

ALBERTA COLLEGE OF PHARMACY

IN THE MATTER OF  
THE HEALTH PROFESSIONS ACT

AND IN THE MATTER OF A HEARING  
REGARDING THE CONDUCT OF

**AHMED ATIQUE**  
**Registration Number 10024**

**DECISION OF THE HEARING TRIBUNAL**

August 10, 2020

## **I. INTRODUCTION**

The Hearing Tribunal held a hearing into the conduct of Ahmed Atique on June 17, 2020. The following persons were in attendance on behalf of the Hearing Tribunal: Kevin Kowalchuk, pharmacist and Chair, Cassandra Woit, pharmacist, and Nancy Brook, public member. Katrina Haymond acted as independent counsel to the Hearing Tribunal.

The hearing took place via videoconference. The hearing was held under the terms of Part 4 of the *Health Professions Act* (“HPA”).

The following persons were also in attendance at the hearing: Annabritt Chisholm and David Jardine, legal counsel for the College, and James Krempien, Complaints Director. Ahmed Atique was also present. Mr. Atique confirmed that he was aware of his right to be represented by legal counsel, and that although legal counsel was not present at the hearing, he wished to proceed.

Margaret Morley, Hearings Director, was also present. Ms. Morley did not participate in the hearing, but was available to assist in administering the virtual hearing.

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

## **II. ALLEGATIONS**

The Amended Notice of Hearing was entered into the record and was marked as Exhibit 1. The allegations set out in the Amended Notice of Hearing were as follows:

IT IS ALLEGED THAT, as licensee and pharmacist between January 1, 2016 to August 31, 2018 while you were both a registered Alberta pharmacist and the licensee of the former Nazia Pharmacy (ACP License #2850), you:

1. Submitted approximately \$1.5 million dollars’ worth of claims for Pediasure Fibre, Enfamil Enfacare A+ Infant, Ensure Regular, Ensure Plus, Pediasure Oral Liquid and Glucerna Oral Liquid (the “Health Care Products”) to Alberta Blue Cross (“ABC”) without being able to provide the required supporting supplier invoices for the claims;
2. Failed to create and retain required pharmacy records in respect to the claims made for the Health Care Products such that there are no records that show any stock was ever received by the pharmacy in respect to these claims which represented 87% of the claims made to Alberta Blue Cross for the Health Care Products during this period;
3. Submitted claims for the Health Care Products although you did not have the corresponding stock to have dispensed the Health Care Products to

patients, and thereby submitted false claims and created inaccurate dispensing records for patients;

4. Purchased and dispensed the Health Care Products although they were not from safe and proven sources such as a regulated supplier or other legitimate business and were of unknown quality and safety;
5. Purchased and dispensed some of the Health Care Products that you knew or should have known had been previously dispensed by another pharmacy and were now being resold to you;
6. Breached your agreement with Alberta Blue Cross; and
7. Failed to act ethically in your dealings with Alberta Blue Cross and in the manner in which you acquired and then dispensed some of the Health Care Products that were of unknown quality and safety.

IT IS ALLEGED THAT your conduct in these matters:

- a. Failed to demonstrate the ethical conduct and professional judgment expected and required of an Alberta pharmacist and pharmacy licensee;
- b. Breached your statutory and regulatory obligations to the Alberta College of Pharmacy as an Alberta pharmacist and pharmacy licensee;
- c. Created the potential for patient harm;
- d. Decreased the public's trust in the profession; and
- e. Undermined the integrity of the profession.

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

- Sections 10(1)(a) and 10(1)(d)(iv) and (v) of the *Pharmacy and Drug Act*;
- Section 12(1) of the Pharmacy and Drug Regulation;
- Standards 1, 18 and 19 and Sub-sections 1.1, 1.2, 18.6, 19.1(a) and 19.1(b) of the Standards of Practice for Pharmacists and Pharmacy Technicians;
- Standards 1, 5 and 8 and Sub-sections 1.1, 1.2, 5.15(b) and 8.1 of the Standards for the Operation of Licensed Pharmacies; and
- Principles 1(1, 5, 6, 9 and 12) and 10(1 and 2) of the ACP Code of Ethics;

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

#### IV. **EVIDENCE**

The hearing proceeded by way of an Agreed Statement of Facts and other agreed exhibits, including an Admission of Unprofessional Conduct. No witnesses were called to testify.

The following exhibits were entered by agreement of the parties:

Exhibit 1: Amended Notice of Hearing

Exhibit 2: Admission of Unprofessional Conduct

Exhibit 3: Agreed Statement of Facts and Combined Exhibit Book

##### Agreed Statement of Facts:

A copy of the text of the Agreed Statement of Facts (paragraphs 1-24) is attached to the Hearing Tribunal's decision as **Appendix A**. The exhibits referred to therein or referred to in other parts of the decision have not been reproduced and do not form part of the Hearing Tribunal's decision.

##### Admission of Unprofessional Conduct:

In the Admission of Unprofessional Conduct (Exhibit 2), Mr. Atique admitted the allegations set out in the Amended Notice of Hearing. He also admitted that his conduct breaches s. 10(1)(a) and 10(1)(d)(iv) and (v) of the *Pharmacy and Drug Act*; s. 12 of the *Pharmacy and Drug Regulation*; Standards 1, 18 and 19 and sub-sections 1.1, 1.2, 18.6, 19.1(a) and 19.1(b) of the *Standards of Practice for Pharmacists and Pharmacy Technicians*; Standards 1, 5, 8 and sub-sections 1.1, 1.2, 5.15(b) and 8.1 of the *Standards for the Operation of Licensed Pharmacies*; and Principles 1 (1, 5, 6, 9 and 12) and 10(1 and 2) of the *ACP Code of Ethics*. He further admitted that his conduct constitutes "unprofessional conduct" as defined in s. 1(1)(pp)(i)(ii)(iii) and (xii) of the *Health Professions Act* and s. 1(1)(p)(i)(ii) and (ix) of the *Pharmacy and Drug Act*.

##### Agreed Exhibits

The parties submitted a Combined Exhibit Book by agreement. The Exhibits entered by agreement included the following:

Exhibit A Letter of complaint (the "Complaint") submitted on behalf of Alberta Blue Cross indicating that Nazia Pharmacy did not have purchase invoices to support

a large quantity of nutritional products claimed representing an overpayment of \$1,493,234.76 for the period January 1, 2016 - August 31, 2018.

- Exhibit B Letter from Complaints Director to Mr. Atique, notifying him of the Complaint, dated April 29, 2019.
- Exhibit C Letter from Complaints Director to the Complainant, dated April 29, 2019.
- Exhibit D Written response from Mr. Atique to the Complaints Director, dated May 20, 2019.
- Exhibit E Letter from Alberta Blue Cross, dated June 3, 2019, enclosing additional documents.
- Exhibit F Complaints Director's summary of meeting with Mr. Atique, dated June 13, 2019.
- Exhibit G Complaints Director's summary of meeting with the Complainant, dated June 28, 2019.
- Exhibit H Email from Alberta Blue Cross to Complaints Director, dated July 2, 2019 attaching additional information.
- Exhibit I & K Pharmaceutical Agreements between Alberta Blue Cross and Atique & Company Ltd.

## V. SUBMISSIONS

Ms. Chisholm made submissions on behalf of the College. Ms. Chisholm submitted that the Hearing Tribunal's task is to determine whether the allegations in the Amended Notice of Hearing are factually proven. If the Hearing Tribunal determines that the allegations are factually proven, it must also determine whether the conduct constitutes unprofessional conduct as defined in the HPA or as defined in the *Pharmacy and Drug Act*. If the Hearing Tribunal finds that the conduct is proven, then the Tribunal can proceed to consider sanction.

Ms. Chisholm explained that the hearing involves Mr. Atique's conduct in his capacity as a pharmacist and licensee from 2016-2018. In April of 2018, the College received a complaint from Alberta Blue Cross ("ABC") alleging that Mr. Atique, owner and licensee of Nazia Pharmacy (the "Pharmacy") breached his Agreement with ABC, as he had submitted claims for nutritional products but did not have invoices to confirm that he had purchased the products he was selling to his customers.

Ms. Chisholm then reviewed each of the allegations in the Amended Notice of Hearing, and provided a detailed review of each of the documents included in the Combined Exhibit Book (Exhibit 3). Ms. Chisholm explained that during the College's investigation, Mr. Atique admitted that he had purchased nutritional products from individuals at a lower price than the price offered by other suppliers. At the time he purchased the products, he believed that some of the sellers were affiliated with criminal organizations. He also believed he was purchasing

some of the products from other individuals who had received the products from a licensed pharmacy, but did not need the products and were re-selling the products to him. At the time he purchased the nutritional products, Mr. Atique did not ask many questions regarding how the suppliers came to possess the products. Mr. Atique paid for the products in cash, and was not provided with any invoices or receipts.

Ms. Chisholm submitted that there was sufficient evidence to demonstrate that the allegations were proven. Ms. Chisholm further submitted that the conduct in issue was unprofessional conduct. Mr. Atique's actions created the potential for harm, since the source of the products was unknown. Further, Mr. Atique's actions have the potential to diminish public trust, including the insurer, in the pharmacy profession.

Mr. Atique also made submissions on his own behalf. Mr. Atique submitted that although he was dispensing products received from unknown sources, it was not a quality or safety issue, since the products were sealed at the time they were dispensed and were not expired. Further, although Mr. Atique admitted the allegations, he submitted that the situation was not as serious as it would have been if he was dispensing drugs rather than nutritional products. Further, Mr. Atique noted that there were no patients who raised any concerns.

## **VI. FINDINGS**

The Hearing Tribunal accepted Mr. Atique's admission of unprofessional conduct pursuant to s. 70 of the HPA. The Hearing Tribunal finds that the allegations set out in the Amended Notice of Hearing are proven, and that the conduct constitutes unprofessional conduct as defined in the HPA and in the *Pharmacy and Drug Act*.

In determining that the allegations were proven and that Mr. Atique's admission should be accepted, the Hearing Tribunal carefully considered the Agreed Statement of Facts entered into by the parties, and the documentation in the Combined Exhibit Book.

Mr. Atique was the owner and licensee of the Pharmacy from December 12, 2014 – June 24, 2019, when the Pharmacy closed. In 2018, Mr. [REDACTED], Analyst, Claims Assurance Services at ABC, notified Mr. Atique that they were verifying compliance with the terms and conditions of the provider agreement, and requested documentation to support the claims made by the Pharmacy for eight nutritional products between January 1, 2017 and December 31, 2017 (Combined Exhibit Book, Exhibit E). Subsequently, the review was expanded to include the period between January 1, 2016 and August 31, 2018.

The first allegation is that during this time approximately 1.5 million dollars worth of claims for "Nutritional Products" was submitted for provincial reimbursement. Mr. Atique submitted these claims without being able to provide the required supporting supplier invoices for the claims as outlined in Exhibits A, E & H when audited by Alberta Blue Cross.

The second allegation is that Mr. Atique failed to create and retain required pharmacy records in respect to the claims made for the health care products, such that there are no records that show any stock was ever received by the pharmacy in respect to these claims. This allegation is supported by evidence collected during the investigations by both ABC and the College outlined in Exhibits D, E, F, G & H.

The third allegation is that he submitted claims for the Health Care Products although he did not have the corresponding stock to have dispensed the Health Care Products to patients, and thereby submitted false claims and created inaccurate dispensing records for patients. This allegation is supported by evidence collected during the investigations by both ABC and the College outlined in Exhibits D, E, F, G & H.

The fourth allegation is that he purchased and dispensed the Health Care Products although they were not from safe and proven sources such as a regulated supplier or other legitimate business and were of unknown quality and safety. This allegation is supported by evidence collected during the investigation by the College outlined in Exhibits D, E, F & G.

The fifth allegation is that he purchased and dispensed Health Care Products that he knew or should have known had been previously dispensed by another pharmacy and were now being resold to him. This allegation is supported by evidence collected during the investigation by the College outlined in Exhibits D, E, F & G.

The sixth allegation is that he breached his agreement with Alberta Blue Cross. Evidence presented in Exhibits E, F, G, H, I & K demonstrated that the terms of Pharmaceutical Agreements between ABC and Nazia Pharmacy were not met by Mr. Atique.

The seventh allegation outlines that Mr. Atique failed to act ethically in his dealings with ABC and in a manner in which he acquired and then dispensed some of the Health Care Products which were of unknown quality and safety. This allegation is supported by evidence collected during the investigations by both ABC and the College outlined in Exhibits D, E, F, G & H.

Based on the information submitted during the hearing, the Hearing Tribunal finds that allegations in the Amended Notice of Hearing are factually proven on a balance of probabilities.

The Hearing Tribunal also considered whether the conduct in issue constitutes “unprofessional conduct”. The Hearing Tribunal was satisfied that Mr. Atique’s conduct constitutes unprofessional conduct, as defined in both the HPA and the *Pharmacy and Drug Act*. Submissions of dispensing claims to ABC for Nutritional Products for which Mr. Atique did not have supporting invoices for product procured from verified sources represented dishonest conduct in dealings with ABC, contrary to Principles 1 (1, 5, 6, 9 and 12) and 10(1 and 2) of the ACP Code of Ethics. Mr. Atique’s conduct also demonstrated that he allowed his professional judgment to be impaired by financial gain, contrary to principle 1(1) of the Code of Ethics. The public should be entitled to expect pharmacists to be honest in their dealings with others in the provision of healthcare services. The public should also be entitled to expect that pharmacists will not allow their own financial interests to take precedence over their professional obligations and judgment.

Mr. Atique’s submissions of claims without being able to provide the supporting invoices for the Audited Drugs contravened Standards 1, 18 and 19 and sub-sections 1.1, 1.2, 18.6, 19.1(a) and 19.1(b) of the Standards of Practice for Pharmacists and Pharmacy Technicians; Standards 1, 5, 8 and sub-sections 1.1, 1.2, 5.15(b) and 8.1 of the Standards for the Operation of Licensed Pharmacies. The rules and standards for the creation and maintenance of accurate pharmacy

records and records of care exist to enable regulators like the College to regulate effectively in the public interest. Mr. Atique breached these standards repetitively over a lengthy period of time, and in these circumstances his conduct constituted unprofessional conduct.

Mr. Atique's conduct harms the integrity of the profession of pharmacy and is contrary to s. 10(1)(a) and 10(1)(d)(iv) and (v) of the *Pharmacy and Drug Act*; s. 12 of the Pharmacy and Drug Regulation. Mr. Atique failed to demonstrate the ethical conduct and professional judgment expected and required of an Alberta pharmacist and pharmacy licensee; this failure created the potential for patient harm since product was procured from unverified sources and in cases knowingly, or should have known that, dispensed product was originally provided to other patients. It decreases the public and insurer's trust in the profession for the reason that Mr. Atique felt it was acceptable to go outside of the standards established precisely in place to protect the public.

## **VII. SUBMISSIONS ON SANCTION**

After the Hearing Tribunal deliberated, the Tribunal advised the parties that it accepted the Admission of Unprofessional Conduct by Mr. Atique, and determined that the conduct admitted to constituted unprofessional conduct. The Hearing Tribunal invited the parties to make submissions with respect to sanction.

Mr. Jardine provided the Hearing Tribunal with a Joint Submission on Sanctions, signed by both Mr. Atique and Mr. Krempien. Mr. Jardine indicated that the parties were jointly proposing a number of sanctions, including: a suspension of Mr. Atique's practice permit for a period of three years, the requirement for Mr. Atique to complete the Probe course offered by the Centre for Personalized Education for Professionals, completion of the College's Ethics and Jurisprudence Exam, and that upon his return to practice, he must practice under supervision. In addition, the parties jointly proposed that Mr. Atique would be prohibited from acting as owner, proprietor or licensee for 10 years, he must pay fines in the amount of \$40,000, and that he must pay costs of the investigation and hearing.

Mr. Jardine made submissions regarding the application of a number of factors referred to by the Court in *Jaswal v. Medical Board (Newfoundland)* and how they applied in this case. Mr. Jardine submitted that the conduct in issue was on the more serious end of the spectrum, such that a serious penalty was warranted. Mr. Jardine further noted that Mr. Atique has been a regulated member of the College since 2011, and a licensee since 2014, and is not a new member of the profession. He also noted that Mr. Atique has no previous findings of unprofessional conduct. His prior record, and the fact that he admitted the conduct, were mitigating factors and explained why the Complaints Director was seeking a suspension, rather than cancellation.

Mr. Jardine also made submissions with respect to three previous decisions issued by the Hearing Tribunal, and suggested that the orders jointly proposed were consistent with the decisions presented, given the specific facts in this case.

Mr. Jardine also made submissions regarding the role of the Hearing Tribunal when considering a joint submission on sanctions, and referenced the Saskatchewan Court of Appeal's decision in *Rault v. Law Society of Saskatchewan*, and the Supreme Court of

Canada's decision in *R. v. Anthony-Cook*. Mr. Jardine explained that the Joint Submission is a product of negotiation, and that while the Hearing Tribunal is not bound to accept it, the Hearing Tribunal should exercise significant deference when presented with a Joint Submission on Sanctions.

The Hearing Tribunal requested clarification regarding the anticipated costs associated with the investigation and the hearing. Mr. Jardine advised that as of June 6, 2020, the costs were \$17,900.00. However, this did not include the costs associated with preparation for the hearing, or fees for independent legal counsel. It was anticipated that the total costs would be in the range of \$25,000 - \$30,000.00.

Mr. Atique also made submissions with respect to sanctions. Although he agreed to the sanctions jointly proposed, he indicated that it would be difficult to comply given the significant financial penalties, especially since his ability to generate an income has been impacted for the following reasons: his pharmacy has been closed now for nearly a year, also within this last year he was required to travel outside of the country to attend to personal affairs due to the passing of his mother and with his return to Canada COVID has added additional challenges. The inability to work as a pharmacist while suspended for three years will force him to find work elsewhere. Mr. Atique requested that his name is withheld from appearing on the public record.

## **VI. ORDERS AND REASONS FOR ORDERS**

After considering the submissions of both parties, the Hearing Tribunal accepts the Joint Submission on Sanctions, and makes the following orders pursuant to s. 82 of the HPA:

1. Mr. Atique's practice permit shall be suspended for three years, starting on a date acceptable to the Complaints Director and being no later than 30 days after the date of the Hearing Tribunal's written decision.
2. After serving his suspension set out in Order 1 above and prior to being eligible to reinstate as a clinical pharmacist with the Alberta College of Pharmacy Mr. Atique must, at his own cost, successfully complete:
  - a. the Centre for Personalized Education for Professional's (CPEP) Probe Course; and
  - b. the College's Ethics and Jurisprudence Exam.and provide proof of same to the Complaints Director before his suspension is lifted.
3. After completing Orders 1 and 2 and upon reinstating as a clinical pharmacist with the Alberta College of Pharmacy, Mr. Atique's practice permit shall be subject to the conditions that:

- a. he practice under direct supervision for six months, under a direct supervisor approved by the Complaints Director, with a report to be provided by the direct supervisor to the Complaints Director on a monthly basis and to the satisfaction of the Complaints Director; and
- b. for an additional six months, the licensee of any pharmacy in which Mr. Atique is employed shall provide a report to the Complaints Director on a monthly basis and to the satisfaction of the Complaints Director;

A report to the satisfaction of the Complaints Director will include that there is no repeat of the conduct at issue in this matter.

4. Mr. Atique shall provide a copy of the Hearing Tribunal's written decision to the proprietor and licensee of any pharmacy in which he applies to work or works as a pharmacist for five years, commencing on the date he receives a copy of the Hearing Tribunal's written decision and continuing for five years after he reinstates as a clinical pharmacist.
5. Mr. Atique shall not be permitted to be an owner, proprietor or licensee of a pharmacy for ten years, commencing on the date he receives a copy of the Hearing Tribunal's written decision.
6. Mr. Atique shall pay a fine of \$10,000 for Allegations 1 and 3 combined, a \$10,000 fine for Allegation 2, a \$10,000 fine for Allegations 4 and 5 combined, and a \$10,000 fine for Allegations 6 and 7 combined, for a total fine of \$40,000. Payment will occur in accordance with a monthly payment schedule as directed by the Hearings Director. The fines shall be paid in full within 36 months of the date Mr. Atique receives a copy of the Hearing Tribunal's written decision.
7. Mr. Atique shall be responsible for payment of all costs of the investigation and 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 Mr. Atique receives a copy of the Hearing Tribunal's written decision.

The Hearing Tribunal carefully considered the submissions by Mr. Jardine with respect to the deference that must be exercised when considering a Joint Submission on Sanction. The cases referred to establish that when a joint submission is presented, the Hearing Tribunal should exercise deference and should not reject or vary it unless there is good reason to do so. The courts have held that the bar for rejecting or varying a joint submission is high, and the Hearing Tribunal must not do so unless it is unfit, unjust or unreasonable, or unless it brings the administration of justice into disrepute.

The Hearing Tribunal considered the orders that were jointly proposed, and believes that they are appropriate having regard to the factors that are relevant in assessing sanction in the professional discipline context.

In particular the Hearing Tribunal considered:

- The seriousness of Mr. Atique's proven unprofessional conduct, it was severe and alarming for a member of the pharmacy profession considering the dollar amount involved and the time frame over which the unprofessional conduct occurred.
- Although Mr. Atique had no prior discipline history, did admit to the conduct and was cooperative during the investigation, this had to be weighed against the totality of Mr. Atique's proven unprofessional conduct; the gravity and seriousness of all seven allegations that were found to be proven.
- The Hearing Tribunal took into consideration the fact that Mr. Atique is not a new or inexperienced pharmacist unaware of how to conduct himself, so inexperience should not be considered a mitigating factor. This was a case about basic ethical expectations and all regulated members are expected to conduct themselves appropriately, with integrity and in compliance with the law at all times, regardless of their degree of experience or seniority.
- The Tribunal also considered that pharmacists are regarded as important members of the healthcare team who are both trusted and empowered to see and care for patients. It would be inappropriate to allow an individual like Mr. Atique, whose proven conduct has been fundamentally inconsistent with pharmacists' position of trust, for consideration of sanctions less than that jointly proposed.

Although Mr. Atique requested that the Hearing Tribunal's decision be published without identifying him by name, pursuant to s. 119 of the HPA and the ACP's Bylaws, decisions regarding publication are made by the College's Registrar. Accordingly, the Hearing Tribunal has no jurisdiction to direct publication on a non-identifying basis. In any event, the Hearing Tribunal is of the opinion that the decision should be published in a manner that identifies Mr. Atique, given the nature of the conduct.

After considering the submissions of the parties, the Hearing Tribunal felt that the orders set out in the Joint Submission were appropriate, and are sufficient in light of the serious nature of the conduct to deter Mr. Atique and others from engaging in similar conduct in the future.

In agreeing to accept the Joint Submission on Sanction, the Hearing Tribunal noted that Mr. Atique explicitly acknowledged that he was committed to repaying the outstanding amount he owed to ABC by June 1, 2024, and that whether or not he repaid the debt owing to ABC would be considered by the Registrar as evidence of good character in the event that Mr. Atique submitted an application for registration after serving the period of suspension. Although it is up to the Registrar to consider Mr. Atique's application for registration in the future, Mr. Atique's commitment to repaying the amount owing to ABC was relevant in assessing the reasonableness of the Joint Submission on Sanctions.

Signed on behalf of the hearing tribunal by the Chair on the 10<sup>th</sup> day of August, 2020.

Per:   
Kevin Kowalchuk (Aug 11, 2020 06:38 MDT)

Kevin Kowalchuk

## APPENDIX "A"

IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, being  
Chapter H-7 of the Revised Statutes of Alberta, 2000

AND IN THE MATTER OF AN INVESTIGATION REGARDING THE  
CONDUCT OF AHMED ATIQUE, A REGULATED MEMBER OF THE  
ALBERTA COLLEGE OF PHARMACY

### **AGREED STATEMENT OF FACTS**

1. Mr. Atique has been a registered clinical pharmacist with the Alberta College of Pharmacy since July 13, 2011.
2. Mr. Atique was the owner and licensee of Nazia Pharmacy (ACP License #2850) (the "Pharmacy") in Calgary, from December 12, 2014, when the Pharmacy opened to June 24, 2019, when the Pharmacy closed.
3. On April 26, 2019 the Complaints Director received a letter of complaint from ██████████, Team Manager, Claims Audit and Investigation Services, Alberta Blue Cross (the "ABC") resulting from ABC's review of claims made by the Pharmacy between January 1, 2016 to August 31, 2018 for six nutritional products (Pediasure Oral Liquid, Ensure Regular, Glucerna Oral Liquid, Enfamil Enfacare A+ Infant Formula Powder, Ensure Plus, Pediasure Fibre) (collectively referred to as the "Nutritional Products"). Ms. ██████████'s letter of complaint is attached as Exhibit "A" to this Agreed Statement of Facts.

[Combined Book of Exhibits pages 1-2]

4. Ms. ██████████'s letter indicated that as a result of the review, ABC determined that the following percentage of claims for the nutritional products could not be supported and that an overpayment of \$1,493,234.76 had been made by ABC to the Pharmacy:

<b>Drug Product Name</b>	<b>Quantity Claimed</b>	<b>Quantity Unsupported</b>	<b>Quantity Unsupported (%)</b>
Pediasure Oral Liquid	91,909,020 ml	81,376,320 ml	88.54%
Ensure Regular	36,448,840 ml	30,944,670 ml	84.89%
Glucerna Oral Liquid	6,304,374 ml	5,100,414 ml	80.90%
Enfamil Enfacare A+ Infant Formula Powder	728,853 g	678,025 g	93.02%
Ensure Plus	126,195 ml	97,995 ml	77.65%
Pediasure Fibre	269,780 ml	47,940 ml	17.77%

The letter of complaint also indicated that Mr. Atique's written response to ABC's findings included:

*As I told you over the phone too, I was getting these nutrition products commercially/cheaper from various suppliers and individuals and that's why they won't give me the invoices. Since these products are packed, not drug and not refrigerated items. So no harm in buying from others. Only mistake I did is NOT*

*taking the invoices but you can check with any of my customer. I am ONLY ordering and receiving these products through McKesson after I came in contact with you. So only process the claims which have invoices.*

[Combined Book of Exhibits pages 1-2]

5. Based on Ms. [REDACTED]'s letter of complaint, the Complaints Director commenced an investigation into the conduct of Mr. Atique. This investigation resulted in this complaint being referred to a hearing. The Complaints Director's letters to Mr. Atique informing him of the investigation and requesting a written response and letter to Ms. [REDACTED] acknowledging her complaint and requesting additional information and documentation from ABC are attached to this Agreed Statement of Facts as Exhibits "B" and "C" respectively.

[Combined Book of Exhibits pages 3-11]

6. Mr. Atique's written response to the complaint is attached as Exhibit "D" to this Agreed Statement of Facts and includes a three page cover letter as well as copies of correspondence between himself and ABC over the course of the review.

[Combined Book of Exhibits pages 12-86]

7. The additional documents provided by ABC are attached as Exhibit "E" to this Agreement Statement of Facts include:

- a. the Final Report and covering letter to the Pharmacy [Combined Book of Exhibits pages 89-169];
- b. working papers and supporting documentation [Combined Book of Exhibits pages 172-495];
- c. provider correspondence with ABC [Combined Book of Exhibits pages 496-548]; and
- d. the Draft Report and covering letter to the Pharmacy [Combined Book of Exhibits pages 549-590].

#### Facts Relevant to the Complaint

##### *The Review by Alberta Blue Cross*

8. By letter dated April 16, 2018, Mr. [REDACTED] Analyst, Claims Assurance Services, ABC, advised Mr. Atique that ABC was verifying the Pharmacy's compliance with the terms and obligations of the ABC Pharmaceutical Services Provider Agreement. The letter requested documentation and information to support the claims made by the Pharmacy for eight nutritional products between January 1, 2017 and December 31, 2017.

[Combined Book of Exhibits pages 15-19 (Exhibit D) and 497-501 (Exhibit E)]

9. Between May 18, 2018 and October 12, 2018, the Compliance Verification Review was expanded on two occasions to eventually include claims made by the Pharmacy for the Nutritional Products between January 1, 2016 and August 31, 2018.
10. For each Nutritional Product, the Pharmacy was required to provide for ABC's review:
- The Pharmacy's opening inventory on January 1, 2016;
  - The total quantity of each drug product dispensed by the Pharmacy to all customers between January 1, 2016 and August 31, 2018;
  - The Pharmacy's closing inventory on August 31, 2018; and
  - The purchase invoices or supplier purchase summary sheets between January 1, 2016 and December 31, 2018.
11. By letter dated January 30, 2019, Mr. [REDACTED] provided a Draft Report to Mr. Atique that outlined the specific findings from the Compliance Verification Review in which the Pharmacy was found to be in contravention of the ABC Pharmaceutical Services Provider Agreement.

[Combined Book of Exhibits pages 37-84 (Exhibit D) and pages 549-589 (Exhibit E)]

*The ABC Final Report*

12. In its Final Report dated March 12, 2019, ABC identified a total overpayment to the Pharmacy of \$1,508,296.23.

[Combined Book of Exhibits pages 90-92 (Exhibit E)]

13. ABC made findings as follows:
- Drug Product Quantity Claimed Exceeded Drug Product Quantity Available for Claims Submitted

ABC found the following overpayments based on the percentage of the total drug product quantity claimed to ABC where the quantity was not supported. Appendices A to G of the Final Report provide a summary of the documentation received from the Pharmacy during the compliance verification review and Appendices H and I provide the calculations used to determine the overpayment.

PIN	Drug Product Name	Total Amount Paid by ABC	Quantity Unsupported (%)	Overpayment
00990029	Pediasure Fibre	\$3,384.11	17.77%	\$601.35
00999564	Enfamil Enfacare A+ Infant Formula Powder	\$39,488.46	93.02%	\$36,732.16
00999901	Ensure Regular	\$359,640.75	84.89%	\$305,299.03
00999902	Ensure Plus	\$1,797.68	77.65%	\$1395.89
00999933	Pediasure Oral	\$1,242,715.03	88.54%	\$1,100,299.88

	Liquid			
00999940	Glucerna Oral Liquid	\$60,452.97	80.90%	\$48,906.45
Total Value:				\$1,493,234.76

2. Ineligible Drug Products Claimed Under Eligible Product Identification Number (PIN)

ABC found the Pharmacy provided invoices for purchases of ineligible drug products to support claims submitted for Enfamil Enfacare A+ Infant Formula Powder (PIN 0999564) as follows:

Total Quantity Claimed to ABC	Total Quantity of Ineligible Benefits Purchased	Ineligible Portion of Claims (%)	Total Amount Paid	Overpayment
1,006,864	278,011	27.61%	\$54,550.78	\$15,061.47
Total Value:				\$15,061.47

[Combined Book of Exhibits pages 90-92]

14. By letter dated April 25, 2019, ABC notified Mr. Atique that the Pharmacy its ABC Pharmaceutical Services Provider Agreement would terminate effective 11:59 p.m. on June 24, 2019. [Combined Book of Exhibits pages 85-86 (Exhibit D)]

15. Before the Agreement was terminated and the Pharmacy closed, ABC withheld \$152,643.74 from the Pharmacy by withholding payment of ABC claims submitted by the Pharmacy subsequent to the review.

*The ACP Investigation*

16. On June 13, 2019, Mr. Krempien met with Mr. Atique. A summary of their meeting is attached as Exhibit "F" to this Agreed Statement of Facts. In part, Mr. Atique indicated to Mr. Krempien that:

- a. During much of the ABC audit period (January 1, 2016 to August 31, 2018) the pharmacy was averaging approximately 100 dispensed prescriptions every weekday. Towards, and since, the end of the period the pharmacy is now averaging less than 60 dispensed prescriptions every weekday. Mr. Atique indicated the decrease started during, and because of, the ABC audit. Moreover, Mr. Atique indicated that since ABC had cancelled the pharmacy's ABC Pharmacy Services Agreement, the Pharmacy is dispensing even fewer prescriptions. Because of the decreased prescription volume and the ~1.5M debt owed to ABC, Mr. Atique indicated he decided to close the pharmacy effective June 24, 2019.
- b. Many of the pharmacy's patients have social services drug coverage through ABC.

- c. The pharmacy's suppliers for the Nutritional Products included McKesson, as per the invoices listed in the ABC audit, and individuals. Mr. Atique indicated that he was never provided invoices or receipts for the purchases he made from the individuals and that he paid in cash. He indicated that some individuals provided substantial amounts of nutritional products and others were likely selling nutritional products that they had previously been dispensed by other pharmacies and which they no longer needed.
- d. The Nutritional Products purchased by Mr. Atique for the pharmacy were purchased from individuals because the prices were significantly lower than McKesson and legitimate/traditional drug wholesalers and retailers.
- e. At some point in 2018, during the ABC audit, Mr. Atique ceased using the individuals as a supply for the Pharmacy and used McKesson exclusively.
- f. Mr. Atique has no other Nutritional Product invoices or receipt records beyond those already provided during the ABC audit. He did not record the receipt of the Nutritional Products at his pharmacy, either manually or by adjusting the pharmacy's electronic inventory.

[Combined Book of Exhibits pages 591-594 (Exhibit F)]

17. On June 28, 2019, Mr. Krempien met with the complainant, Ms. [REDACTED] to review her concerns and the responses Mr. Atique provided the ABC and the College. A summary of their meeting is attached as Exhibit "G" to this Agreed Statement of Facts. In part, Ms. [REDACTED] indicated to Mr. Krempien that:

- a. The Pharmacy was selected for an ABC audit through ABC's internal business analytics. The Pharmacy was determined to be one of the highest submitters of: product quantity, dollar value and number of claims of nutritional products for any pharmacy in Alberta. Tips received at ABC about the pharmacy was not a selection factor for the audit.
- b. ABC conducted a "desk audit" in this matter and did not visit the Pharmacy and review or obtain copies of records onsite or contact the patients associated with the Nutritional Product claims about their receipt of the Nutritional Products from the Pharmacy.
- c. As per the ABC Pharmaceutical Services Provider Agreement with the Pharmacy, Nutritional Products were priced as: the manufacturer's list price (MLP) as set by ABC + Upcharge #1 (3%) + a Mark up (10%). Thus, as an example, if the MLP for a case of Ensure was \$50, but a pharmacy purchased a case for \$40, the pharmacy would still be entitled to claim  $\$50 + 3\% + 10\% = \$56.50$  per case.
- d. Because an MLP is used for pricing nutritional products, a separate/specific invoice is not needed to be associated with each individual claim for nutritional products. Instead ABC requires pharmacies to be able to produce a total set of purchase invoices for the nutritional products to account for the total quantity of nutritional

products claimed. Nutritional products are not priced through "actual acquisition cost" pricing.

- e. For Nutritional Products, ABC would generally accept purchase documentation from regulated suppliers such as drug wholesalers (e.g. McKesson or Procurity) or legitimate and reputable businesses (e.g. NoFrills, Costco, Wal-Mart) and "might" even accept purchase documentation from a member of the public supplier. However, Ms. ██████████ suggested ABC would have concerns if the supplier was an "individual" because of the possible safety/quality of the product provided by an unregulated entity and that the individual may have previously had the nutritional product dispensed to them and paid by ABC.

[Combined Book of Exhibits pages 595-596 (Exhibit G)]

18. By email dated July 2, 2019, Ms. ██████████ provided additional information to Mr. Krempien regarding the amount paid by ABC to the Pharmacy for Nutritional Products following the March 15, 2017 policy change where dispensing fees would no longer be paid for nutritional products and the April 16, 2018 information request letter sent to the pharmacy by ABC. Ms. ██████████'s email including the attached additional information is attached as Exhibit "H" to this Agreed Statement of Facts.

[Combined Book of Exhibits pages 597-599 (Exhibit H)]

#### *The Pharmacy's Agreements with ABC*

19. The ABC Pharmaceutical Services Provider Agreement entered into by the Pharmacy and ABC effective December 12, 2014 and May 17, 2018 are attached as Exhibits "I" and "J" to this Agreed Statement of Facts.

[Combined Book of Exhibits pages 600-601 (Exhibit I) and pages 602-629 (Exhibit J)]

20. The ABC Pharmaceutical Services Provider Agreement entered into by the Pharmacy and ABC effective May 17, 2018 is attached with signatures pages as Exhibits "K" and "L" to this Agreed Statement of Facts.

[Combined Book of Exhibits pages 630-631 (Exhibit K) and pages 632-660 (Exhibit L)]

#### *The Repayment to ABC*

21. Mr. Atique and ABC have advised that they have entered into a repayment plan that requires Mr. Atique to pay the remaining overpayment amount owed to ABC in monthly installments of \$25,000, beginning December 1, 2019 and continuing until June 1, 2024.

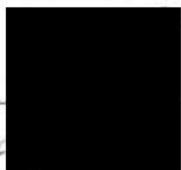
22. On June 9, 2020, ABC confirmed that in accordance with the repayment plan Mr. Atique has made monthly payments since December 1, 2019 and the outstanding amount owed is \$1,160,652.50.

23. Mr. Atique acknowledges that his continued adherence to the repayment plan may be considered as evidence of good character under section 11 of the *Pharmacists and Pharmacy Technicians Profession Regulation*. He also understands that the Registrar may impose conditions on any future practice permit issued to him to ensure that he continues to make payments towards the repayment plan until the total overpayment amount is repaid to ABC.

24. The parties agree that the Complaints Director has relied on on Mr. Atique's representations that he is committed to repaying the total overpayment amount to Alberta Blue Cross.

THE ABOVE FACTS ARE AGREED TO BY:

\_\_\_\_\_  
AHMED ATIQUE



\_\_\_\_\_  
JAMES KREMPIEN,  
COMPLAINTS DIRECTOR OF ALBERTA COLLEGE OF PHARMACY

