

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF

RYAN YOUNG

Registration Number 11920

DECISION OF THE HEARING TRIBUNAL ON SANCTIONS

October 19, 2023

I. INTRODUCTION

1. The Hearing Tribunal consisting of Jennifer Teichroeb, Pharmacy Technician and Chair, Tiana Cunningham, Pharmacy Technician, Naz Mellick, Public Member and Doug Dawson, Public Member, held a hearing into the conduct of Ryan Young, Pharmacy Technician, on April 18, 2023.
2. On June 8, 2023, the Hearing Tribunal issued its decision finding Mr. Young to have engaged in unprofessional conduct under the *Health Professions Act*, RSA 2000, c. H-7 (the "Act") as alleged in the following allegations:
3. IT IS ALLEGED THAT, between March 22 and March 27, 2022, while you were a registered Alberta pharmacy technician employed at the Royal Alexandra Hospital (the "Hospital"), you:
 1. Diverted cocaine powder from the Hospital's narcotic inventory on one or more of March 22, 2022, March 24, 2022, March 26, 2022 and March 27, 2022.
 2. Created false Narcotic Vault Access records to facilitate and attempt to conceal your diversion of cocaine from the Hospital.
 3. Misused approximately 1.25 grams of cocaine during the period in which you continued to work at the Hospital and provide professional services.
4. The Hearing Tribunal requested submissions on sanctions and offered to consider requests for an oral hearing on sanctions from either party. No request for an oral hearing on sanctions was made and the parties agreed on a schedule to provide written submissions on sanction.
5. Ms. Annabritt Chisholm and Ms. Monica Tran, counsel for the Complaints Director, provided the Complaints Director's written submissions on sanctions to the Hearings Director and to Mr. Young on June 26, 2023. Mr. Young provided his submissions on sanction to the Hearings Director and the Complaints Director on July 21, 2023. Ms. Chisholm advised that the Complaints Director had no reply submission. The submissions on sanction from both parties were then provided to the Hearing Tribunal.
6. The Hearing Tribunal met on September 22, 2023 and considered the record of the hearing, its findings of unprofessional conduct against Mr. Young, the Complaints Director's written submissions on sanction, and Mr. Young's written submissions on sanction. Mr. Jason Kully attended with the Hearing Tribunal as its independent legal counsel.

II. SUBMISSIONS ON SANCTION AND COSTS

Complaints Director

7. The Complaints Director reviewed the Hearing Tribunal's powers to make orders under the Act and the purposes of orders in professional discipline proceedings: protection of the public; maintaining the integrity of the profession; fairness to the regulated member; and deterrence, including specific deterrence of the regulated member from repeat conduct and general deterrence of the profession's other regulated members.
8. The Complaints Director then reviewed relevant factors from *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin L.R. (2d) 233, the first of which is the nature and gravity of the proven allegations. The Complaints Director referred to the Hearing Tribunal's findings and argued that each of the proven allegations constituted unprofessional conduct and were serious. Mr. Young's proven unprofessional conduct harmed the integrity of the profession and demonstrated repeated failures by Mr. Young to meet the high standards of professional and ethical judgment expected and required of an Alberta pharmacy technician.
9. The Complaints Director submitted that Mr. Young was not an inexperienced pharmacy technician as he had been practicing for over eight years at the time of the conduct. Thus, the findings could not be explained by a lack of experience. Further, Mr. Young's conduct failed to uphold the basic expectations of a regulated member.
10. The Complaints Director recognized they were not aware of any prior complaints.
11. The Complaints Director submitted that the evidence established a repeated pattern of conduct that occurred on four occasions over a five-day period.
12. The Complaints Director recognized that Mr. Young verbally admitted to the three allegations at the hearing.
13. The Complaints Director recognized that Mr. Young had been subject to a parallel criminal proceeding for theft under \$5,000, which arose from the same conduct that led to the College's investigation and hearing. The Complaints Director was not aware of how or if the criminal matter had resolved or if Mr. Young has suffered any penalties as a result.
14. The Complaints Director stated they were not aware of any evidence of actual harm to patients, but there was the potential for patient harm due to Mr. Young misusing a controlled substance and providing professional services in close proximity to the misuse of cocaine. The risk of patient harm is relevant to the seriousness of the proven

unprofessional conduct and the need to protect the integrity of the profession moving forward.

15. The Complaints Director was not aware of any additional mitigating circumstances. The Complaints Director noted that Mr. Young acknowledged during the hearing that he was using cocaine in late March 2022 due to concerns with his [REDACTED]. However, Mr. Young did not provide any specific evidence with respect to how his concerns with his [REDACTED] had an impact on the proven conduct. Furthermore, while Mr. Young's concerns with his [REDACTED] may have impacted or resulted in him engaging in the proven conduct, it would be difficult to accept that they would be a mitigating factor in such serious conduct.
16. In relation to the need for specific and general deterrence, the Complaints Director submitted that the sanctions should reflect the importance of Mr. Young upholding the obligations expected and required of Alberta pharmacy technicians. The sanctions should also show other regulated members that the College will respond to this type of unprofessional conduct with significant sanctions. Specifically, the sanctions had to make it clear to the profession that the diversion and misuse of a Schedule 1 drug was conduct that breaches the duties owed to the College and conduct that necessitates a severe sanction.
17. The Complaints Director submitted that the public must be able to see that steps have been taken to sanction Mr. Young's conduct and to ensure that it does not recur in the future. Therefore, orders made by the Hearing Tribunal must make clear to the public that a pharmacy technician's diversion, attempts to conceal, and then subsequent misuse of a Schedule 1 drug will not be tolerated.
18. The Complaints Director submitted Mr. Young's conduct was clearly beyond the range of permitted conduct.
19. The Complaints Director submitted there were no comparable decisions that addressed only diversion, the creation of false narcotic records and the misuse of narcotics. However, the Complaints Director identified two cases in which the issues arose separately or in conjunction with other issues, Robin Small and Robert Stadnyk, both of which involved the College. The Complaints Director reviewed these cases and the sanctions imposed and stated that Mr. Young should receive a shorter period of suspension and direct supervision than that imposed on Mr. Small but a longer suspension and longer reporting period than that imposed on Mr. Stadnyk.
20. In light of the submissions, The Complaints Director then proposed the following orders:
 1. Mr. Young's registration with the College, including his ability to apply for reinstatement onto any of its registers, shall be suspended for a period of 18 months from the date of the Hearing Tribunal's written decision.

2. Mr. Young's registration shall not be reinstated until, and in addition to any other registration requirements imposed by the College's Registration Department, Mr. Young provides the Complaints Director with a recent (within three months of his application for reinstatement, and after the suspension in Order 1 has been completed) report from a qualified physician who is satisfactory to the Complaints Director and who has knowledge of the Hearing Tribunal's decision that Mr. Young is fit to return to practice.
 3. Any practice permit issued to Mr. Young upon satisfaction of the provisions of Orders 1 and 2 above shall be subject to the following conditions:
 - a. Mr. Young shall practice under direct supervision for a minimum of six months following his return to practice. At the end of the six months, and prior to the removal of the condition, the supervisor must provide the Complaints Director with a report on Mr. Young's supervised conduct that is satisfactory to the Complaints Director. The supervisor providing the report must have directly observed the practice and conduct of Mr. Young for a minimum of six months; and
 - b. For a period of five years, Mr. Young must provide notice and a copy of the Hearing Tribunal's decision to any employer who offers him employment as a pharmacy technician or in a pharmacy or health care setting where the restricted activities of regulated members of the College (including the sale of scheduled drugs) can occur. Mr. Young will provide verification of this notice to the Complaints Director at any time that he obtains or changes employment.
 4. Mr. Young is prohibited from being a pharmacy owner or proprietor until five years after his reinstatement onto a pharmacy technician register with the College.
 5. Mr. Young shall be responsible for payment of all costs of the hearing. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director. The costs shall be paid in full within 24 months of the date of receipt of the Hearing Tribunal's written decision on sanction.
21. The Complaints Director submitted that while any suspension is serious, the proposed 18-month suspension would serve the purposes of deterrence and maintaining the integrity of the profession by demonstrating that the College takes the unprofessional conduct very seriously. The suspension would also appropriately reflect the severity of Mr. Young's conduct.

22. The Complaints Director submitted that the misuse of a controlled substance created the potential for patient harm, as it is known that cocaine is a misused and addictive substance. The Complaints Director referred to the Hearing Tribunal's finding that the misuse of a controlled substance and providing professional services in close proximity to this misuse demonstrated that Mr. Young failed to ensure he was completely fit to practice. As a result, the requirement for a recent (within three months) report from a qualified physician who is satisfactory to the Complaints Director that Mr. Young is fit to return to practice would mitigate the risk of future patient harm.
23. The Complaints Director submitted a period of direct supervision is appropriate to ensure that Mr. Young understands and is capable of carrying out the responsibilities of an Alberta pharmacy technician before he is permitted to practice independently, create records, and provide pharmacy services to the public after his suspension is over.
24. The Complaints Director submitted that Mr. Young's conduct demonstrated a lack of trust and integrity as a member of the profession, so it is important that his future employers are aware of his previous conduct after he returns to practice. Therefore, he should be ordered to provide a copy of the Hearing Tribunal's decision in this matter to any employer who offers him employment as a pharmacy technician or in a pharmacy or health care setting where restricted activities of the profession can occur.
25. The Complaints Director also submitted that Mr. Young's conduct demonstrated that he could not be trusted to put his professional obligations before his own personal interests. Further, as his conduct was serious and disrupted the integrity of the drug distribution system, he should not be permitted to own or act as a proprietor of a pharmacy for a period of time after returning to the register so that the College can be certain he can be trusted.
26. On the issue of costs, the Complaints Director submitted that the College and the College's other regulated members should not bear the full costs of the investigation and hearing which arose from Mr. Young's proven unprofessional conduct. The Complaints Director's written submission stated that those costs were \$14,308.00 to June 26, 2023, which did not include the costs of the sanctions stage. The final costs could therefore exceed \$17,000.
27. The Complaints Director referred to *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 [*Jinnah*], where the Alberta Court of Appeal provided guidance on costs orders under the Act. *Jinnah* instructs that costs should not be ordered by default or on a formulaic basis. Instead, the members of a self-regulated profession and the College should bear the costs of an investigation and hearing unless a compelling reason to do so otherwise exists. *Jinnah* sets out four instances where it is appropriate to order a significant portion of costs against the investigation member:

- a) When a professional has engaged in serious unprofessional conduct;
 - b) When a professional is a serial offender who has engaged in unprofessional conduct on two or more occasions;
 - c) When a professional fails to cooperate with a college's investigators and forces a college to spend more resources than is necessary to ascertain certain facts related to a complaint; and
 - d) When a professional engages in hearing misconduct and unnecessarily prolongs the hearing or otherwise results in increased costs of prosecution that are not justifiable.
28. The Complaints Director submitted the only relevant instance was whether Mr. Young engaged in serious unprofessional conduct that warranted an order of costs.
29. The Complaints Director reviewed the Court of Appeal's examples of what may constitute serious unprofessional conduct and stated that the Hearing Tribunal found that Mr. Young had engaged in unprofessional conduct and that he engaged in conduct that was a marked departure from what is expected of an Alberta pharmacy technician, and that he must have known, or if not should have known, that his behavior was completely unacceptable. As the Complaints Director was not aware of any information that would suggest an order for all of the costs would impose a "crushing financial blow" and as the Complaints Director asked for the costs to be apportioned across 24 months to make the payment more reasonable, the Complaints Director submitted the proposed costs order was appropriate.

Mr. Young

30. Mr. Young made brief submissions on sanctions. He stated that he felt he deserved a suspension of between 3 to 5 years. He submitted that he wished to return to practice one day and that he would obey any sanctions imposed.
31. In relation to monetary sanctions, Mr. Young submitted that the complaint process had cost him everything he owned and that he could barely afford to feed himself and his family, let alone provide shelter for his family. He stated that he had admitted his guilt before the investigation started.

IV. DECISION AND REASONS

32. After considering the submissions of the Complaints Director and Mr. Young, and having regard to the principles of sanctioning and the *Jaswal* factors, the Hearing Tribunal makes the following orders against Mr. Young in this case:
1. Mr. Young's registration with the College, including his ability to apply for reinstatement onto any of its registers, shall be suspended for a period

of 18 months from the date of the Hearing Tribunal's written decision on sanction.

2. Mr. Young's registration shall not be reinstated until, and in addition to any other registration requirements imposed by the College's Registration Department, Mr. Young provides the Complaints Director with a recent (within three months of his application for reinstatement, and after the suspension in Order 1 has been completed) report from a qualified physician who is satisfactory to the Complaints Director and who has knowledge of the Hearing Tribunal's decision that Mr. Young is fit to return to practice.
3. Any practice permit issued to Mr. Young upon satisfaction of the provisions of Orders 1 and 2 above shall be subject to the following conditions:
 - a. Mr. Young shall practice under direct supervision for a minimum of six months following his return to practice. At the end of the six months, and prior to the removal of the condition, the supervisor must provide the Complaints Director with a report on Mr. Young's supervised conduct that is satisfactory to the Complaints Director. The supervisor providing the report must have directly observed the practice and conduct of Mr. Young for a minimum of six months; and
 - b. For a period of five years, Mr. Young must provide notice and a copy of the Hearing Tribunal's decision to any employer who offers him employment as a pharmacy technician or in a pharmacy or health care setting where the restricted activities of regulated members of the College (including the sale of scheduled drugs) can occur. Mr. Young will provide verification of this notice to the Complaints Director at any time that he obtains or changes employment.
4. Mr. Young is prohibited from being a pharmacy owner or proprietor until five years after his reinstatement onto a pharmacy technician register with the College.
5. Mr. Young shall be responsible for payment of 50% of the costs of the hearing, to a maximum of \$10,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director with such monthly payments commencing at the conclusion of Mr. Young's 18-month suspension period as set out in Order 1. The costs shall be paid in full within 48 months of the start of the payments.

Suspension

33. An 18-month suspension is a significant sanction. Nonetheless, it is warranted in this case to denounce Mr. Young's proven unprofessional conduct and to deter Mr. Young as well as other members of the profession. A suspension of this length demonstrates that the diversion of controlled substances, the creation of false records to facilitate and conceal such diversion, and the misuse of such controlled substances in close proximity to the time of providing professional services, are all serious matters that will result in a serious sanction. This is particularly true for pharmacy technicians as the safe keeping of medications, including narcotics, is one of the most fundamental aspects of the profession.
34. Mr. Young himself acknowledged that a suspension of 3-5 years would be appropriate. While the Hearing Tribunal does not agree that a suspension of this length is necessary given all of the factors and given Mr. Young's desire to return to practice one day, Mr. Young's own recognition demonstrates the gravity of the conduct.
35. The legal and regulatory requirements applicable to narcotics are intended to protect the public's health and safety from potentially dangerous drugs. Mr. Young ignored these requirements and removed cocaine powder for his personal use while trying to cover up this diversion. Such conduct is a marked departure from the expectations of regulated members of the College. It is a very serious matter and warrants a serious sanction. The seriousness of the matter is increased by the fact that Mr. Young continued to provide professional services in close proximity to the timing of his misuse of the controlled substance, thereby putting members of the public at risk of harm.
36. Together these findings also suggest a need for significant sanctions to maintain public confidence in the regulation of the pharmacy technician profession and to promote deterrence. If Mr. Young's proven unprofessional conduct is not strongly sanctioned, then Mr. Young and other pharmacy technicians would not be adequately deterred from similar future conduct. A suspension will provide protection to the public by reducing the risk that other pharmacy technicians will similarly remove drugs and create false records. The suspension also demonstrates that this conduct is unacceptable and that it will not be tolerated, thereby maintaining the public's confidence in the integrity of the profession as there is a clear demonstration that the removal of drugs will be taken seriously.
37. While the Hearing Tribunal believes that rehabilitation is also a fundamental aspect of sanctioning, it recognizes that Mr. Young's conduct in this case was not the result of a lack of competency. The diversion of narcotics and creation of false records was deliberate conduct that was unrelated to the provision of professional services to

members of the public. As such, the importance of deterrence and maintenance of public confidence is increased.

38. This suspension is slightly shorter than the 24-month suspension imposed on Mr. Robin Small as while both individuals diverted and misused narcotics and altered records to conceal the diversion of the drugs, Mr. Small's conduct occurred over a longer period of time and Mr. Small practiced while he was incapacitated. An 18-month suspension for Mr. Young more appropriately reflects his misconduct. The 4-month suspension imposed on Mr. Stadnyk would not appropriately reflect the diversion of narcotics and the altering of records to facilitate and conceal the diversion and a longer suspension period is necessary. Such a suspension would not be a sufficient deterrent to both Mr. Young and other members of the profession.
39. An 18-month suspension appropriately reflects the seriousness of Mr. Young's unprofessional conduct and his failure to comply with the expectations of a regulated member. It is an appropriate balance of the purposes of discipline proceedings against members of a self-regulating profession and the relevant factors in this case. Specifically, there are limited mitigating factors beyond Mr. Young's guilty plea. In light of the other factors, including the seriousness of the conduct which involved a repeated pattern of conduct on four occasions and which created a risk for patient harm, the experience of Mr. Young indicating his awareness of the basic expectations of a member of the College, the need to impose deterrence and maintain confidence in the integrity of the profession, and the range of sanctions imposed in other decisions, this 18-month suspension is appropriate.

Report From A Qualified Physician

40. The Hearing Tribunal concluded that by misusing a controlled substance and providing professional services in close proximity to his misuse of cocaine, Mr. Young "failed to ensure he was completely fit to practice and failed to protect and enhance his own personal health and well-being or to seek the assistance of his colleagues."
41. While Mr. Young stated his diversion and use of cocaine was not the result of an addiction, his proven conduct raises concerns about Mr. Young's ability to ensure he is fit to practice. Mr. Young diverted narcotics for his own personal use in an attempt to address stressors in his life and to cope with matters that were occurring in his personal life. He used his position as a pharmacy technician to facilitate access to narcotics which were then misused in response to other matters going on in his life. While the Hearing Tribunal is sympathetic to Mr. Young's situation, his conduct demonstrates that he lacked the judgment to seek assistance or properly address the issues in his life. Instead, he diverted narcotics from his place of work while trying to conceal this occurred. This is serious conduct and raises concerns about Mr. Young's fitness to practice. As noted by the Complaints Director, cocaine is also known to be an addictive substance.

42. A recent report that Mr. Young is fit to return to practice from a qualified physician who is satisfactory to the Complaints Director and who has knowledge of the Tribunal's findings will ensure that these concerns are addressed, thereby mitigating the risk of future harm to patients. The report will ensure that members of the public are not exposed to harm as there will be a check to ensure Mr. Young is fit to return to work in a safe manner. The report will also serve as a measure of rehabilitation as there will be an assurance that Mr. Young has taken the necessary steps to address the circumstances that gave rise to Mr. Young's failure to protect his own personal health and well-being.
43. The Hearing Tribunal would also like to remind Mr. Young of the importance of partaking in self-care and in seeking appropriate assistance and medical help in the event he should encounter issues in the future.

Direct Supervision and Employer Notification

44. The period of direct supervision and providing notice to future employers serve the same purpose: protecting the public by reducing the likelihood of similar conduct occurring in the future.
45. Practicing under direct supervision for a minimum of six months following Mr. Young's return to practice, followed by a satisfactory report where the supervisor providing the report must have directly observed the practice and conduct of Mr. Young for a minimum of six months, will ensure that Mr. Young safely returns to practice. As he will have not practiced the profession for a significant period of time after the suspension and as he engaged in serious conduct when he was last practicing, this supervision will ensure that members of the public are not exposed to harm. It will also provide Mr. Young with a period of time to demonstrate that he still has the necessary skills and that he is able to exercise appropriate judgment. The supervision will also serve to deter him from engaging in the same type of misconduct as his opportunities to engage in diversion will be limited and his potential misuse of narcotics will be monitored. This is appropriate in light of the conduct. The Hearing Tribunal notes that a longer period of direct supervision was ordered against Mr. Small, which demonstrates this sanction is appropriate to address the diversion of narcotics.
46. The Hearing Tribunal also agrees that it is important for any employer who employs Mr. Young as a pharmacy technician, or in a pharmacy or health care setting where the restricted activities of regulated members of the College (including the sale of scheduled drugs) can occur, to be aware of this Hearing Tribunal's decision as the full gravity of Mr. Young's conduct should be known. An employer should be cognizant of the need for oversight upon Mr. Young's return to the profession. Ensuring future

pharmacy employers are aware of Mr. Young's conduct is not disproportionate, irrelevant or unfair.

47. These sanctions serve as educational tools for the profession, a deterrent for Mr. Young and the profession, and important safeguards for the public.

Restriction on being Owner or Proprietor

48. The Hearing Tribunal agrees that the prohibition on being an owner or proprietor is appropriate and that 5 years is an appropriate length of time.
49. Mr. Young's proven conduct involved the diversion of narcotics and the altering of records to facilitate and conceal such activities. As an owner or proprietor, Mr. Young would have increased direct access to the narcotics and would have more control over records relating to the narcotics. He would be in a position where diversion and concealment would be easier. In light of the proven conduct and in order to protect the public, Mr. Young should not be placed in a position where he has easier access to narcotics and where he is in a place to have more control and influence over records related to the narcotics. A period of 5 years is an appropriate period for Mr. Young to demonstrate that he is no longer a risk to the public and that he can safely act as an owner.
50. This sanction also protects the public and demonstrates to the public that the profession takes Mr. Young's conduct seriously and that it will not tolerate similar conduct from him into the future. This is a serious order and should not be taken lightly.

Costs

51. The Complaints Director sought an order for Mr. Young to pay 100% of the costs of the investigation and hearing, which were stated to have reached \$14,308.00 by June 26, 2023 and which could exceed \$17,000.00 when the hearing was complete. While Mr. Young did not specifically address the costs issue, he submitted that the complaint process had cost him everything he owned and that he could barely afford to feed himself and his family, let alone provide shelter for his family.
52. The Alberta Court of Appeal adopted a new approach to costs in discipline proceedings under the Act in *Jinnah*. In *Jinnah* the Court of Appeal held that costs are a part of self-regulation, and the profession as a whole is presumed to bear the costs of investigations and hearings in most cases. Costs are not punitive in nature and are not another penalty and should not be imposed as such. Costs orders are discretionary.
53. The Court of Appeal stated that costs should not be awarded in every case and that before making an order for costs the Tribunal should consider whether a costs order is warranted at all. The Court of Appeal held that it is generally inappropriate to

require a disciplined health professional to pay a significant portion of the investigation and hearing costs without a compelling reason. A compelling reason will exist in four scenarios, which are where the proven unprofessional conduct is serious, where the member is a serial offender who engages in unprofessional conduct on two or more occasions, where a member fails to cooperate with the college investigators and forces the college to expend more resources than is necessary to ascertain the facts related to a complaint, and where a member engages in hearing misconduct that prolongs the hearing or results in increased costs that are not justifiable.

54. The Court gave examples of serious unprofessional conduct. These included a sexual assault on a patient, a fraud perpetrated on an insurer, the performance of a dental procedure while suspended, or the performance of a dental procedure in a manner that is a marked departure from the ordinary standard of care. The Court said that in these serious cases a Hearing Tribunal can justifiably order the disciplined professional to indemnify the College for all or a substantial portion of its expenses. The Court reasoned that in serious cases of this magnitude, the disciplined professional must have known that their behavior was unacceptable and would be unprofessional. As stated by the Court of Appeal at paragraph 141 of *Jinnah*, "It is not unfair or unprincipled to require a dentist who knowingly commits serious unprofessional conduct to pay a substantial portion or all the costs the regulator incurs in prosecuting a complaint."
55. In describing another scenario in which a compelling reason would exist, where the professional is a serial offender, the Court differentiated between serious cases and other "not serious" cases in which "a small amount of costs – something less than twenty-five percent" might be justifiable.
56. According to the Court of Appeal, if a costs order is warranted, then the Tribunal should consider how to calculate an appropriate amount, what to include and whether all or only some of the included expenses should be ordered. The Tribunal must also consider whether the overall amount ordered is reasonable having regard to the success or failure of the parties, the seriousness of the allegations, and the conduct of the parties.
57. The Hearing Tribunal's first step is to determine if there is a compelling reason to make a costs order against Mr. Young.
58. As noted by the Complaints Director, the only potential compelling reason in this case is that Mr. Young engaged in serious unprofessional conduct. Although the Court of Appeal provided a few examples of what constitutes such serious unprofessional conduct in *Jinnah*, the Hearing Tribunal finds that the Court of Appeal did not provide an exhaustive list and that there are additional examples of unprofessional conduct which a Hearing Tribunal may find as "serious". This is because there are other cases where a professional would know that that their conduct is such a magnitude that it


would be unacceptable and unprofessional. If a member engages in conduct that is a marked departure from what is expected of an Alberta pharmacy technician and is conduct of such seriousness that they must have known, or if not should have known, that the behavior was completely unacceptable, the Hearing Tribunal can make a finding that such conduct is “serious” and warrants a costs order. The Hearing Tribunal is in the best position to make this determination given its knowledge of the profession and what is expected of a member of the profession.

59. The Hearing Tribunal finds that the diversion of narcotics from an employer’s inventory is serious unprofessional conduct warranting a costs award. Narcotics are a controlled substance and subject to numerous regulations and restrictions which are intended to protect members of the public. Theft and the possession of cocaine are two separate and distinct criminal offences, which demonstrates the seriousness of conduct. When all of this is considered, any individual, especially a pharmacy technician, would know that the diversion of narcotics is a marked departure from expected conduct and is completely unacceptable. Mr. Young ignored clear legal and regulatory requirements that applied to him and the storage of narcotic drugs. When the diversion of narcotics is combined with the creation of false records to facilitate and conceal the diversion and the misuse of cocaine during the period in which a pharmacy technician continued to provide professional services, it is abundantly clear that Mr. Young’s behavior was serious. He engaged in an intentional disregard of his professional obligations and the measures put in place to protect others. It is serious conduct that amounts to a compelling reason to impose a costs award.
60. Having determined that Mr. Young should pay costs, the second step is to determine in what amount costs should be imposed.
61. The Hearing Tribunal recognizes that the Court of Appeal acknowledged in *Jinnah* at paragraph 141 that a professional who engages in serious unprofessional conduct can “justifiably be ordered to indemnify the College for a substantial portion or all of its expenses in prosecuting a complaint”. The Hearing Tribunal is also mindful of the Court of Appeal’s direction that costs are not intended to be punitive and that a Tribunal must ensure the final amount is a reasonable number.
62. In determining what is a reasonable amount of costs in this case, the Hearing Tribunal considered that the conduct was serious, as set out in this decision and the Merits Decision, and that Mr. Young was guilty of all the allegations. The Tribunal also considered that while Mr. Young did not enter into a written admission or joint submission on sanction, he entered a verbal admission at the hearing. The Tribunal also noted that Mr. Young had acknowledged his conduct during the investigation which simplified the process.
63. The Hearing Tribunal has also considered Mr. Young’s submissions as to his financial circumstances. Mr. Young did not introduce evidence of his actual financial

circumstances at the sanctions phase, but the Tribunal accepts that the suspension, and any costs order, will have a significant financial impact. Further, Mr. Young stated that his conduct had cost him everything he owned and that he could barely afford to feed himself and his family, let alone provide shelter for his family. This is a significant issue as any further costs award will have a significant impact on Mr. Young and his family. In addition, while the Tribunal is not aware of the outcome of the criminal proceedings against Mr. Young, it finds that this would have likely had a further impact on his financial circumstances.

64. It is evident that Mr. Young's conduct, while conduct of his own choosing, has had a significant impact on his financial situation. It is also clear that the suspension of 18 months imposed by the Tribunal will have a further impact on his financial situation. The Hearing Tribunal does not intend to impose a costs award that would cripple Mr. Young's financial situation and that would be punitive.
65. Taking all of these factors into account the Tribunal has determined that Mr. Young should pay 50% of the investigation and hearing costs, to a maximum of \$10,000. This amount reflects that Mr. Young should bear a substantial portion of the costs given his serious conduct which he knew was unacceptable, but that he should not be required to fully indemnify the College in light of his guilty plea, his upcoming suspension, and his financial position. As the Hearing Tribunal understands that the College may incur costs beyond \$17,000, a \$10,000 cap on the costs to be paid by Mr. Young is appropriate. This provides certainty and reflects that many of these additional costs are outside of Mr. Young's control.
66. The Tribunal finds that 50% of the final costs to a maximum amount of \$10,000 will be a reasonable amount for Mr. Young to pay. This amount is not punitive and reflects all of the circumstances.
67. The Complaints Director proposed that Mr. Young make monthly payments as directed by the Hearings Director with the costs to be paid in full within 24 months. In order to ease the financial burden of the costs order the Hearing Tribunal has determined that the monthly payments shall start at the conclusion of Mr. Young's 18-month suspension as set out in Order 1 and that all costs shall be paid in full within 48 months of the start of the payments. This will allow Mr. Young the opportunity to return to employment as a pharmacy technician prior to having to repay the costs amount.

Signed on behalf of the hearing tribunal by the Chair on October 19, 2023

Per: 
Jennifer Teichroeb (Oct 19, 2023 10:46 MDT)
Jennifer Teichroeb