 informing of the addition of allegation of unprofessional conduct to the investigation and requesting a written response to the new allegation.
20. Memo from Mr. Krempien to file dated April 28, 2023 regarding telephone conversation with Mr. Luong.
21. Email from Mr. Krempien to Ms. Mosher dated May 5, 2023 forwarding written response sent by Mr. Luong.
22. Letter from Ms. Mosher to Mr. Luong dated May 8, 2023 enclosing letter from Ms. [REDACTED] to JL Pharmacare Pharmacy dated October 31, 2022.
23. Memo from Ms. Mosher to file dated May 5, 2023 regarding attempts to contact Mr. Luong.
24. Memo from Mr. Krempien to file dated May 10, 2023 regarding attempts to contact Mr. Luong.
25. Email from Ms. Mosher to Mr. Luong dated May 11, 2023 regarding Sun Life audit letter.
26. Email from Mr. Luong to Ms. Mosher dated May 13, 2023 regarding undertaking to respond.
27. Email from Ms. Mosher to Mr. Luong dated May 15, 2023 regarding failure to supply additional information and investigation status.
28. Email from Mr. Luong to Ms. Mosher dated May 16, 2023 regarding the investigation.
29. Email from Mr. Luong to Ms. Mosher dated May 16, 2023 regarding responding to correspondence.
30. Email from Ms. Mosher to Mr. Luong dated May 17, 2023 regarding completion of investigation.
31. Email from Mr. Luong to Mr. Krempien dated May 17, 2023 regarding closing the Pharmacy.
32. Investigator table of claims and potential breaches.

Exhibit 3 also contained at Tab D the Alberta College of Pharmacy Standards of Practice for Pharmacists and Pharmacy Technicians (the “SPPPT”), at Tab E the Alberta College

of Pharmacy Standards for the Operation of Licensed Pharmacies (the “SOLP”), at Tab F the Alberta College of Pharmacy Code of Ethics (the “Code of Ethics”), at Tab G excerpts of the *Pharmacy and Drug Act*, and at Tab H excerpts of the HPA.

Ms. Chisholm proceeded to take Mr. Krempien through the various documents included in Tab C to Exhibit 3, and Mr. Krempien provided the following:

- Tab 1 are emails Mr. Krempien exchanged with [REDACTED] [REDACTED] Manager of Fraud Risk Management with Sun Life, on October 4, 2022. Mr. [REDACTED] was reaching out for assistance in accessing records at the Pharmacy pursuant to an audit Sun Life was conducting of the Pharmacy. Mr. Krempien advised Mr. [REDACTED] that the College could not directly assist but copied Mr. Luong and outlined that the *Health Information Act* allows a custodian of health information records such as Mr. Luong to disclose records to a third-party insurer for the purposes of an audit.
- Tab 2 is a response Mr. Krempien received from Mr. Luong dated October 6, 2022 and addressed to Mr. [REDACTED] outlining Mr. Luong’s concerns with the Sun Life audit. Mr. Krempien confirmed that he did not treat Mr. Pelley’s email as a complaint about Mr. Luong, but recorded the information as an issue of public concern.
- Tab 3 is a copy of the complaint about Mr. Luong from Jillian [REDACTED] Drug Claims Consultant with Sun Life Fraud Risk Management, which Mr. Krempien received on January 27, 2023. Ms. [REDACTED] the complainant, set out that the Pharmacy was selected for an audit because 91% of the claims submitted from that pharmacy were submitted manually rather than electronically, which was abnormal. This review showed that a large number of those claims were coming from a small number of people, and there were additional concerns about the types of claims being submitted by the Pharmacy. Sun Life then conducted an in-person audit, which raised concerns that Mr. Luong was not cooperating with the audit as he was refusing to provide the requested documentation. There were also concerns that a large number of the claims were prescribed by Dr. Nam [REDACTED] who had retired from medical practice in December 2020. Finally, there were concerns about claims for compounded medications, as the Pharmacy was not equipped to prepare such compounds in-house. Mr. Krempien referred the complaint for investigation and appointed himself and Jennifer Mosher as investigators in the matter, with Ms. Mosher conducting the bulk of the investigation.
- Tab 4 is the Complaint Referral Form, a document created by the College to document information regarding the complainant and the member, and a high-level summary of the complaint.
- Tab 5 is a memo from Mr. Krempien to himself, summarizing a phone conversation he had with Mr. Luong on January 30, 2023. During the call, Mr.

Krempien identified himself as the Complaints Director and notified him of the complaint from Ms. [REDACTED] and that he was commencing an investigation. Mr. Krempien provided more information to Mr. Luong on the procedural steps that would follow, including that Mr. Luong would be required to provide a written response and to provide supplemental documentation for the investigation, and informing Mr. Luong that he had requested additional information and documentation from Sun Life. Mr. Krempien suggested, and Mr. Luong agreed, that Mr. Luong was already in possession of much of the documentation in this matter, either having received it during the Sun Life audit or had produced it during the Sun Life audit. Mr. Luong indicated he would be providing his response in due course.

- Tab 6 is a memo from Mr. Krempien to himself, summarizing a phone conversation he had with Ms. [REDACTED] on January 31, 2023. During the call, Mr. Krempien informed Ms. [REDACTED] that the College would be investigating her complaint regarding Mr. Luong, and that he would be asking Ms. [REDACTED] for additional documentation, specifically all of Sun Life's audit documents regarding the Pharmacy and any records of conversations or other communications between Sun Life and Mr. Luong regarding this matter.
- Tab 7 is a letter to Ms. [REDACTED] from Mr. Krempien dated January 31, 2023 acknowledging the receipt of her complaint, providing procedural information, and requesting documentation.
- Tab 8 is a letter to Mr. Luong from Mr. Krempien dated January 31, 2023, providing Mr. Luong with written notice of Ms. Penney's complaint. In the letter, Mr. Krempien directed Mr. Luong to provide his written response by March 3, 2023, and provided guidance on what the response should consist of, including the supplemental documentation he was to provide. Specifically, Mr. Krempien directed Mr. Luong to provide a copy of the documents he had received and he had provided to Sun Life as part of the Sun Life audit.
- Tab 9 are emails between Ms. [REDACTED] and [REDACTED] a Complaints Resolution Advisor at the College.
- Tabs 10-12 are memos and emails, comprising communications between Mr. Krempien and Ms. [REDACTED] regarding the provision of Sun Life's documentary material to Mr. Krempien.
- Tab 13 is the full package of documents that Mr. Krempien received from Sun Life. It is a large document and includes their audit documents, their communications with Mr. Luong, and copies of records received from the Pharmacy. Mr. Krempien stated that he supported Ms. Penney's analysis and conclusions in this audit package.

- Tab 14 is Mr. Luong's written response to the complaint, sent on March 2, 2023. Mr. Luong did not provide the documents as requested by Mr. Krempien on January 31, but rather provided a summary of the Sun Life audit from his perspective. Mr. Luong outlined his justification or rationale for not providing Sun Life with the documents they requested, specifically that he believed Sun Life did not have the contractual authority to ask these types of personal or business questions, including questions about which pharmacy he ordered compounded medications from.
- Tabs 15 to 18 are documents created by or sent to Ms. Mosher from various parties regarding her investigation.
- Tab 19 is a letter from Mr. Krempien to Mr. Luong sent via email and registered mail on April 28, 2023, identifying concerns with Mr. Luong's failure or refusal to cooperate with Ms. Mosher's investigation. Mr. Krempien informed Mr. Luong that the failure to cooperate was potentially a form of unprofessional conduct and notified Mr. Luong that he was adding an additional allegation of unprofessional conduct related to Mr. Luong's refusal to cooperate with the investigation. Mr. Krempien directed Mr. Luong to provide the documents that had been asked for by himself and Ms. Mosher, as well as to provide the information requested by Ms. Mosher as part of her investigation. Mr. Krempien directed Mr. Luong to respond by May 5.
- Tab 20 is a memo from Mr. Krempien to himself, summarizing a phone conversation he had with Mr. Luong on April 28, 2023. During the call, Mr. Luong confirmed that he had received Mr. Krempien's email. Mr. Luong acknowledged that he would respond by May 5.
- Tab 21 is Mr. Luong's written response to Mr. Krempien's communications of April 28. In the response, Mr. Luong reiterated that he believed Sun Life didn't have the right to audit his work, and that he felt he did not need to respond to invalid complaints that were lacking in evidence. Mr. Luong provided the name of two pharmacies that provided him compounding services. Mr. Luong indicated he was refusing to provide the information requested by Ms. Mosher, as he felt it to be irrelevant to the complaint. Mr. Luong did not provide any supplemental documents as requested.
- Tabs 22 to 23 are documents created or sent by Ms. Mosher regarding her investigation.
- Tab 24 is a memo from Mr. Krempien to himself, summarizing his attempts to contact Mr. Luong via telephone on May 10, 2023. Mr. Krempien had been made aware that Mr. Luong had not answered recent phone calls from Ms. Mosher, so

Mr. Krempien was contacting Mr. Luong to direct him to return Ms. Mosher's calls.

- Tabs 25-30 are documents created by or sent to Ms. Mosher regarding her investigation.
- Tab 31 is an email from Mr. Luong to a separate department in the College, dated May 16, 2023, informing the College that he would be closing the Pharmacy permanently as of May 23, 2023.
- Tab 32 is a table prepared by Ms. Mosher.

Mr. Krempien stated that after he received a copy of the investigation report from Ms. Mosher, he reviewed the report, the documentation and her preliminary analysis and determined that there were sufficient grounds to conclude that Mr. Luong had engaged in unprofessional conduct and misconduct, and as such the matter would be referred to a hearing. Mr. Krempien also noted that on May 31, 2023, Mr. Luong had accessed his online profile and had selected not to renew his annual permit but instead selected to move to the retired register. Mr. Krempien provided that retired members have no authority to practice the profession of pharmacy, nor are they able to teach, and they cannot hold themselves out as pharmacists.

Mr. Krempien provided that Mr. Luong first registered with College as an intern in 1998 and moved to the clinical register in 2000. He also provided that there has only been one other formal complaint made about Mr. Luong, which was made in 2010 by another pharmacist who alleged that Mr. Luong had not transferred the remaining valid refills of a patient in a timely enough manner. The matter was resolved after investigation without a referral to a hearing.

Ms. Chisholm then proceeded to call Ms. Jillian [REDACTED] Drug Claims Consultant with Sun Life Fraud Risk Management, as a witness. Ms. [REDACTED] stated that in her role at Sun Life, she conducted an audit into Mr. Luong's practice at the Pharmacy. Ms. [REDACTED] explained that the Pharmacy had a very high rate of manual claims submissions, 91% in July 2021, where typically the majority of claims would be made electronically. This indicated to Sun Life that an additional review was necessary.

Ms. [REDACTED] testified that each time a Sun Life member submitted a manual claim, they gave authorization to Sun Life to audit those claims if further review was needed. Pursuant to that authority, Ms. [REDACTED] contacted the Pharmacy in October 2022 and requested documentation for 72 claims in order to review those claims. In January, after Ms. Penney's review was in its 6th month, she made a complaint about Mr. Luong to the College as Mr. Luong had only provided documentation regarding 11 of the 72 claims, and by January Mr. Luong had stopped talking to Ms. [REDACTED]

Ms. Chisholm proceeded to take Ms. [REDACTED] through select documents in Tab C to Exhibit 3, and Ms. [REDACTED] provided the following:

- Tab 6 is a memo from Mr. Krempien to himself, summarizing a phone conversation he had with Ms. [REDACTED] on January 31, 2023. Ms. [REDACTED] stated that the memo was an accurate summary of her conversation with Mr. Krempien.
- Tab 7 is a letter to Ms. [REDACTED] from Mr. Krempien dated January 31, 2023 acknowledging the receipt of her complaint, providing procedural information, and requesting documentation. Ms. [REDACTED] stated that Mr. Krempien's request was submitted to Sun Life's privacy and compliance team, and approval was given to collect the documentation and provide it to the College.
- Tab 9 are emails between Ms. [REDACTED] and [REDACTED] a Complaints Resolution Advisor at the College.
- Tab 10 is a memo from Mr. Krempien to himself, summarizing a phone conversation he had with Ms. [REDACTED] on February 24, 2023. Ms. [REDACTED] stated that the memorandum was an accurate summary of their conversation.
- Tab 12 are emails between Ms. [REDACTED] and Mr. Krempien about the delivery of the requested documentation to the College and about College processes.
- Tab 13 is the full package of documents that Ms. [REDACTED] provided to the College regarding her internal review of the top three Sun Life plan members claiming at the Pharmacy. Ms. [REDACTED] provided the following information regarding Tab 13:
 - Ms. [REDACTED] included in this package plan member information, claiming history and detailed notes on the reviews Ms. [REDACTED] had conducted for the top three Sun Life plan members claiming at the Pharmacy. Ms. [REDACTED] provided detailed information about her notes on the reviews she conducted. Ms. [REDACTED] stated that she had to rely on the information submitted by the Sun Life members, as Mr. Luong refused to provide documentation.
 - Ms. [REDACTED] testified that based on her review of the top three Sun Life plan members claiming at the Pharmacy, she was able to see that many of claims related to the Pharmacy had been previously audited claims. Ms. [REDACTED] also stated that she was concerned about Dr. [REDACTED] as a prescriber for claims from the Pharmacy well into 2022, as he had retired in December 2020. Ms. [REDACTED] stated that she did not reach out to Dr. [REDACTED] because he was retired and his practice was closed. Ms. [REDACTED] stated that her understanding was that once a doctor is retired, they have no right to prescribe.

- Ms. [REDACTED] provided additional information on the complaint she submitted to the College. The complaint included a list of medications she saw as having concerning patterns, including that some of the medications and medical devices were very similar between spouses and parents and dependents, and that prescriptions were being filled on exactly a 30-day interval which was unusual given the type of medication/medical device. The complaint included documentation from a small number of claims that had been received from Mr. Luong which raised concerns for Ms. [REDACTED] including a pharmacy hard copy receipt showing Dr. [REDACTED] as a prescriber after the date of his retirement and the actual prescription for that medication showing a different doctor as the prescriber, and pharmacy hard copy receipts for compounded medication it was not clear that the Pharmacy was permitted or equipped to compound. The complaint also provided the trends in manual claim submissions for the Pharmacy over time, which showed high rates in July 2022 before dropping off dramatically when Sun Life's audit began in October, eventually going to zero claims by the end of 2022.
- There were blank copies of Sun Life's Extended Health Care Claim Form, a copy of which would have to be submitted with every manual claim. Ms. [REDACTED] noted the section of the form that allows members to give their consent for Sun Life to review their claims. Ms. [REDACTED] stated that Sun Life had processes in place wherein if a manual submission form was not signed, the adjudicator would reject the claim.
- Ms. [REDACTED] had compiled information to assist a Sun Life investigator in conducting an on-site audit. This included information confirming that the Pharmacy was able to submit claims electronically, the College's records regarding Mr. Luong and the Pharmacy, external photos of the Pharmacy and map images of the Pharmacy's location, questions for the on-site auditor to ask Mr. Luong regarding specific claims and the plan members claiming at the Pharmacy, and a list of claims for which documentation was needed:
 - Ms. [REDACTED] requested that the on-site auditor ask Mr. Luong questions about claims submitted by member [REDACTED] who Ms. [REDACTED] indicated was Mr. Luong's wife. Ms. Chisholm asked Ms. [REDACTED] how she determined that [REDACTED] was Mr. Luong's wife. Ms. [REDACTED] referred to a Public Service Health Care Plan Claim Form completed by [REDACTED] which showed [REDACTED] address as the Northeast Address, which is the corporate registration address for the Pharmacy. This form also showed Nhan Luong as being checked off as [REDACTED] spouse. Additionally, Ms. [REDACTED] reviewed the plan for Nhan Luong and determined that [REDACTED] and two [REDACTED] were listed as dependents, also at the Northeast Address. Ms. [REDACTED] also reviewed a business card collected at the on-site audit which was for "Jeff Nhan Luong". From these, Ms. [REDACTED] determined there was a relationship between Mr. Luong and [REDACTED] Ms.

█████ attempted to contact █████ on multiple occasions over a period of months, but she was not able to speak with █████

- Ms. █████ observed that both Mr. Luong and █████ were claiming the maximum amount one would need of Diabetic Test Strips and Lancets, despite having no history to suggest they are diabetic, and that in Ms. Penney's opinion, persons with pre-diabetes would not test this frequently. This raised concerns for her that Mr. Luong and █████ were inappropriately claiming for diabetic medical supplies.
- Ms. █████ also included a chart of claims for which documentation from the Pharmacy was needed, which showed that Mr. Luong had not provided the requested documentation for 61 claims. Ms. █████ stated that for the 11 claims for which Mr. Luong did provide documentation, Sun Life determined that those were all for one plan member who was only permitted to submit claims manually and that Sun Life had no concerns. Ms. █████ stated that she gave Mr. Luong several extensions to provide the requested documentation, but Mr. Luong did not produce the documents. It was at this point, six months after the investigation was initiated, that Ms. █████ decided to file the complaint.
- Tab 16 is a memo from Ms. Mosher to herself, summarizing virtual meeting she had with Ms. █████ on April 17, 2023. Ms. █████ stated that the memo was accurate to her recollection.

Ms. Chisholm then proceeded to call Ms. Jennifer Mosher, Investigator with the College complaints department, as a witness. Ms. Mosher stated that she was appointed by Mr. Krempien to conduct an investigation into a complaint against Mr. Luong. Ms. Chisholm proceeded to take Ms. Mosher through select documents in Tab C to Exhibit 3, and Ms. Mosher provided the following evidence:

- Tab 13 is the full package of documents that Mr. Krempien received from Sun Life to support their initial complaint. Ms. Mosher testified that she did not immediately draw conclusions from these documents.
- Tab 14 is Mr. Luong's written response to the complaint, sent on March 2, 2023. Ms. Mosher outlined that Mr. Luong's response was mostly aimed at providing reasons why the Sun Life audit process was unfair to him and had invaded his privacy. Ms. Mosher opined that Mr. Luong's response was not typical of an investigated member, as Mr. Luong had not provided the documentation requested by Mr. Krempien. Ms. Mosher stated that though Mr. Luong had provided some documentation, the documents he provided were not related to the concerns outlined in the complaint.

- Tab 15 contained emails between Ms. Mosher and Ms. [REDACTED] where Ms. Mosher was organizing a virtual meeting to discuss the complaint.
- Tab 16 is a memo from Ms. Mosher to herself, summarizing a virtual meeting she had with Ms. [REDACTED] Mr. [REDACTED] and Ms. [REDACTED] Sun Life Director of Fraud Risk Management on April 17, 2023. Ms. Mosher stated that Ms. [REDACTED] and her two colleagues provided information on how Sun Life chose which claims they were seeking to verify, and that it was due to a disproportionately high number of manual claims billed from the Pharmacy for a small number of members. Ms. [REDACTED] also provided information that Mr. Luong had not been particularly cooperative during the Sun Life investigation. While Mr. Luong had been cooperative with questions regarding [REDACTED] he stopped answering questions when it came to [REDACTED] and their family, suggesting it was a private matter.
- Tab 17 is emails between Ms. Mosher and Mr. Luong, where Ms. Mosher was organizing a virtual meeting to discuss the complaint.
- Tab 18 is a memo from Ms. Mosher to herself, summarizing a virtual meeting she had with Mr. Luong on April 26, 2023. Ms. Mosher stated that she and Mr. Luong discussed the complaint and his response to the complaint, and Ms. Mosher informed Mr. Luong that she needed more information regarding the 72 claims that Sun Life was attempting to verify. Ms. Mosher testified that Mr. Luong stated that [REDACTED] was a patient of the Pharmacy and he had no other personal or familial relationship with him. Mr. Luong initially indicated he was dating [REDACTED] then retracted that statement and informed Ms. Mosher he was not prepared to respond to questions regarding the identity of [REDACTED] and [REDACTED] dependents. Mr. Luong also refused to discuss [REDACTED] or Dr. [REDACTED] Ms. Mosher summarized this as Mr. Luong initially being cooperative, but as time went on he stopped answering questions, particularly regarding what the College believed to be his family. Ms. Mosher informed Mr. Krempien that Mr. Luong was not cooperating with her investigation.
- Tab 19 is a letter from Mr. Krempien to Mr. Luong sent via email and registered mail on April 28, 2023, identifying concerns with Mr. Luong's failure or refusal to cooperate with Ms. Mosher's investigation and adding an allegation of unprofessional conduct due to that failure to cooperate. Mr. Krempien directed Mr. Luong to respond by May 5, 2023.
- Tab 21 is Mr. Luong's written response to Mr. Krempien's communications of April 28. In the response, Mr. Luong requested additional information about the complaint. Ms. Mosher deduced that Mr. Luong was looking for a copy of the document prepared by Ms. [REDACTED] of the 72 claims that were subject to their audit, as he had destroyed the copy Ms. [REDACTED] provided to him.

- Tab 22 is a letter that Ms. Mosher sent to Mr. Luong via email on May 8, 2023, wherein she enclosed a copy of the document he was requesting, the letter from Ms. [REDACTED] which contained the list of 72 claims subject to the Sun Life audit. In the letter, Ms. Mosher directed Mr. Luong to confirm he had received the letter by 4 pm on May 9, 2023, and to provide documentation and information requested in the letter by 4 pm on May 15, 2023.
- Tab 23 is a memo from Ms. Mosher to herself, summarizing her attempts to contact Mr. Luong via telephone on May 10, 2023 and verify that he had received her email of May 8. Ms. Mosher left two voicemails.
- Tab 25 are emails between Ms. Mosher and Mr. Luong wherein Mr. Luong verified that he had received her May 8 letter and indicated to Ms. Mosher that he would respond in a few days.
- Tab 26 is emails between Ms. Mosher and Mr. Luong regarding information about the letter from Ms. [REDACTED] that Ms. Mosher had forwarded on May 8.
- Tab 27 is an email that Ms. Mosher sent to Mr. Luong on May 15, informing Mr. Luong that he had missed the deadline to provide additional information for her investigation. Ms. Mosher informed Mr. Luong that she was completing her investigation in the absence of those records.
- Tab 28 is an email from Mr. Luong to Ms. Mosher sent on May 16, again outlining his concerns with the process and the Sun Life audit. The documentation and information requested by Ms. Mosher was not provided.
- Tab 29 is an email from Mr. Luong to Ms. Mosher also sent on May 16, wherein he informed Ms. Mosher that she should have understood that his response would be delayed.
- Tab 30 is an email from Ms. Mosher to Mr. Luong sent on May 17, informing Mr. Luong that she had received his replies and that the required information was still outstanding, and that she would be completing her investigation in the absence of those records.
- Tab 32 is a table prepared by Ms. Mosher, which is a summary of the 72 claims that Sun Life was trying to verify at the Pharmacy to which she added information that would identify whether there were any breaches from the perspective of the College. Ms. Mosher provided the following information regarding this chart:
 - The chart looked at the three major groups of claims for the three plan members investigated.

- For the prescriptions prescribed by Dr. [REDACTED] Ms. Mosher looked to see if they had been filled past his retirement date.
- For the compounded medicines, Ms. Mosher looked at the compounds to determine if they were prepared in a compliant facility.
- For the claims that were sent for individuals who were believed to be Mr. Luong and his family ([REDACTED] and dependents), Ms. Mosher examined whether they met the criteria for dispensing or prescribing for members of a pharmacist's immediate family. Ms. Mosher stated that the criteria come from the SPPPT which requires a minor condition under circumstances that would be considered emergent, or where another appropriate health care provider was not readily available. Ms. Mosher provided the following examples:
 - For [REDACTED] for an anti-inflammatory topical compound on January 24, 2021, Ms. Mosher concluded the medication could have been prescribed/dispensed for a minor condition, but it was not an emergency, and another health care provider would have been readily available.
 - For [REDACTED] for diabetic supplies on January 24, 2021, Ms. Mosher concluded the dispensing activity was not for a minor condition, was not an emergency, and as this was taking place in Edmonton, another health care provider would have been available. Ms. Mosher provided that, in her experience as a pharmacist, she did not know of a reason why someone with no history of diabetes would use these diabetic supplies, and when she inquired with Mr. Luong about this, he did not provide her with that information.

IV. SUBMISSIONS

After the three witnesses testified, Ms. Chisholm made closing submissions on behalf of the College.

Ms. Chisholm submitted that the Hearing Panel must determine two matters on a balance of probabilities: whether the allegations made against Mr. Luong in the Notice of Hearing had been factually proven and, if so, whether those allegations constitute unprofessional conduct.

Ms. Chisholm then referred the Hearing Tribunal to the Notice of Hearing.

With respect to the first allegation, Mr. Luong's failure to cooperate with an investigator appointed by the Complaints Director of the College, Ms. Chisholm submitted that the allegation was proven. Ms. Mosher asked Mr. Luong several questions relevant to Allegation 1 in her April 26, 2023 interview with him (Exhibit 3, Tab C, Tab 18), and Mr. Luong refused to provide responses to those questions. Mr. Krempien then posed

the questions to Mr. Luong on April 28, 2023 (Exhibit 3, Tab C, Tab 19), to which Mr. Luong provided a partial response (Exhibit 3, Tab C, Tab 21), noting in part that he did not believe that Sun Life had a right to audit his work and also that he had believed that Ms. Mosher's questions were irrelevant. Ms. Chisholm summarized Mr. Krempien's evidence on this point, in that Mr. Krempien believed the questions being posed to Mr. Luong were directly relevant to the complaint and the College's investigation. Ms. Chisholm submitted that Mr. Luong did not respond in full to any of the questions posed to him.

Ms. Chisholm submitted that the SPPPT, the SOLP, and Principle 10 of the Code of Ethics all require pharmacists to comply with the law that governs their practice, to be honest in dealing with the College, and to respond openly, courteously and respectfully to complaints and criticism made against them.

Ms. Chisholm submitted that when Mr. Luong refused to provide the requested information to Ms. Mosher, he failed to uphold the SPPPT, the SOLP and the principles of the Code of Ethics. Ms. Chisholm submitted that a failure to comply with an investigator of the College is serious, and is specifically identified as constituting unprofessional conduct pursuant to s. 1(1)(pp)(vii) of the HPA.

With respect to the second allegation, regarding Mr. Luong's failure to cooperate with Sun Life's audit of the Pharmacy by refusing to provide requested information and documentation for approximately 61 of 72 audited claims, Ms. Chisholm submitted that the allegation was proven based on the materials in Exhibit 3, Tab C, Tab 13. Ms. Chisholm pointed to the chart prepared by Ms. [REDACTED] showing that Mr. Luong had failed to provide documentation for 61 of the 72 claims Sun Life was auditing (Exhibit 3, Tab C, Tab 13, p. 102). Ms. Chisholm submitted that Principle 10(2)(c) of the Code of Ethics requires pharmacists to act honestly in dealings with contractors, suppliers, and others encountered in business dealings related to the practice of pharmacy. Further, Principle 10(1) requires pharmacists to comply with both the letter and the spirit of the laws that govern their practice.

Ms. Chisholm submitted that over a four-month period throughout the audit process, Mr. Luong was provided with multiple opportunities to provide the information that Ms. [REDACTED] had requested, and he failed to do so, which was unacceptable. Ms. Penney's evidence was that she had the authorization to request the information from the forms signed by the plan members. Ms. Chisholm submitted that this was not a case of a third party acting unreasonably; third-party insurers cannot monitor the validity of every single claim that is submitted, so they rely on the honesty and cooperation of pharmacists, and expect them to comply with the agreements that pharmacies enter into with third parties.

Ms. Chisholm submitted that Mr. Luong did not comply with over 80% of Ms. Penney's request, and that this conduct was a breach of the Code of Ethics and was unprofessional

conduct under s. 1(1)(pp)(ii) of the HPA. Further, Ms. Chisholm submitted that this conduct harms the integrity of the profession and as such is unprofessional conduct under s. 1(1)(pp)(xii) of the HPA.

With respect to the third allegation regarding Mr. Luong's failure to maintain a record keeping system at the Pharmacy that ensures the creation, maintenance and availability for retrieval of pharmacy records, Ms. Chisholm submitted that the allegation was proven based on the evidence, which provided that during the several hours of the on-site audit, the auditor was unable to retrieve the requested records.

Ms. Chisholm submitted that, as an owner and a licensee of a pharmacy, Mr. Luong was obliged to ensure that records were kept and would be made available in accordance with Standard 8.1 of the SOLP and s. 10(1)(d)(iv) of the *Pharmacy and Drug Act*, and that the legislation and the standards regarding record keeping exist to enable regulatory bodies like the College to effectively regulate in the public interest. Ms. Chisholm submitted that record keeping is part of providing appropriate services to the public, which includes insurers, and the public should be entitled to expect that pharmacists and licensees will maintain a high degree of ethics and professionalism and uphold those obligations.

With respect to the fourth allegation, regarding Mr. Luong dispensing medications and medical devices for himself and his immediate family members for conditions that were not considered minor, emergent or where another practitioner was not available, Ms. Chisholm submitted that the allegation was proven. Ms. Chisholm submitted the following regarding the familial connection:

- On April 26, 2023, Ms. Mosher had a conversation with Mr. Luong, wherein he told Ms. Mosher that he was dating [REDACTED] before retracting that statement (Exhibit 3, Tab C, Tab 18).
- The January 31, 2021 Public Service Health Care Plan Claim Form completed and submitted by [REDACTED] (Exhibit 3, Tab C, Tab 13) shows that [REDACTED] home address is the same as the Northeast Address, which was established as Mr. Luong's home address by the Land Titles Certificate showing Mr. Luong as the owner of the property, as well as the evidence of Mr. Krempien regarding the Affidavits of Mr. [REDACTED] and Mr. [REDACTED]. This form also names NL ("Nhan Luong") as [REDACTED] spouse, and Mr. Luong went by the name of Jeff Nhan Luong (Exhibit 3, Tab C, Tab 13). Further, the form names [REDACTED] and [REDACTED] as dependents.
- Ms. Chisholm submitted that even without Mr. Luong's cooperation, there was enough evidence to conclude on a balance of probabilities that NL was Mr. Luong himself and that [REDACTED] [REDACTED] and [REDACTED] were Mr. Luong's immediate family members.

Ms. Chisholm submitted that Allegation 4 was proven based on the chart created by Ms. Mosher at Exhibit 3, Tab C, Tab 32, which goes through the 61 claims for which Mr. Luong did not provide information or documentation and reviews the claims against the SPPPT standards for dispensing to immediate family members. Ms. Chisholm provided following examples from the chart, where she submitted Mr. Luong did not comply with the SPPPT:

- For ■■■ on January 24, 2021 for diabetic supplies (Contour Test Strips), Ms. Mosher concluded that did not meet the criteria of a minor condition in emergent circumstances, or a case where another health care provider would not have been readily available.
- For ■■■ on January 24, 2021 again for diabetic supplies (Microlet Lancets), Ms. Mosher came to the same conclusion as the Contour Test Strips.
- For ■■■ on January 30, 2021 for Zolpidem, 10 milligrams, Ms. Mosher came to the same conclusion as the Contour Test Strips.
- For NL on January 30, 2021 for Gabapentin, 600 milligrams, Ms. Mosher came to the same conclusion as the Contour Test Strips.
- For ■■■ on January 7, 2021 for Sertraline, 100 milligrams, Ms. Mosher came to the same conclusion as the Contour Test Strips.

With respect to the Allegation 5, regarding Mr. Luong dispensing diabetic supplies for himself and his spouse in the absence of a documented history of diabetes, Ms. Chisholm submitted that the allegation was proven by Mr. Luong's failure to provide any information as to why the diabetic supplies would have been provided. Ms. Chisholm summarized Ms. Penney's evidence that the amount of those diabetic supplies being dispensed would have required the strips to be used three times a day, which was not probable for someone that had no documented history of diabetes. Ms. Chisholm submitted that it was not in keeping with the SPPPT, the SOLP and the expectations of a regulated pharmacy or the licensee of a pharmacy to dispense diabetic supplies to family members when there is not a documented history of diabetes. Ms. Chisholm submitted that pharmacists have an obligation to use health resources wisely and to be stewards of the health care environment. Ms. Chisholm further submitted that this conduct is in breach of the SPPPT and the SOLP (unprofessional conduct within the meaning of s. 1(1)(pp)(ii) of the HPA), and it is also conduct that damages the integrity of the profession (unprofessional conduct within the meaning of s. 1(1)(pp)(xii) of the HPA).

Investigated Members Submissions

There were no submissions from Mr. Luong as he was not in attendance.

Hearing Tribunal Questions

The Hearing Tribunal observed that Allegation 3 spoke to a failure to maintain a record system while Ms. Chisholm stated that Mr. Luong failed to provide records. The Tribunal asked Ms. Chisholm to speak to the evidence that would demonstrate Mr. Luong failed to maintain a record system. Ms. Chisholm stated the evidence was that maintaining a record system included the ability to have the records made available. She stated that despite the auditor/inspector being in the Pharmacy for a number of hours, the records were not available or accessible. She stated the allegation was not just maintaining the records but was about maintaining a record system where records can be made readily available.

The Tribunal also asked Ms. Chisholm to speak to the evidence that supported Mr. Luong and his spouse did not have a history of diabetes. Ms. Chisholm stated that Ms. Penney's evidence was that she reviewed Mr. Luong's records as a patient and that there were no records of him having any medications such as insulin or anything else that would have identified a history of diabetes. She also stated that Ms. Luong was asked to provide information to support the dispensing of diabetic supplies but that he was unable to or refused to do so.

IV. FINDINGS

After hearing Ms. Chisholm's submissions, the Hearing Tribunal adjourned to deliberate. The Hearing Tribunal determined that allegations one, two, four and five in the Notice of Hearing were proven. The Hearing Tribunal determined that allegation three in the Notice of Hearing was not proven on a balance of probabilities.

The Hearing Tribunal's reasoning is as follows.

Allegation 1 – that as a registered clinical pharmacist and the licensee of the Pharmacy, Mr. Luong:

- 1. Failed to cooperate with an investigator appointed by the Complaints Director of the College, when he refused:**
 - a. to provide prescription and transaction records to Jennifer Mosher related to SunLife's audit of the Pharmacy and the subject claims;**
 - b. to confirm his relationship with [REDACTED] NL, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] all of whom were patients of the Pharmacy;**

- c. to confirm patient information regarding the need for diabetic supplies for NL and [REDACTED]**
- d. to confirm his relationship with Dr. [REDACTED]**
- e. to confirm a complete list of pharmacies that the Pharmacy has a compounding and repackaging agreement with;**
- f. to answer questions about his practice of prescribing and dispensing medications and medical devices for himself and his immediate family members.**

The evidence establishes that on January 27, 2023, Mr. Krempien, the Complaints Director for the College, received a complaint about Mr. Luong and the Pharmacy from Ms. [REDACTED]. Mr. Krempien appointed himself and Ms. Mosher as investigators for the Complaint, with Ms. Mosher conducting the bulk of the investigation.

On January 30, 2023 Mr. Krempien had a phone conversation with Mr. Luong, wherein he informed Mr. Luong of the Complaint and informed him that he would be requesting additional information and documentation from Mr. Luong. On January 31, 2023, Mr. Krempien wrote to Mr. Luong and requested his response to the Complaint, to be provided with 30 days, which was to include any materials that could assist in resolving the matter. Specifically, Mr. Krempien directed Mr. Luong to provide a copy of the documents he had received and he had provided to Sun Life as part of the Sun Life audit. On March 2, Mr. Luong provided his written response to the complaint. Mr. Luong did not provide the documents as directed by Mr. Krempien.

On April 17, 2023, Ms. Mosher met with Ms. [REDACTED] and other representatives from Sun Life to discuss the Complaint. In that conversation, Ms. [REDACTED] provided the following regarding the “top three” plan members and dependents for whom the Pharmacy did not bill Sun Life directly:

- [REDACTED] (plan member) and [REDACTED] (spouse);
- [REDACTED] (plan member) and NL (spouse), [REDACTED] (dependent), [REDACTED] (dependent); and
- [REDACTED] (plan member), [REDACTED] (spouse), [REDACTED] (dependent).

The evidence also demonstrates that on April 26, 2023, Ms. Mosher and Mr. Luong met virtually to discuss the Complaint and Mr. Luong’s response:

- Ms. Mosher informed Mr. Luong that she needed additional information from him regarding the 72 claims that Sun Life had attempted to verify.

- Mr. Luong provided that [REDACTED] was a patient at the Pharmacy and he had no personal or familial relationship to him. When asked about [REDACTED] Mr. Luong initially stated that he and [REDACTED] were “dating”, but when asked if NL was himself, Mr. Luong indicated he was not “prepared to respond” to that question. When asked if [REDACTED] and [REDACTED] were his [REDACTED] Mr. Luong indicated he was not “prepared to respond” to that question. When asked about his relationship to [REDACTED] Mr. Luong indicated he was not “prepared to respond” to that question, and refused to provide information regarding [REDACTED] or [REDACTED] When asked about his relationship with Dr. [REDACTED] Mr. Luong stated that he was not “prepared to respond” to that question.
- When asked to provide information about compounding activities at the Pharmacy, Mr. Luong confirmed he prepared some compounds in the Pharmacy and currently had a compounding and repackaging agreement with Health Square Pharmacy, and he purchased compounds from other compounding pharmacies. Mr. Luong refused to provide Ms. Mosher with the names of the other compounding pharmacies. Ms. Mosher subsequently confirmed that he did have a compounding and repackaging agreement with Health Square Pharmacy, which had started in October 2022.
- When asked about whether he prescribed and dispensed medications for himself and his immediate family, Mr. Luong stated that he was not “prepared to respond” to the question. When Ms. Mosher requested Mr. Luong provide specific information regarding the prescribing and dispensing of medications and medical supplies for NL, Mr. Luong stated that he was not “ready” to answer those questions.
- Mr. Luong then informed Ms. Mosher that he would not provide her with any further information with respect to the subject prescriptions from the Sun Life audit, meaning that he would not provide information or pharmacy records related to the 61 outstanding claims. Ms. Mosher informed Mr. Luong it was important to cooperate with her investigation and that she had a responsibility to complete the investigation in a timely manner, to which Mr. Luong responded that he was “not ready” to answer her questions about his relationship with the subject patients or the prescriptions for which she required further information.

On April 28, 2023, Mr. Krempien sent a letter to Mr. Luong outlining his concerns with Mr. Luong’s potentially unprofessional conduct in failing or refusing to comply or cooperate with Ms. Mosher. Mr. Krempien advised Mr. Luong that he was adding this Allegation #1, and directed Mr. Luong to provide his response, if any, by May 5, 2023. Mr. Krempien also directed Mr. Luong to provide the information and records requested by Ms. Mosher by May 5, 2023.

On May 5, 2023, Mr. Luong provided his written response, which provided information about two more pharmacies which supplied compounded medications to the Pharmacy

(█████ and ██████ Pharmacies), though Mr. Luong indicated there were many others. Importantly, the evidence establishes that Mr. Luong did not provide the requested information or documentation.

On May 8, 2023, Ms. Mosher again directed Mr. Luong to provide the following documentation and information requested, to be received by May 15, 2023:

- Confirmation of his relationship, personal and professional, with plan member ██████ their spouse NL, and dependents ██████ and ██████
- Confirmation of his relationship, personal and professional, with plan member ██████ their spouse ██████ and dependent ██████
- Confirmation of his relationship, personal and professional, with Dr. ██████
- Information regarding his practice to prescribe and dispense medications and medical devices for himself and his immediate family members on an ongoing basis; and
- Information regarding the 72 prescription claims that were the subject of the Sun Life audit, i.e., a copy of the authorizing prescription (written or verbal) and the associated transaction records (sometimes referred to as "pharmacist signed hardcopies" or "electronic hard copies and documentation").

Ms. Mosher and Mr. Krempien made several attempts to follow up with Mr. Luong. On May 10, 2023, Mr. Luong confirmed he had received Ms. Mosher's letter of May 8, 2023. By May 15, 2023, Mr. Luong had not provided the requested documentation and Ms. Mosher wrote to him to inform him that she was closing her investigation without that documentation. Mr. Luong responded on May 16, and still did not provide the requested information and documentation. Ms. Mosher responded on May 17, confirming that she had not yet received the requested documentation and information, and as such she would be completing her investigation without that information.

The Hearing Tribunal considered the evidence outlined above and determined that Mr. Luong failed to cooperate with an investigator appointed by the Complaints Director of the College.

Specifically, the Hearing Tribunal determined that despite repeated requests from Mr. Krempien and Ms. Mosher, Mr. Luong refused or failed to:

- a. provide prescription and transaction records related to Sun Life's audit of the Pharmacy and the claims therein;

- b. confirm his relationship with [REDACTED] NL, [REDACTED] [REDACTED] [REDACTED] [REDACTED] and Dr. [REDACTED]
- c. confirm patient information regarding NL and [REDACTED] need for diabetic supplies;
- d. confirm a complete list of pharmacies that the Pharmacy had a compounding and repackaging agreement with; and
- e. answer questions about his practice of prescribing and dispensing medications and medical devices to himself and his immediate family members.

The evidence does not provide any reasonable excuse for this refusal or failure.

In the circumstances, Allegation 1 is factually proven, on a balance of probabilities.

Allegation 2 – that as a registered clinical pharmacist and the licensee of the Pharmacy, Mr. Luong failed to cooperate with SunLife’s audit of the Pharmacy, including when he refused to provide SunLife with requested information and documentation for approximately 61 of 72 audited claims.

The evidence demonstrates that in July 2022, Sun Life noted that 91% of the claims from the Pharmacy were manual submissions, which was unusual for pharmacies that could submit claims electronically, as the Pharmacy could. Additionally, there were patterns in the types of medications and interval of processing that raised concerns. In October 2022, Sun Life conducted an on-site audit and later a desk audit of the Pharmacy. On October 31, 2022, Sun Life requested that Mr. Luong provide them with documentation regarding 72 claims in order to validate services, specifically copies of the authorizing prescription and the pharmacist signed hardcopies. Sun Life requested this information by November 4, 2022. As of December 2, 2022, Mr. Luong had provided documentation for 11 claims, which were regarding only one plan member, [REDACTED]. Sun Life subsequently requested information about prescribers and compounding practices and continued to make requests for documentation on the remaining 61 claims. Ms. [REDACTED] provided that as the Sun Life investigation carried on, Mr. Luong’s cooperation progressively ceased. In January, after Mr. Luong stopped responding to Sun Life’s requests for information, Ms. [REDACTED] filed a complaint with the College.

The Hearing Tribunal considered the evidence outlined above and determined that Mr. Luong failed to cooperate with Sun Life’s audit of the Pharmacy, including when he refused to provide information and documentation requested for 61 of 72 audited claims when he was given multiple opportunities to do so.

In the circumstances, Allegation 2 is factually proven, on a balance of probabilities.

Allegation 3 – that as a registered clinical pharmacist and the licensee of the Pharmacy, Mr. Luong failed to maintain a record keeping system at the Pharmacy that ensures the creation, maintenance and availability for retrieval of pharmacy records.

The evidence demonstrates that on October 3, 2022, an on-site audit of the Pharmacy took place. The auditor arrived at 2:50 pm and began asking Mr. Luong questions. The auditor informed Mr. Luong that he was looking for prescription receipts, and asked Mr. Luong to show him the documentation he was requesting. After a discussion about Sun Life's authority to review this material, Mr. Luong provided information to the auditor regarding three prescriptions for ■■■ but refused to provide the auditor with physical copies of this information. When the auditor requested information regarding prescriptions for ■■■ Mr. Luong became distressed and took a long time to provide that information. When the auditor requested information regarding prescriptions for NL, Mr. Luong provided some of the information, then refused to answer any further questions. The auditor left the Pharmacy at 3:52 pm.

Ms. Chisholm submitted that part of the requirement of maintaining a record system is the ability to have those records made available, and despite the auditor being in the Pharmacy for some period of time, the requested records were not readily available or accessible.

The Hearing Tribunal considered the evidence outlined above and determined that there was not sufficient evidence to find that Mr. Luong failed to maintain a record keeping system at the Pharmacy that ensures the creation, maintenance and availability for retrieval of pharmacy records. The evidence demonstrates that the auditor was at the Pharmacy for 62 minutes and that during this time Mr. Luong provided some information and pharmacy records to the auditor. The evidence also demonstrates that Mr. Luong failed or refused to provide certain records, but the allegation is specifically related to the maintenance of a record keeping system, not the failure to provide records. The Tribunal recognizes that Ms. Chisholm submitted that the obligation to maintain a record keeping system also requires that the system allow a pharmacist to have the records made available. The Tribunal also agrees with this interpretation of the requirement. However, there is an absence of any evidence to demonstrate that Mr. Luong's record keeping system somehow did not allow him to have the records available. The evidence actually supports that his record keeping system made such records available as he did provide some information to the auditor.

The evidence demonstrates that Mr. Luong was failing to or refusing to provide the records. It does not demonstrate that the records did not exist or were not available. Therefore, it cannot be determined whether his record system was sufficient or not.

In the circumstances, Allegation 3 is not factually proven on a balance of probabilities.

Allegation 4 – that as a registered clinical pharmacist and the licensee of the Pharmacy, Mr. Luong dispensed medications and medical devices for himself and his immediate family members for conditions that were not considered minor, emergent or where another practitioner was not available.

Based on the evidence, the Hearing Tribunal finds on a balance of probabilities that NL is Mr. Luong, that ■■■ is Mr. Luong's spouse, ■■■ is Mr. Luong's dependent and ■■■ is Mr. Luong's dependent, with ■■■ ■■■ and ■■■ being Mr. Luong's family members.

At the end of her investigation, Ms. Mosher created a chart which summarized the 72 claims that Sun Life was auditing from the Pharmacy and determined whether those claims were prescribed/dispensed to Mr. Luong or his immediate family members, and if they were, whether in her professional opinion the medications were prescribed/dispensed for minor conditions in emergent where another practitioner was not available. Ms. Mosher provided that of the 72 claims, 47 were for Mr. Luong or his immediate family, and none met the criteria of being under emergent circumstances or where another practitioner would not have been available:

- For NL, 20 claims between 2021-2022:
 1. January 19, 2021: Acyclovir Oint (minor condition)
 2. January 23, 2021: Kojic Acid 5 in Lyderm/Stieva (minor condition)
 3. January 23, 2021: Celebrex 200mg
 4. January 23, 2021: Mometasone NS (minor condition)
 5. January 23, 2021: Flovent HFA
 6. January 23, 2021: Eletriptan 40mg
 7. January 30, 2021: HC 2.5/Clindamycin 1 in Cerave Lotion (minor condition)
 8. January 30, 2021: Gabapentin 600 mg
 9. January 30, 2021: Pentoxifylline SR 400mg
 10. January 30, 2021: Finasteride 5mg
 11. October 16, 2021: Contour Test Strips
 12. October 16, 2021: Microlet Lancets
 13. June 27, 2022: Contour Test Strips
 14. June 27, 2022: Microlet Lancets
 15. March 7, 2022: Sildenafil 100mg
 16. August 25, 2022: Gabapentin 600 mg
 17. September 7, 2022: Mometasone NS
 18. September 7, 2022: Prednisolone OS
 19. September 8, 2022: Androgel Pump (minor condition)
 20. September 10, 2022: Rosuvastatin 10 mg
- For ■■■ 10 claims between 2021-2022:
 21. January 12, 2021: Omeprazole DR 20 (minor condition)
 22. January 24, 2021: Diclo 10/Menthol 6/Cyclo 5 in PLO (minor condition)

23. January 24, 2021: Elidel Cream (minor condition)
24. January 24, 2021: Mometasone Cream (minor condition)
25. January 24, 2021: Contour Test Strips
26. January 24, 2021: Microlet Lancets
27. January 30, 2021: Zolpidem 10mg
28. March 25, 2021: Contour Test Strips
29. March 25, 2021: Microlet Lancets
30. August 25, 2022: Diclofenac 10% in Versapro (minor condition)
- For [REDACTED] four claims in 2021:
 31. January 22, 2021: SA 6% in Cerave Cream (minor condition)
 32. October 30, 2021: Avamys (minor condition)
 33. October 30, 2021: Tactupump Forte
 34. October 30, 2021: Methylphenidate 10mg
- For [REDACTED] 13 claims from 2021-2022:
 35. January 7, 2021: Sertraline 100mg
 36. January 7, 2021: Trazadone 50mg
 37. January 7, 2021: Clonidine (0.025 mg)
 38. January 7, 2021: Aripiprazole 5mg
 39. January 13, 2021: Pulmicort Nebuamp
 40. January 16, 2021: HC 2% in cliclopirox 1% cream (minor condition)
 41. January 21, 2021: Mometasone Cream
 42. January 21, 2021: Fluticasone NS (minor condition)
 43. August 13, 2022: Budesonide NS
 44. August 14, 2022: Fluticasone NS (minor condition)
 45. August 20, 2022: Depo Provera
 46. September 10, 2022: Eletriptan 40mg
 47. September 14, 2022: Jublia 10%

Ms. Mosher provided that based on her clinical experience as a pharmacist, a minor condition is a non-complicated condition that can be diagnosed and/or managed by the patient, i.e. eczema/rash or minor inflammation. Ms. Mosher further provided that “emergency” is defined by the College 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. Finally, Ms. Mosher provided that although Mr. Luong works alone, he and his family live in Edmonton where several other pharmacies were accessible during the relevant period.

The Hearing Tribunal considered the evidence outlined above and determined that Mr. Luong dispensed medications and medical devices to himself and his immediate family members for conditions that were not considered minor, emergent or where another practitioner was not available.

In the circumstances, Allegation 4 is factually proven, on a balance of probabilities.

Allegation 5 – that as a registered clinical pharmacist and the licensee of the Pharmacy, Mr. Luong dispensed diabetic supplies for himself and his spouse in the absence of a documented history of diabetes.

As outlined above, the evidence demonstrates that Mr. Luong dispensed diabetic supplies to himself and his spouse on the following occasions:

- For NL on October 16, 2021: Contour Test Strips and Microlet Lancets
- For NL on June 27, 2022: Microlet Lancets
- For [REDACTED] on January 24, 2021: Contour Test Strips and Microlet Lancets
- For [REDACTED] on March 25, 2021: Contour Test Strips and Microlet Lancets

Ms. [REDACTED] provided that in her review of the plan member's medical information, there was nothing to indicate in the file of [REDACTED] or NL to suggest that they are diabetic. Further, when Mr. Luong was asked whether he or [REDACTED] had a history of diabetes, he refused to answer.

The Hearing Tribunal considered the evidence outlined above and determined that Mr. Luong dispensed diabetic supplies to himself and his spouse in the absence of a documented history of diabetes. While Mr. Luong had the opportunity to provide an explanation as to why the diabetic supplies were dispensed, he failed to do so. In light of the lack of evidence of a rationale for the dispensing, there is no documented reason that would explain Mr. Luong's actions.

In the circumstances, Allegation 5 is factually proven, on a balance of probabilities.

Unprofessional Conduct

The Hearing Tribunal considered whether Mr. Luong's proven conduct amounted to unprofessional conduct. Section 1(1)(pp) of the HPA defines unprofessional conduct to include (ii) contraventions of the HPA, a code of ethics or standards of practice; (vii)(B) failure or refusal to comply with a request of or co-operate with an investigator; and (xii) conduct that harms the integrity of the profession.

Mr. Luong persistently refused to cooperate with the Sun Life and College investigations, including a failure to produce requested documentation and a refusal to answer questions regarding his practice. Regulated members are required to cooperate with investigations conducted by the College and benefits providers with whom they have a contractual relationship. As a result of Mr. Luong's failures, the Hearing Tribunal concluded that Mr. Luong's established conduct contravened Standards 1.1 and 1.2 of the SPPPT, Standards 1.1 and 1.2 of the SOLP, and Principles 10(1), 10(2c) and 10(10) of the Code of Ethics. The SPPT, SOLP and Code of Ethics required Mr. Luong to

practice in accordance with the law and comply with its letter and spirit, to be honest in dealings with the College as well as other parties encountered in business deals related to the practice of the profession, and to respond honestly, openly and courteously to complaints and criticisms. Mr. Luong failed to do so.

Further, a failure to cooperate with a College investigator is specifically recognized in the HPA as amounting to unprofessional conduct. This is because conduct of this nature is serious, and undermines the College's ability to engage in effective self-regulation. An inability to conduct a fulsome investigation would put the public at risk, as well as harm the public confidence in the profession. As Mr. Luong failed to cooperate with the College's investigator, he failed to meet his obligations as a professional and engaged in unprofessional conduct. His failure to cooperate with the Sun Life investigations also impaired confidence in the profession as a third party insurer cannot confirm every claim and must rely on pharmacists to provide information.

The Hearing Tribunal also concluded that Mr. Luong's established conduct contravened Principle 3(4) of the Code of Ethics as, which required Mr. Luong to limit his treatment of himself or members of his immediate family only to minor conditions, emergency circumstances or when another appropriate health professional is not readily available. Mr. Luong prescribed or dispensed medications and medical devices to himself and his immediate family on at least 47 occasions between 2021 and 2022. On a review of the evidence, it was determined that there were never emergent circumstances and another health care professional would always have been available. The evidence also demonstrated that Mr. Luong dispensed diabetic supplies for himself and his spouse in the absence of a documented history of diabetes. Therefore, the Tribunal found that Mr. Luong breached Principle 3(4) of the Code of Ethics.

This conduct is serious. As a pharmacist, Mr. Luong has an obligation to use health resources wisely and to be a steward of the health care environment. Mr. Luong failed to do so and instead Mr. Luong used his professional status for his own personal benefit and the benefit of his family. As a member of the College, Mr. Luong had to act in accordance with the limits imposed on him and he failed to do so. Mr. Luong did not adhere to his professional ethical obligations and his conduct harmed the integrity of the profession as a whole.

As Mr. Luong breached the SPPT, the SOLP and the Code of Ethics, he engaged in unprofessional conduct under s. 1(1)(pp)(ii) of the HPA. As Mr. Luong refused to cooperate with an investigation by the College, he engaged in unprofessional conduct under s. 1(1)(pp)(vii)(B) of the HPA. Finally, Mr. Luong's conduct harmed the integrity of the profession, and as such he engaged in unprofessional conduct under section 1(1)(pp)(xii) of the HPA.

V. ORDERS


Having made its finding on unprofessional conduct, the Hearing Tribunal must now consider the appropriate orders for penalty.

The Hearing Tribunal directs that the Complaints Director provide its written submissions on penalty to the Hearings Director within 3 weeks of receipt of these written reasons of the Hearing Tribunal. The Hearings Director will then be responsible for providing copies of the Complaints Director's written submissions on penalty to the Hearing Tribunal and Mr. Luong. Mr. Luong will then have 3 weeks after being provided with the Complaints Director's submissions on penalty to provide his written submissions on penalty to the Hearings Director. The Hearings Director will then provide copies of Mr. Luong's written submissions on penalty to the Hearing Tribunal and the Complaints Director. If written submissions on penalty are received from Mr. Luong, the Complaints Director will have one week from receipt of Mr. Luong's submissions on penalty to provide any reply submission to the Hearings Director. The Hearings Director will then provide a copy of any reply submission to both the Hearing Tribunal and Mr. Luong.

While recognizing the previous difficulties that the College has encountered in contacting Mr. Luong, the Hearing Tribunal requests that the Hearings Director make reasonable efforts to again contact Mr. Luong by email (if available), phone and registered mail. If the Hearings Director is not able to contact Mr. Luong directly or if no response is received from Mr. Luong within seven (7) days as a result of the reasonable efforts made to contact him, then the Hearings Director may send the Complaints Director's submissions on penalty and the request for Mr. Luong's submissions on penalty to Mr. Luong at the Northeast Address. Mr. Luong will then have the 3 weeks from the date of that letter being sent to provide the Hearings Director with any submissions on penalty. If no submissions on penalty are received from Mr. Luong with the 3 weeks provided, the Hearing Tribunal will proceed with considering and determining the question of appropriate orders for penalty.

The Hearing Tribunal reserves jurisdiction over the question of the appropriate orders for penalty as well as over any procedural questions (for example, timelines) arising with respect to the submissions on penalty.

Signed on behalf of the Hearing Tribunal by the Chair on March 1, 2024

Per: 
Anjali Acharya (Mar 3, 2024 17:27 MST)
Anjali Acharya