

ALBERTA COLLEGE OF PHARMACISTS

IN THE MATTER OF
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING REGARDING
THE CONDUCT OF **M. LEONARD JOHNSON**

DECISION OF THE HEARING TRIBUNAL

September 18, 2013

I. INTRODUCTION

The Hearing Tribunal held a hearing into the conduct of Mr. M. Leonard Johnson. In attendance on behalf of the hearing tribunal were Ms. Dianne Veniot, Chairperson, Ms. Denise Batiuk, pharmacist, Mr. Peter Fenrich, pharmacist and Ms. Diane Adams, public member.

The hearing took place on June 17, 2013 at the Alumni House located at 11515 Saskatchewan Drive, Edmonton, Alberta. The hearing was held under the terms of Part 4 of the *Health Professions Act* ("HPA").

In attendance at the hearing were Mr. James Krempien, Complaints Director and Mr. David Jardine, legal counsel representing the complaints director and Mr. Leonard Johnson, who chose to represent himself after acknowledging his right to be represented by legal counsel. In addition, Mr. Gregory Sim was independent counsel for the hearings tribunal.

II. PRELIMINARY AND JURISDICTIONAL ISSUES

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

APPLICATION TO CLOSE THE HEARING

There was one preliminary application to close the hearing for a specified length of time pursuant to Section 78(1) of the *Health Professions Act*.

Mr. Johnson indicated he would be applying under Section 78(1)(a)(i) of the *Health Professions Act* to close the hearing for a specified length of time because he has an outstanding criminal matter.

Mr. Johnson then allowed Mr. Jardine to explain further. Mr. Jardine explained that it was appropriate to close the hearing for a limited time because of probable prejudice to the prosecution of the criminal matter presently before the courts, as there already had been some publicity and there is a desire to avoid any potential prejudice to the resolution of said criminal matter. Mr. Jardine indicated it was anticipated the criminal matter would be resolved within approximately 90 days.

Mr. Jardine indicates the complaints director was not resisting the application to close the hearing, provided it was only for a specified period of time and that the matter would ultimately be made public. He indicated the complaints director does not view the request to close the hearing as prejudicial as he noted the foundational documents upon which this complaint is based have already been provided to the Crown and no one from the public was physically present during the hearing.

It was noted that pursuant to the *Health Professions Act* even if no one attends the hearing in person, Section 85(3) of the *Health Professions Act* provides that a member of the public may examine the hearing tribunal's decision and the testimony given before the hearing tribunal however recorded except any part of the testimony that was given while the hearing was held in private.

HEARING TRIBUNAL'S DECISION ON THE SECTION 78 QUESTION

The hearing tribunal concluded that the hearing would be closed under Section 78(1)(a)(i) of the *Health Professions Act* for a period of 90 days. The tribunal notes that Section 78(1) does not expressly authorize a hearing tribunal to close the hearing for a certain period of time after which it would become open. However it is also noted that Section 78 does not preclude a time-limited order to close the hearing.

The hearing tribunal recognizes that open administrative proceedings are beneficial and in the public interest and accordingly interprets Section 78(1) as permitting it to order the hearing closed in the most limited way necessary to accomplish the goal of avoiding prejudice to Mr. Johnson's criminal proceedings. The hearing tribunal recognizes that making the transcript of the proceedings publicly available after 90 days results in the least possible impairment to the open hearing principal that it can make in light of the circumstances.

The tribunal recognizes that it is very important for the profession and the public ultimately to have access to this information. In this case only a short closing is sought.

It was also noted that the complaints director agrees with the request to close the hearing for a short period of time provided the information is ultimately publicly available in order to protect the public and provide notice to the profession of the outcome of this process.

There were no objections to the timeliness of the Notice of Hearing and no objections of a preliminary or jurisdictional nature other than the Section 78 question were noted.

III. ALLEGATIONS

The Notice of Hearing was entered as Exhibit 1, and stated the following:

It is alleged that:

Between July 1, 2012 and early April 2013

1. You diverted and misused narcotics and targeted substances by diverting for your personal use approximately 641 tablets and capsules of hydromorphone and a small amount of Ativan from Safeway #299 in Lethbridge, Alberta at a time when you were the licensee and pharmacy manager of this pharmacy;
2. You obtained and used an undetermined quantity of Paxil, Ativan and zopiclone from prescriptions;

3. You abused your position of trust as a pharmacist and pharmacy licensee of Safeway #299 by altering the electronic inventory records of the pharmacy and by creating false patient records to conceal your diversion of drugs from the pharmacy and specifically you:
 - a. Altered on numerous occasions the pharmacy's electronic inventory records for: hydromorphone 2mg, 4mg and 8mg tablets; HydromorphContin 12mg, 18mg and 24mg capsules; and Ativan 1mg SL tablets; and
 - b. Created false electronic dispensing transaction record for ■■■, ■■■, ■■■, ■■■, ■■■, ■■■. and ■■■.¹
4. Your conduct of diverting and misusing narcotics and targeted substances and ■■■'s medication created an environment that had the real potential to have created patient harm and your conduct in creating false narcotic dispensing records for the patients referred to in 3(b) above had the real potential to have disrupted their care and to have created patient harm;
5. You continued to divert medications and to alter the pharmacy's electronic inventory records and to create false electronic dispensing records for patients until you were confronted by Safeway personnel who had detected your diversion of medication and who suspended your employment.

IV. EVIDENCE AND SUBMISSIONS

The college's first and only witness was Mr. James Krempien, the complaints director. Mr. Krempien made an opening statement during which he walked through Exhibit 1, being a binder of documents entered by consent.

Set out below is a summary of the key documents entered at the hearing:

- | | |
|-------------------|--|
| Exhibit 1, Tab D | Sequence of Events Report – the initial report to the college from Mr. James Johnston, Director of Pharmacy Operations, Canada Safeway on April 2, 2013 to report the discovery that Mr. Leonard Johnson had been diverting narcotics and has a substance abuse issue and the steps that were taken including suspending his employment on April 4, 2013 |
| Exhibit 1, Tab D2 | Correspondence relating to a previous investigation and findings regarding Mr. Leonard Johnson published in the November/December 2001 “ACP News” Newsletter |
| Exhibit 1, Tab D3 | Email from Jim Johnston, Director of Pharmacy Operations, Canada Safeway informing the complaints director of the immediate suspension of |

¹ The Notice of Hearing that was entered as an exhibit included the full name of each patient. However, the hearing tribunal will refer to these patients by their initials for the purposes of this decision to maintain their confidentiality.

employment of Leonard Johnson, the admission to narcotic addiction and diversion of HydromorphContin, and the evidence of falsified prescriptions and manipulation of inventory logs. As well, the email stated that the Lethbridge police would be notified once the internal audit has been completed.

Exhibit 1, Tab D10-13 Email from Leonard Johnson requesting removal of his name from the active practice list dated April 4, 2013 and the associated ACP processes to remove Leonard Johnson from the clinical register and confirming he is no longer eligible to provide restricted activities

Exhibit 1, Tab D14 Email from Jim Johnston forwarding preliminary investigation results conducted by Mr. Kevin Kowalchuk, Regional Pharmacy Manager, Canada Safeway detailing suspicious adjustments to inventory and falsified transactions where no hard copy or triplicate prescription was available.

Exhibit 1, Tab D15 A 5-page detailed summary prepared by the complaints director of a meeting held in person between Leonard Johnson and James Krempien in which Leonard Johnson admitted to diverting narcotics and falsifying both pharmacy and patient records in an attempt to conceal his actions. Also detailed was Leonard Johnson's admission that the narcotics were consumed by himself and an acknowledgement of a relapse with his substance abuse issues.

Exhibit 1, Tab D17 Complete copy of the audit information collected by Kevin Kowalchuk dated April 10, 2013 including Drug History Inventory reports detailing unauthorized or suspicious manual adjustments to the perpetual inventory record; copies of patient-specific prescription screens showing unauthorized fills for Hydromorphone where no valid prescription exists as being filled by Leonard Johnson and no electronic trail to NetCare would be detected; and detailed notes from the auditor where he was unable to uncover adequate explanation for destruction of damaged, spoiled, wasted or otherwise missing doses of 7 strengths of Hydromorphone and 1 strength of Ativan.

During the hearing, Mr. Krempien provided an Agreed Statement of Facts and Admissions and Admission of Unprofessional Conduct. This was marked Exhibit 2.

Mr. Jardine proceeded to detail the key factual admissions in Exhibit 2, pertinent details of which are as follows:

- Mr. Johnson was a registered clinical pharmacist and licensee of a pharmacy in Lethbridge, Alberta at the time of the alleged conduct.
- On April 8, 2013 Mr. Johnson met with the complaints director and:

- Admitted to diverting narcotics and altering pharmacy and patient records to conceal his diversions at Safeway #299 as previously alleged by James Johnston;
 - He admitted to diverting for his personal use 624 hydromorphone tablets over the course of 22 diversions between mid-December 2012 and early April 2013
 - Described his recent mental health and family issues that he believed contributed to his admitted narcotic diversions and record alterations;
 - Indicated that the drugs he diverted were only for his own use;
 - Acknowledged that his use of narcotics was a relapse of his substance abuse issues;
 - Admitted to recently self-treating his depression with [REDACTED] previously dispensed supply of Paxil, in the absence of a prescription or diagnosis from his physician;
 - Admitted to occasionally obtaining Ativan and zopiclone from [REDACTED] previously dispensed prescriptions;
 - Described the methods he used to divert narcotics from Safeway #299;
- Mr. Johnson admitted that he abused his position of trust as a pharmacist and pharmacy licensee and that he created an environment that had the potential to have created patient harm and to disrupt patient care, and that he only stopped once detected by his employer.
 - Mr. Johnson admitted that he committed the conduct alleged in allegations one, two and three in the Notice of Hearing.
 - Mr. Johnson admitted that he contravened:
 - Standard 1 and Sub-standards 1.1 and 1.2 of the Standards of Practice for Pharmacists and Pharmacy Technicians;
 - Standards 1, 5 and Sub-standards 1.1, 1.2 and 5.11 of the Standards for the Operation of Licensed Pharmacies
 - Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv), 1(1)(p)(ix), 10(1)(a), 10(1)(d)(iv), 31(2)(a) and 38 of the *Pharmacy and Drug Act*;
 - Principles I(1,9), X(1) and XI(2,4 and 5) of the Alberta College of Pharmacists' Code of Ethics Bylaw;
 - Section 4(1) of the *Controlled Drugs and Substances Act*; and
 - Section 31(1) of the Narcotic Control Regulations
 - Mr. Johnson also admitted that his conduct and contraventions constituted misconduct pursuant to Sections 1(1)(p)(i), 1(1)(p)(ii), 1(1)(p)(iv) and 1(1)(p)(ix) of the *Pharmacy and Drug Act* and unprofessional conduct as defined by the *Health Professions Act*, Sections 1(1)(pp)(ii), 1(1)(pp)(iii) and 1(1)(pp)(xii) for each of allegations one, two and three.

The hearing tribunal then heard submissions from Mr. Jardine about unprofessional conduct. Mr. Jardine first clarified that the Notice of Hearing contained three allegations of unprofessional conduct identified in the first three paragraphs. Paragraphs four and five were explanatory

paragraphs providing context for the particular allegations. Mr. Jardine explained that he believed the evidence showed on a balance of probabilities that each of the three allegations was factually proven and that there was sufficient evidence to show unprofessional conduct.

Mr. Johnson reserved comment on the Agreed Statement of Facts and Admissions and Admission of Unprofessional Conduct or the circumstances around his conduct pending the Hearing Tribunal's decision as to whether there was evidence of unprofessional conduct.

The hearing tribunal was tasked with determining whether the admitted conduct is unprofessional conduct and whether any orders should be made under Section 82(1) (sanctions) of the HPA.

V. FINDINGS

The hearing tribunal has considered whether the conduct constitutes "unprofessional conduct" within the meaning of S. 1(1)(pp) of the HPA, which is defined to include:

- Displaying a lack of knowledge of or skill or judgment in the provision of professional services;
- Contravening a code of ethics or standards of practice;
- Contravening another enactment that applies to the practice of the profession, such as the *Pharmacy and Drug Act* or the *Controlled Drugs and Substances Act*;
- Conduct that harms the integrity of the profession

The hearing tribunal, after caucus, concluded that with respect to the first allegation there was an admission of diversion and personal use of the narcotics hydromorphone. This conduct is clearly unprofessional as it harms the integrity of the profession for registered pharmacists to be diverting and misusing the controlled substances with which they are entrusted. This would also potentially harm the targeted patients whose records were tampered with.

Mr. Johnson was also a licensee therefore his conduct was also subject to the provisions of the *Pharmacy and Drug Act* which contains specific prohibitions on failing to adequately follow legislation relating to the prescribing, dispensing, supply or distribution of drugs including controlled substances. Mr. Johnson clearly failed to comply with the requirements of the *Pharmacy and Drug Act* when he diverted hydromorphone from the pharmacy's supply without a valid prescription and used it himself. Such failures are defined as misconduct under the *Pharmacy and Drug Act*, S. 1(1)(p)(iv) and they are therefore part of the definition of unprofessional conduct under the *Health Professions Act* Section 1(1)(pp).

Additionally, the diversion contravenes Standard 5 of the Standards for the Operation of Licensed Pharmacies which speaks to a licensee ensuring the drug supply in the licensed pharmacy is managed so as to protect the integrity, quality and safety of drugs, and specifically

5.11 stating a licensee must ensure drugs are secured against theft, loss or diversion, and Code of Ethics Principle 11(5) which guides members to not misuse or abuse substances.

The Tribunal accepts that Mr. Johnson's admitted conduct in the first allegation constitutes unprofessional conduct.

With regard to the second allegation there was again an admission of obtaining and ingesting prescription and controlled substances that were not prescribed for Leonard Johnson but rather for [REDACTED]. The hearing tribunal finds these actions clearly breached the ACP Code of Ethics Principles 11(2), (4) and (5) in failing to demonstrate responsibility for himself, failing to declare circumstances calling his fitness to practice into question and misusing and abusing substances. The tribunal also noted that Mr. Johnson's breached the *Controlled Drugs and Substances Act* Section 4(1) with the consumption of [REDACTED]'s Ativan, a controlled substance he was not authorized under the regulations to possess. Mr. Johnson's breaches of the ACP Code of Ethics and of the *Controlled Drugs and Substances Act* constitute unprofessional conduct as defined in the *Health Professions Act* Section 1(1)(pp)(ii), (iii) and (xii).

It is unprofessional for a registered pharmacist to be diverting prescription medications and controlled substances for his own use.

As for the third allegation and subsequent admission of altering pharmacy records and creating false patient records to conceal his diversions, this also constitutes unprofessional conduct. Standard of Practice for Pharmacists and Pharmacy Technicians 1.1 speaks to practicing within the law and Standard 1.2 speaks to practice within the spirit of the law. Tampering with a number of patient records, and falsifying inventory records breached Standards 1.1 and 1.2 and demonstrates an unprofessional action. Section 8(10)(1)(a) and (d)(iv) of the *Pharmacy and Drug Act* require that a licensee must ensure the pharmacy operates in accordance with the Act and that all required records are created and maintained in accordance with the Act. The intentional falsifying of records also does not hold up to Principles 1 or 10 of the Code of Ethics which speak to holding the well-being of each patient as the primary consideration and acting with honesty and integrity in complying with the letter and intention of the law.

Mr. Johnson's contraventions of the Standards of Practice, the *Pharmacy and Drug Act* and the ACP Code of Ethics constitute unprofessional conduct as defined in the *Health Professions Act* Section 1(1)(pp)(ii), (iii) and (xii). There is no question that altering electronic health records to cover up the diversion of drugs such as narcotics is unprofessional conduct for a pharmacist.

The Tribunal, after deliberation has accepted the Admission of Unprofessional Conduct and finds Mr. Johnson committed unprofessional conduct for each of the three allegations.

V. SANCTIONS

After hearing evidence and submissions from the parties regarding the conduct in issue, the Hearing Tribunal advised the parties of its findings of unprofessional conduct. The parties were offered the opportunity to adjourn to make submissions on sanctions after receiving the hearing tribunal's written submissions on the merits. However, both Mr. Jardine and Mr. Johnson indicated that they would prefer to make submissions regarding penalty on the same day.

Mr. Johnson requested the opportunity to speak to the findings and to the matter of sanctions first. The complaints director did not object.

Mr. Johnson offered his apology to the tribunal members and to the college and indicated this was not his customary behavior. He is a husband, a father to 7 children, an active member of his community and his Church, and a professional held in high esteem. He has coached sports for many years including football, basketball and baseball. He has many letters of support and evaluation records indicating he is a good and valued employee, attesting to his good character.

Mr. Johnson did not seek licensee status; rather it was imposed upon him after the abrupt resignation of the previous licensee in November 2012, just prior to his relapse. Previous to that relapse he had been in recovery for 13 years. He indicated that depression, mental illness and dark negative thoughts plagued him leading him to fail to maintain his addiction management program. [REDACTED] This contributed to Mr. Johnson failing to recognize his own depressive state and leading to an inability to continue with his addiction management program.

Mr. Johnson indicated that he has spent 8-10 years as a group leader in Narcotics Anonymous between 2000 and 2008. He ceased doing Narcotics Anonymous group leader duties because he became too busy and went into another recovery group (of Narcotics Anonymous) on a different day of the week. He indicated he stopped attending Narcotics Anonymous meetings in mid to late 2011 and then apparently relapsed in late 2012.

This matter has received some attention in the media, on the radio, television and in the paper. Lethbridge is a small community and he emphasized that it will be very difficult for him to find work regardless of the sanctions that are imposed and he's already suffered a significant amount of public shame as has his family because of this matter. He indicated it has caused quite a bit of stress and anxiety to him and to his wife.

Mr. Johnson offered that he is currently under the care of his own physician for depression. He completes a weekly depression evaluation and a monthly visit with his physician. He has a counselling team and is pursuing his own recovery. He has attended a 2 week addictions recovery course and has sought assistance from an EFAP program which has now run its course and he is currently seeking assistance from his spouse's EFAP program for further counselling. He indicated that no one in a rational state of mind would make the choices he had made that led to his relapse. He indicated he made mistakes and got into trouble.

Regarding the altering of records Mr. Johnson indicated that he chose the patients carefully and because they were patients on his system with no Alberta Health Care numbers. This was to minimize the damages to each patient. He knew he could have created paper prescriptions to cover up his diversion of their drugs for a longer period of time yet he claimed to specifically not to do that because it would have created more of a mess. By omitting to create paper prescriptions to cover up his behaviour he knew that he would be shortly discovered.

He indicated he hoped the tribunal could see him for more than just an addict. He indicated addiction is an illness and his recovery is dependent on after care. He indicated that he is of the view that his depression is under control now and if he were in a pharmacy today he would not be taking narcotics.

Mr. Johnson provided some documents detailing his current steps and progress in addressing his addiction. These were marked as Exhibit 3 and included:

- Letter from Richard Luykenaar, Provisional Psychologies Addiction Counsellor outlining Mr. Johnson's attendance starting May 7, 2013 for individual counselling that will continue and attendance at a recovery group psycho-educational day program he attended.
- AHS Treatment Client Attendance Report indicating no recorded absences from May 5, 2013 and a pending appointment set for July 4, 2013.
- Letter from D. Dionne, EAP Counsellor with Shepell-fgi confirming 4 appointments attended starting April 19, 2013 and concluded June 12, 2013 with no further appointments scheduled.
- Many performance evaluations performed while Mr. Johnson was both Licensee, dated February 20, 2013 and staff pharmacist, dated March 7, 2011, January 25, 2010, and March 4, 2008 consistently indicating he successfully meets expectations of his supervisors, that he is well liked by staff and customers, is a valuable member of the team, and is professional in appearance and attitude.

Mr. Jardine referred to an excerpt from the *Regulation of Professions in Canada*, which makes it clear that the primary consideration at the penalty phase of the proceedings is to impose an order which ensures that the public is adequately protected from future conduct of a similar nature. Additionally the second principle is protection of the integrity of the profession and the third is fairness to the member. It is necessary to balance all of these factors in determining appropriate sanctions.

Mr. Jardine also referred to some of the factors referenced in *Jaswal v. Newfoundland (Medical Board)* (1996), 42 Admin L.R. (2d) 233 (T.D) suggesting that the hearing tribunal should consider the following when determining which orders should be imposed:

1. Nature and gravity of the proven allegations: These are serious matters. Diversion of drugs and falsifying of records goes to the root of pharmacy practice. The conduct in this case was deliberate rather than an accident or mistake.
2. Age and experience of the offender: Mr. Johnson has practiced as a pharmacist for a number of years. This is not something that occurred due to his inexperience and thus is not a mitigating factor.
3. Previous character of the offender: There was a previous finding of unprofessional conduct in 2001. It was noted that the conduct was very similar in 2001.
4. Age and mental condition of offended patient: No evidence of actual patient harm was presented. Patient records were altered however there appears to have been no negative impact to these patients.
5. Number of times offence occurred: This was not an isolated event. The conduct occurred over a significant period of time with at least 22 incidents of diversion. There were numerous opportunities to have stopped and only ended when there was an investigation and complaint.
6. Role of member in acknowledging what occurred: Mr. Johnson made an early admission once confronted and remained cooperative throughout the process. This factor weighs in his favor.
7. Other serious or financial penalties: Mr. Johnson did lose his employment with Canada Safeway. There is another criminal matter presently before the courts.
8. Impact on offended patient: not applicable
9. Mitigating circumstances: Full cooperation, acknowledgement, admission of facts as well as 13 years of compliance with an after-care program following his 2001 relapse and conviction.
10. Need to promote deterrence: There is a need to ensure that Mr. Johnson and other members of the profession are deterred from engaging in similar conduct. However specific deterrence is difficult with addiction issues as the impugned behavior is complex and not necessarily deterred by punitive measures.
11. Public confidence in the integrity of the profession: The tribunal must ensure that the sanctions designed will ensure public confidence in the integrity of the sanctioning process.

12. Degree to which the conduct is clearly regarded, by consensus, as falling: outside the range of permitted conduct: clearly Mr. Johnson's conduct was well beyond the boundary of what would be considered unprofessional conduct.
13. Range of penalties in similar cases: Mr. Jardine referred the Tribunal to the following previous cases that may be of assistance in determining penalty.

Mr. Jardine referred to **M. Leonard Johnson 2001** which is Mr. Johnson's own former case with an admission of unprofessional conduct and dependence on narcotics. His conduct then involved a breach of a prior maintenance and monitoring agreement and an order for a 24 month suspension, counseling and rehabilitation program, return to practice under supervision, prohibition from registering as a pharmacy manager, random drug screening and undertaking to abide by the support program, and costs.

The **Pharmacist Registrant** case as well included a monitoring agreement during which time she consumed drugs, ending up in hospital. Her prior conduct was considered and included a 9 month suspension prior to the time of her hearing and a 10 month total suspension was imposed as any longer suspension was felt to not be a necessary deterrent given her 9 month clean history. Other conditions imposed on her practice permit included disclosure of the matter to any employer and pursuing counseling for 12 months.

The **Leanne Rogalsky** case involved diversion of \$39,000 worth of drugs resulting in serious concerns this was not only for personal use. Her suspension was for 4 years with credit for the 4 years to the time of the hearing. Mitigating factors included a prior abusive relationship. There was a fine imposed of \$2,500 plus costs, a condition on her practice permit including satisfying conditions of re-entry to practice given that she had been out of the profession for a significant period of time, voluntary random drug screens for the following 3 years, and she was prohibited from taking Schedule 1 or 2 drugs without a prescription.

Finally, the **Trent Walsh** case was highlighted which was a first instance and involved a low value drug. However, he did not immediately acknowledge his conduct. His sanctions included an 8 month suspension, a prohibition from acting as Licensee for 5 years, requirements to inform employers of the tribunal decision for 5 years and submit to a monitoring and recovery program for 5 years, as well as costs of the investigation and hearing.

Mr Jardine submitted, on behalf of the complaints director, that the hearing tribunal should impose the following orders:

- 24 months overall suspension, consistent with the previously served suspension in 2001; of which 18 months is to be served and 6 months to be held in abeyance pending compliance with a monitoring program as selected by the college;
- A monitoring and recovery program acceptable to the complaints director provided by a professional service provider such as Canniff & Associates, for a minimum of 5 years. It

was noted that the Canniff & Associates program requires participants to enter into an after care agreement which includes random drug testing, declining in frequency over the course of time as participants gain responsibility for their own well-being as well as frequent correspondence with the program and mental group support counselling.

- Mr. Johnson would be prohibited from acting as a licensee for a minimum of 5 years following his return to practice.
- Mr. Johnson would be required to practice under direct supervision for a minimum of 12 months following his return to practice.
- Mr. Johnson would be required to advise any employer and licensee for a pharmacy practice in which he is employed of the hearing tribunal's decision for the same 5 year period.
- Mr. Johnson would be prohibited from owning or operating a pharmacy for a minimum of 5 years following his return to practice.
- Mr. Johnson would be responsible for the costs of the investigation and hearing to be provided on a schedule set by the hearings director with payments to be worked out with the complaints director recognizing that Mr. Johnson would have no income for some period of time.
- Publication of the outcome of the hearing would be at the discretion of the registrar in accordance with the ACP bylaws but would occur no earlier than 90 days following the conclusion of the hearing given the tribunal's prior order to close the hearing under Section 78(1)(a)(i).

Mr. Johnson was then provided with a further opportunity to make submissions on sanctions and to respond to Mr. Jardine's submissions.

Mr. Johnson indicated that he was agreeable to all of the sanctions put forward by the complaints director except the structure of the suspension. On the question of the suspension he indicated that he is agreeable to a 24 month overall suspension provided that he would serve 6 months of actual suspension with 18 months of suspension held in abeyance pending compliance.

Mr. Johnson indicated that he is not a "bouncing ball" and he was sober for 13 years without difficulty. He indicated he's had a lot of years of recovery under his belt and he should be given the benefit of the doubt.

He also indicated that for financial reasons he sought a shorter suspension as he's had to be out of work for a long period of time before and being out of work for 18 months now would be difficult for him. He indicated the public can be protected without the need for this long suspension, which he characterized as a punitive measure. He indicated the severe penalties are a disincentive for members such as him to come forward and seek help. He indicated that there

will be no problem with his compliance and that if there were any problems he would gladly agree to serve the 24 months suspension.

After hearing submissions from the parties, the Hearing Tribunal sought clarification of Mr. Johnson's registration status with the College given the Complaints Director's proposal for a 24 month suspension. The parties confirmed that Mr. Johnson has been off the clinical register since April 2013. Up to 24 months after April 2013, Mr. Johnson can be re-registered using only the usual re-registration evidence, including proof of insurance, continuing education credits and payment of licensing fees.

Beyond 24 months Mr. Johnson would need to complete internship hours and the jurisprudence exam. Beyond 5 years he would also have to do the PEBC - OSCE. Accordingly, as long as Mr. Johnson's active suspension runs for less than 24 months from April 2013, he will be able to re-register without further examinations or conditions.

The tribunal pointed out to Mr. Johnson and confirmed he understood that if he did not comply with the overall packages of sanctions and therefore had to serve the full 24 months suspension from June 17, 2013 then he would go beyond the 24 months and would be prohibited from re-registering without significant additional obligations. Mr. Johnson indicated he understood this.

VI. ORDERS AND REASONS

The hearing tribunal has carefully considered the submissions made by Mr. Jardine on behalf of the complaints director and Mr. Johnson in relation to sanctions, and the factors referenced in the *Jaswal* decision. In addition, the hearing tribunal considered that Mr. Johnson was in agreement with the orders sought on behalf of the complaints director with one modification suggested to the duration of active suspension.

The hearing tribunal feels that the orders sought achieve the goal of sentencing in the professional discipline context, which is largely concerned with ensuring that the public is protected from future misconduct of a similar nature. The hearing tribunal is of the view that the orders sought on behalf of the complaints director properly reflect the seriousness of the conduct, but at the same time are fair to Mr. Johnson given his candour in these proceedings and his willingness to admit responsibility for his actions.

The hearing tribunal hereby makes the following orders pursuant to S. 82 of the HPA:

1. Leonard Johnson will be subject to a 24 month suspension with 6 months of actual, active suspension and 18 months held in abeyance pending compliance with the remaining sanctions, commencing June 17, 2013. There is observance that Mr. Johnson voluntarily relinquished his practice permit in April and the active suspension will start

effective June 17, 2013. It was felt a longer suspension would not necessarily be of benefit as if there is failure to comply with any of the other sanctions, then the full 24 month suspension would take effect and Leonard would have to undergo additional re-licensure requirements to be registered with the college at the conclusion of the suspension.

2. Leonard Johnson will participate in a recovery and monitoring program that meets the satisfaction of the complaints director, such as offered by Canniff & Associates for a period of 5 years.
3. Leonard Johnson shall be prohibited from acting as a licensee for a minimum of 5 years after his return to practice.
4. Leonard Johnson shall practice under direct supervision of another licensed pharmacist for a minimum of 12 months after his return to work as a pharmacist.
5. Leonard Johnson shall be required to advise any employers in a pharmacy setting of the hearing tribunal's decision and the conditions on his practice permit for a minimum of 5 years following his return to practice.
6. Leonard Johnson shall be prohibited from acting as an owner or proprietor of a pharmacy for a minimum of 5 years following his return to practice.
7. Leonard Johnson shall be responsible for the cost of the investigation and hearing as prescribed by the hearings director with terms for payment acceptable to the complaints director.
8. Publication of this matter shall be at the discretion of the registrar and in accordance with the ACP bylaws but no earlier than 90 days following the conclusion of this hearing on June 17, 2013.

In addition to the sanctions, the hearing tribunal makes the following 2 strong, albeit non-binding recommendations for Mr. Johnson:

- To seek employment outside a traditional dispensing role; and
- To consider continuing the aftercare addictions program beyond the mandated 5 year period.

Signed on behalf of the hearing tribunal by the
chair

Dated:
September 18, 2013

Per:
[Dianne Veniot]