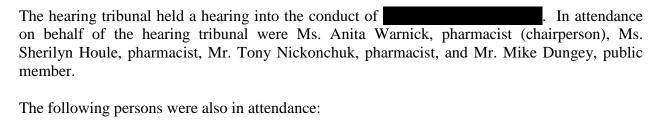
ALBERTA COLLEGE OF PHARMACISTS		
IN THE MATTER OF		
THE HEALTH PROFESSIONS ACT		
AND IN THE MATTER OF A HEARING REGARDING		
THE CONDUCT OF A PHARMACIST REGISTRANT		
DECISION OF THE HEARING TRIBUNAL		
REDACTED		
October 21, 2013		

## I. INTRODUCTION



Mr. James Krempien, Complaints Director
Mr. David Jardine, legal counsel representing the complaints director
, investigated person
Mr. Alex Pringle, legal counsel representing
Ms. Katrina Haymond, independent legal counsel to the hearing tribunal

The hearing took place on at the office of the Alberta College of Pharmacists ("ACP"). The hearing was held under the terms of Part 4 of the *Health Professions Act* ("HPA").

## 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.

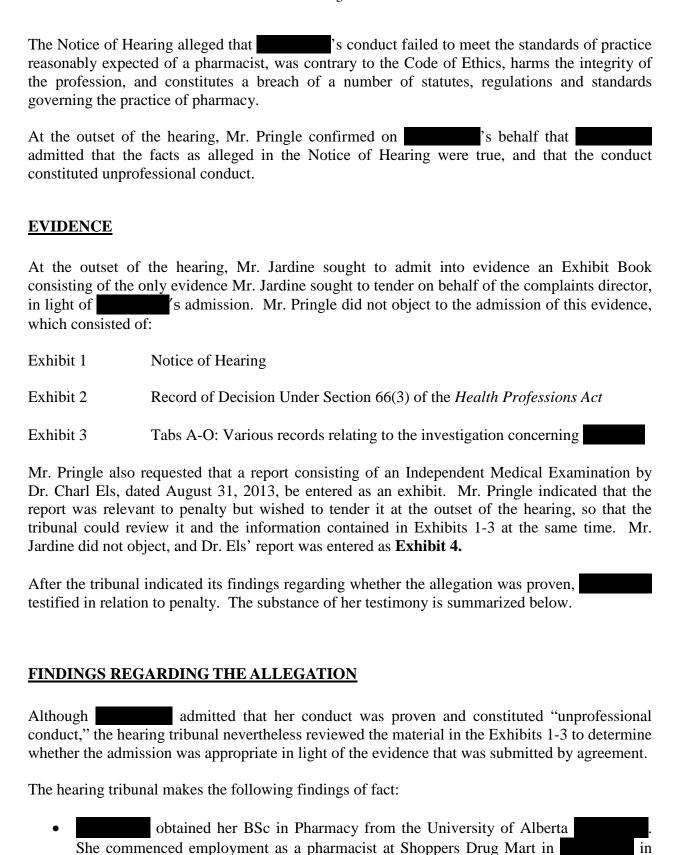
Mr. Pringle indicated at the outset of the hearing that he would be making an application to close certain parts of the hearing pursuant to Section 78 of the *Health Professions Act*. He indicated that he would be making his application at the relevant point in time. The substance of the application, the decision on the application, and the hearing tribunal's reasons are set out in detail below.

## III. <u>ALLEGATION</u>

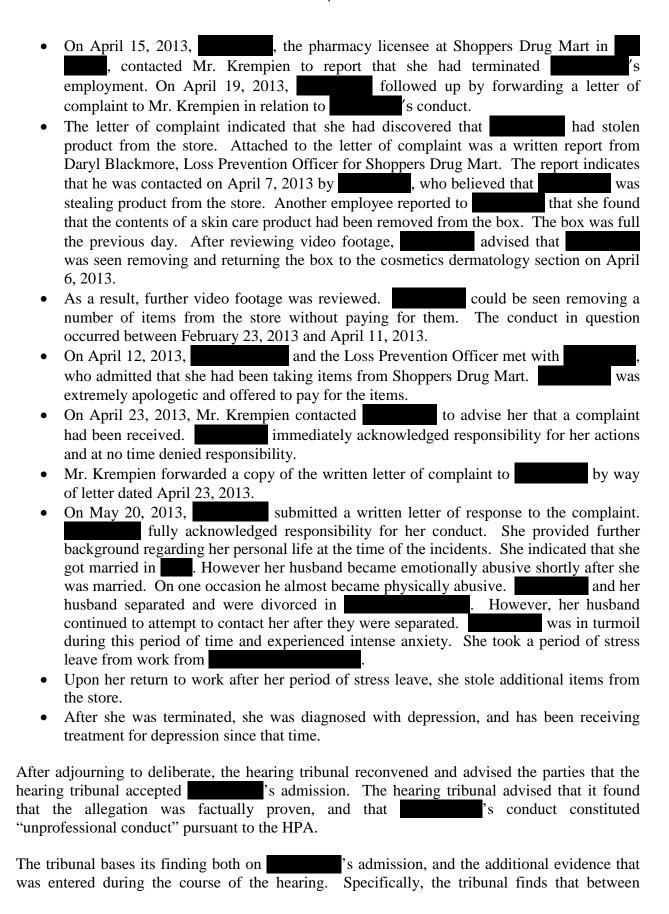
The Notice of Hearing was entered as Exhibit 1, and stated the following:

It is alleged that:

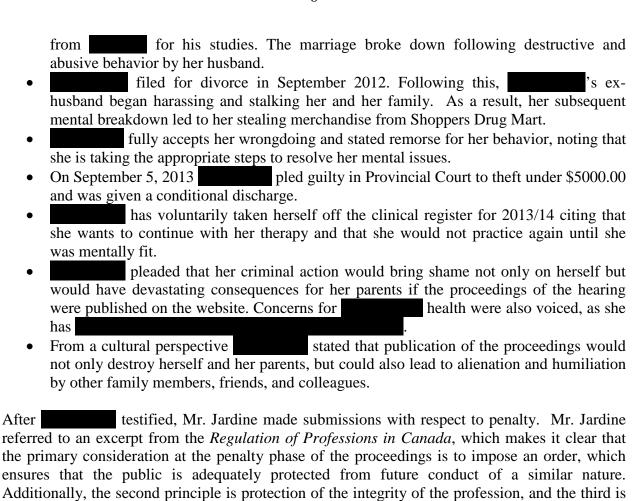
1. Between September 2012 and April 2013 on multiple occasions you stole merchandise and medications from Shoppers Drug Mart of an estimated total dollar value between \$500.00 and \$2500.00 while you were practicing as a pharmacist and that the thefts only ended when you were confronted by the pharmacy licensee and the Shoppers Drug Mart Loss Prevention Coordinator.



June of 2011.



September 2012 and April 2013, stole merchandise and medications from Shoppers Drug Mart on multiple occasions, the value of which totaled somewhere between \$500.00 and \$2500.00.		
The hearing tribunal also finds that the conduct constitutes "unprofessional conduct" as defined in Section 1(1) (pp) of the <i>Health Professions Act</i> ("HPA") which includes:		
<ol> <li>Contravening a code of ethics or standards of practice;</li> <li>Contravening another enactment that applies to the practice of the profession</li> <li>Conduct that harms the integrity of the profession.</li> </ol>		
The hearing tribunal finds that		
In addition, the evidence confirmed that also breached the <i>Criminal Code</i> , which is "another enactment" that applies to the profession. In addition, her conduct harms the integrity of the profession given the position of trust that the public, including employers, must have in members of the pharmacy profession.		
In the circumstances, so conduct constitutes "unprofessional conduct" within the meaning of Section 1(1)(pp) of the HPA.		
PENALTY		
After the parties were advised that allegation was accepted and that the allegation was proven, the parties were invited to present evidence and make submissions with respect to penalty.		
Mr. Pringle indicated that wished to provide testimony in relation to penalty. was sworn in and testified as follows:		
<ul> <li>graduated with a B.Sc. in Pharmacy in the spring of and began employment with Shoppers Drug Mart (SDM) in June 2011.</li> <li>married in to a man that she had known previously in a long distance relationship for two years, and provided sponsorship for him to come to Canada</li> </ul>		

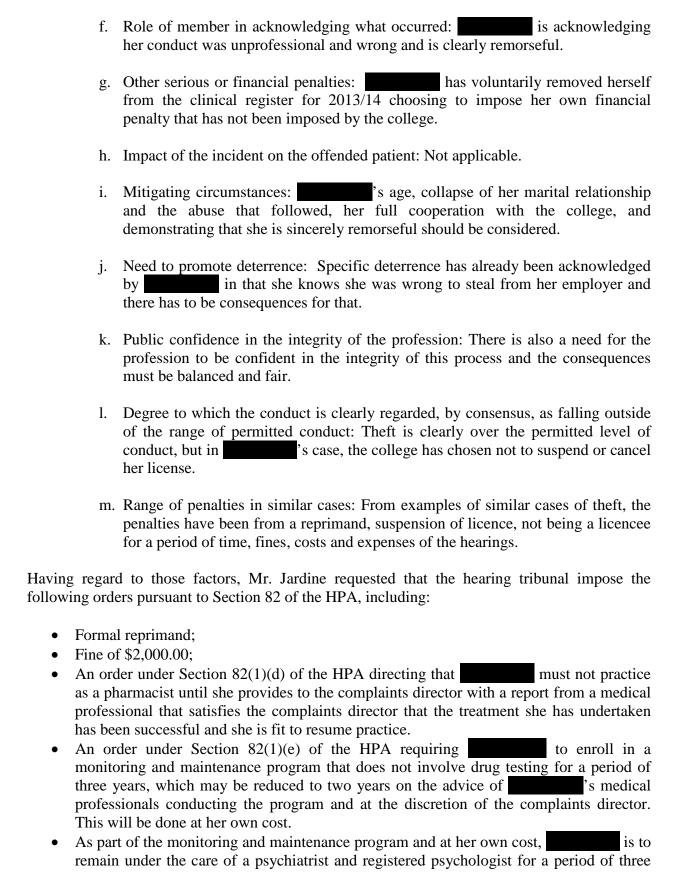


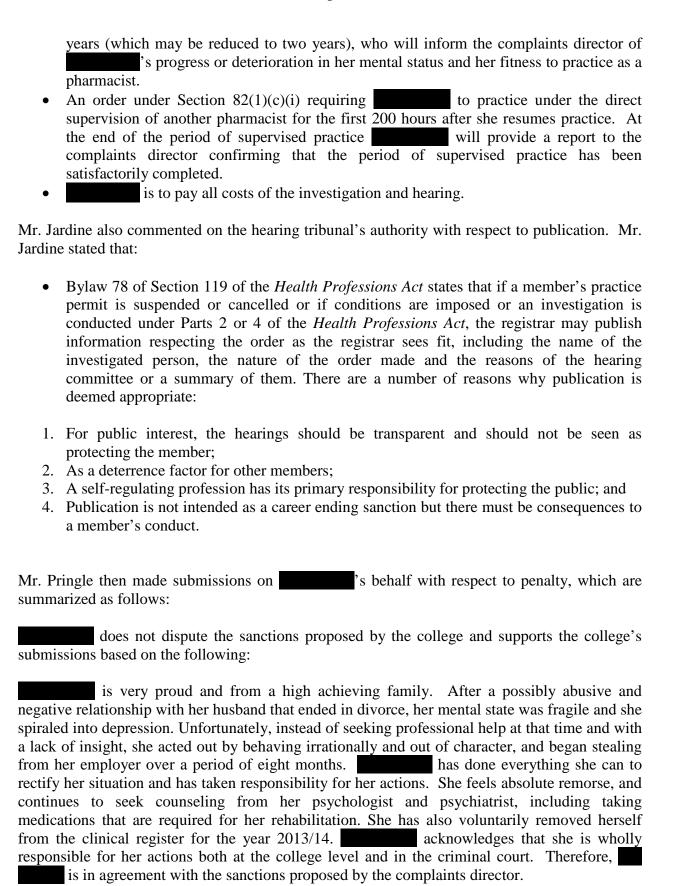
Mr. Jardine also referred to a number of factors that are relevant when assessing penalty in the professional discipline context as outlined in *Jaswal* v. *Medical Board (Newfoundland)*. Mr. Jardine summarized the relevant factors as follows:

fairness to the member. It is necessary to balance all of these factors in determining appropriate

sanctions.

- a. Nature and gravity of the proven allegations: Theft from an employer is a serious matter that shows a lack of judgment and unprofessional conduct.
- b. Age and experience of the offender: is young, a new member to the Alberta College of Pharmacists, and is relatively inexperienced.
- c. Previous character of the offender: There are no prior complaints or convictions.
- d. Age and mental condition of offended patient: Not applicable.
- e. Number of times offence occurred: A series of thefts occurred over a period of time, namely eight months (September 2012-April 2013).





Having regard to Section 119 of the HPA and the wording of the ACP's Bylaw with respect to publication, Mr. Pringle did not request that the hearing tribunal make any orders with respect to publication. However, Mr. Pringle requested that the hearing tribunal make a recommendation to the registrar that the registrar publish the decision without reference to having regard to Dr. Els' opinion that such publication may have a detrimental impact on health and well-being.

## **ORDERS AND REASONS**

The hearing tribunal has carefully considered the submissions made by Mr. Jardine on behalf of the complaints director and by Mr. Pringle on behalf of in relation to sanctions. The hearing tribunal specifically notes that did not take issue with the orders being sought on behalf of the complaints director.

In addition, the hearing tribunal considered the factors referenced in *Jaswal*. The hearing tribunal is in agreement with the terms of the submissions on penalty that both counsel for the complaints director and counsel for agreed to. The hearing tribunal recognized that its orders with respect to penalty must be fair, reasonable and proportionate taking into account the facts of this case. In making its decision on penalty, the hearing tribunal considered a number of factors including the following:

1. The nature and gravity of the proven allegation

's conduct demonstrated a significant lack of judgment. The conduct was serious, and also constituted a violation of the *Criminal Code*.

2. The age and experience of the investigated member

is young and relatively inexperienced not only with the profession of pharmacy but also with life.

3. The presence or absence of any prior complaints or convictions

has no previous complaints or disciplinary matters with the college

4. The number of times the offending conduct was proven to have occurred

The agreed to conduct and breach of adherence to standards of practice occurred over several months (September 2012-April 2013) allowing for significant front store merchandise to be stolen.

5. The role of the member in acknowledging what occurred

has been very remorseful and extremely cooperative throughout the investigation and hearing. has been given a conditional discharge from the criminal court and has made full restitution in payment to Shoppers Drug Mart. She is voluntarily complying with weekly visits to her psychologist and is under the care of a psychiatrist.

6. Other serious or financial penalties

has self-suspended herself from the practice of pharmacy on the clinical registrar for 2013/2014. She has undergone criminal proceedings and has also been terminated by her employer.

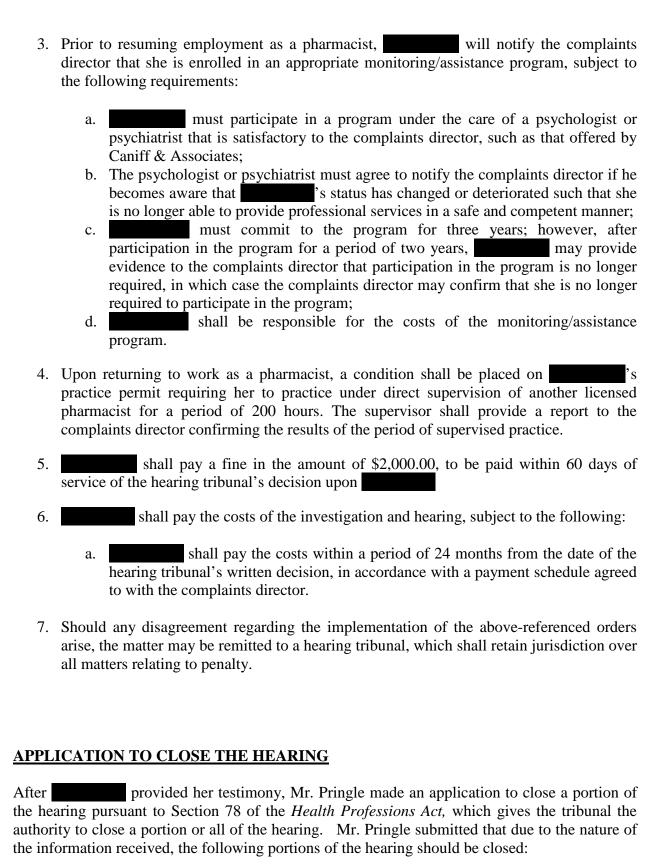
7. The presence or absence of any mitigating circumstances

is very young, and was married to a man who actively used her to gain entry to Canada and betrayed her trust and loyalty. It testified that he purposely made her life miserable, and on one occasion he almost hit her. On another occasion after they had separated, he was waiting for her in the parking lot at work after she finished her night shift. These events led to separated instability at the time of the thefts, as confirmed by medical evidence.

While theft from an employer may, in appropriate circumstances, lead to a lengthy period of suspension or other more punitive type of penalties, the hearing tribunal did not feel that such an order was necessary given the unique facts of this case. In particular, demonstrated genuine remorse, evidenced by deciding to voluntarily self-suspend her practice permit (without the college intervening) for a period of a year. She has no intention to return to practice until she and her medical team feels she is mentally fit. The hearing tribunal also found that while this was indeed a serious matter of theft, it did not involve the diversion of drug or narcotics and did not jeopardize patient care and safety.

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

- shall receive a reprimand and the hearing tribunal's decision shall serve as the reprimand.
- 2. Example 2. Some 2. It is suspended until she provides proof that is satisfactory to the complaints director demonstrating that she is not incapacitated and that she is fit to practice as a pharmacist.



<ol> <li>Dr. Els' report; and</li> <li>All material received in which discussed the details of her marriage.</li> </ol>			
Mr. Jardine stated that he did not object to the order being sought on behalf of			
As such, after consideration of the application, the hearing tribunal made a retroactive order closing those portions of the hearing as requested on the HPA. The reasons for this decision were as follows:			
1. "'s testimony referred to intimate details regarding her personal health information, and also referenced intimate details of her relationship with her exhusband.			
2. Although the HPA generally contemplates that hearings are to be held in public, the HPA also recognizes that there are competing interests, including the right to privacy of the complainant or witnesses that should be considered when an application to close the hearing is made pursuant to Section 78.			
3. Although the hearing will be closed to the public, the goal of transparency is still achieved, since members of the public will have access to the written decision of hearing tribunal.			
4. "'s mental status is still in jeopardy, and deterioration may occur further possibly to the point of harming herself if parts of her delicate testimony are made public.			
5. As area, there is a strong possibility that further harassment, abuse and other acts of revenge would be taken upon her and her family.			
<b>PUBLICATION</b>			
did not request that the hearing tribunal make an order with respect to publication. Accordingly, the hearing tribunal has not considered whether it has jurisdiction to do so.			
However, both Mr. Pringle and Mr. Jardine indicated that the hearing tribunal could consider making a recommendation with respect to publication if it was deemed to be appropriate.			
The hearing tribunal strongly recommends that the registrar consider posting the decision on the ACP's website without specific reference to some and strongly recommends that the registrar consider posting the decision on the ACP's website without specific reference to some and strongly recommends that the registrar consider posting the decision on the ACP's website without specific reference to some and the action of the ACP's desire to conduct its proceedings in a transparent manner, this is achieved			

additional means of achieving transparency, it is not required by the HPA.

in part by holding the hearing in public, and by providing members of the public with access to the hearing tribunal's written decision upon request. Although posting the decision online is an The hearing tribunal believes that posting decisions online with the inclusion of the member's name may have a significant impact on a member, given that the decision becomes publicly available to a broader population and easily accessible by searching the member's name. Moreover, if such decisions are published, the member's discipline history may follow the member in perpetuity, even after the posting is removed from the ACP's website. Although in many instances the goals of transparency may outweigh the member's need for anonymity, whether or not to post the decision online with the member's name should be considered carefully in all cases.

carefully in all cases.	
In this case, the hearing tribunal does not be with some 's name, for the following r	elieve that it is appropriate to post the decision online reasons:
regarding statute is mental statute to any further emotional stress that notes.  • The hearing tribunal is sensitive to	psychiatric report from Dr. Els, has serious concerns. We do not wish for this young lady to be beholder may occur from publicizing her name. the nature of this case, the fragility of garding the nature of the relationship between r ex-husband.
circumstances. Support services are available members who encounter difficult personal of	and all members of the Alberta of seeking help when encountering difficult personal le to members of the profession. It is imperative that circumstances that adversely affect their performance ir personal circumstances do not interfere with their
	Signed on behalf of the hearing tribunal by the chair
Dated: October 21, 2013	Per: [Anita Warnick]