

Discipline Decision

Discipline Decision: Steven Burczynski

Pursuant to the Notice of Hearing (the "Notice") dated August 24, 2018, a hearing was convened by the Discipline Committee of the College of Pharmacists of Manitoba (the "College") at the College offices, 200 Tache Avenue, Winnipeg, Manitoba, on October 2, 2018, with respect to charges formulated by the Registrar of the College alleging that Mr. Steven Burczynski, being a pharmacist under the provisions of *The Pharmaceutical Act*, C.C.S.M. c.P60 ("*The Act*") and a registrant of the College, is guilty of professional misconduct, conduct unbecoming a member, or displayed a lack of skill or judgment in the practice of pharmacy or operation of a pharmacy, or any of the above, as described in section 54 of *The Act*, in that, between July 2017 and March 2018, at White Cross Pharmacy Portage la Prairie located at 5006 Crescent Road West, Portage la Prairie, Manitoba, CARI Pharmacy, located at 893 Main Street, Winnipeg, Manitoba, and White Cross Pharmacy Wolseley located at 647 Broadway Avenue, Winnipeg, Manitoba, Mr. Burczynski:

1. in his capacity as pharmacy owner of CARI Pharmacy he:
 - a. failed to comply with the change of ownership requirements following the purchase of CARI Pharmacy, in contravention of section 70 of *The Act*;
 - b. upon the closure of CARI Pharmacy, failed to ensure that patient records for CARI Pharmacy patients were accessible to patients and their healthcare providers at White Cross Wolseley Pharmacy, and risked the continued care of patients, including a large number of methadone patients, in contravention of sections 45(1)(b) and 79(2) of the *Pharmaceutical Regulation*, Man Reg 185/2013 (the "Regulation"), sections 2.1.1 and 2.2.2 of the *Practice Direction: Permanent and Temporary Pharmacy Closures*, section 2.5 of the *Records and Information Practice Direction*, section 45(1)(b) of the *Regulation*, and Statement VII of the *Code of Ethics*, or any of them;
2. in his capacity as pharmacy manager and pharmacy owner of White Cross Pharmacy Wolseley (WCPW):
 - a. failed to maintain and produce narcotic and other controlled drug inventory history records upon receipt of a narcotic or another controlled drug from a licenced dealer, in contravention of sections 30 of the *Narcotic Control Regulations*, C.R.C., c. 1041 (the "NCRs"), section G.03.001 of the *Food and Drug Regulations*, C.R.C. c. 870 (the "FDRs"), and section 50 of the *Benzodiazepines and Other Targeted Substances Regulations*, SOR/2000-217 (the "BOTSRs"), and sections 2.3, 3.0, and 4.0 of the *Practice Direction: Drug Distribution and Storage* (the "DDS Practice Direction"), or any of them;
 - b. failed to manage and control narcotic and other controlled drug inventory, resulting in significant discrepancies, including eight controlled substances counted by Health Canada on December 14, 2017, in contravention of section 43 of the NCRs, section G.03.012 of the FDRs, section 7(1)(b) of the BOTSRs, and sections 2.3, 3.0, and 4.0 of the DDS Practice Direction, or any of them;
 - c. failed to document the storage of controlled substances acquired from other pharmacies, in contravention of sections 30 and 45(2) of the NCRs, section G.03.015 of the FDRs, section 55(1)(b)(ii) of the BOTSRs, and sections 2.3, 3.0, and 4.0 of the DDS Practice Direction, or any of them;
 - d. [count stayed];

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e. repeatedly ordered controlled substances from other pharmacies without sufficient documentation in contravention of section 45(2) of the NCRs, section G.03.015 of the FDRs, section 50 of the BOTSRs and sections 2.3, 3.0, and 4.0 of the DDS Practice Direction, or any of them;

f. failed to conduct regular inventory counts of controlled substances in contravention of section 7(1)(b) of the BOTSRs, and sections 2.3, 3.0, and 4.0 of the DDS Practice Direction, or any of them;

3. in his capacity as pharmacy owner of White Cross Pharmacy Portage la Prairie, misrepresented facts with respect to the opening date of the pharmacy to both the public and College in contravention of Statement VIII of the *Code of Ethics*;

4. failed to attend as required before the Complaints Committee of the College on August 14, 2018, in contravention of Statement VIII of the *Code of Ethics*; and

5. breached his undertaking of May 29, 2018, to respond to all future communication from the College within 24 hours in contravention of Statement VIII of the *Code of Ethics*.

The hearing into the charges convened on October 2, 2018. Mr. Jeff Hirsch (“Mr. Hirsch”) appeared as counsel on behalf of the Complaints Committee (the “Committee”). Mr. Burczynski failed to attend the hearing. Mr. Hirsch then satisfied the Discipline Committee (the “Panel”) that the College had jurisdiction to proceed with the hearing in accordance with sub-sections 46(2) and 46(3) of *The Act*, following which the Panel adjourned the hearing to January 22, 2019.

On January 22, 2019, the Panel reconvened. Mr. Hirsch appeared as counsel on behalf of the Committee. Mr. Burczynski appeared unrepresented by legal counsel.

A Statement of Agreed Facts was filed in which Mr. Burczynski agreed on the following facts:

1. At the commencement of the hearing before the Panel on October 2, 2018, the Panel found, and Mr. Burczynski admitted, his membership in the College;
2. The College found, and Mr. Burczynski admitted, valid service of the Notice of Hearing dated August 24, 2018;
3. The College filed an Amended Notice of Hearing before the Panel on January 22, 2019, and Mr. Burczynski consented to the filing of the Amended Notice of Hearing;
4. The College entered a stay of proceedings on Count 2(d) of the Notice;
5. The College complied with the requirements of sub-sections 46(2) and 46(3) of *The Act*; and,
6. He had no objection to any of the panel members nor to legal counsel to the panel on the basis of bias, a reasonable apprehension of bias, or a conflict of interest.

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15. Mr. Burczynski's 2019 practicing licence has not been renewed by the College as he has not paid the 2019 practicing licence fee, and has an unpaid late fee owing to the College.

The following admissions were made by Mr. Burczynski in the Statement of Agreed Facts:

1. Mr. Burczynski has reviewed the Notice as well as this Statement of Agreed Facts. He admits the truth and accuracy of the facts in this Statement and that the witnesses and other evidence available to the College would, if called and otherwise adduced, be substantially in accordance with these facts; and,
2. Mr. Burczynski tenders no evidence and makes no submissions on the issue of professional misconduct, other than to admit that the conduct hereinafter described demonstrates a lack of judgment in the practice of pharmacy or operation of a pharmacy and constitutes unskilled practice of pharmacy and professional misconduct as described in section 54 of *The Act*.

Mr. Burczynski entered a plea of guilty to counts 1. a. and b., 2. a., b., c., e., and f., 3, 4, and 5.

The Complaints Committee then requested that Count 2. d., be stayed and a stay of that count was entered.

Mr. Hirsch advised that the parties would make separate submissions to disposition.

Mr. Hirsch submitted that in accordance with sections 54, 55 and 56 of *The Act*, Mr. Burczynski's certificate of registration should be cancelled. Alternatively, Mr. Hirsch submitted that should the Panel decide not to cancel Mr. Burczynski's registration, he should:

1. be suspended from the practice of pharmacy for a period of 12 months from the date of the decision;
2. be prohibited from being an owner of a pharmacy during and for five years after the completion of his practice suspension;
3. be prohibited from being a preceptor for five years after the completion of his practice suspension;
4. be prohibited from having signing and/or ordering authority for drugs covered under the *Controlled Drugs and Substances Act (CDSA)* for five years after relicensure;
5. be prohibited from being a pharmacy manager for five years after the completion of his practice suspension;
6. have a condition placed on his practising licence that he must advise the pharmacy manager at any pharmacy which employs him that the pharmacy must conduct monthly narcotic inventory verification counts for five years after the completion of his practice suspension;
7. be required to complete a minimum of 20 hours of professional development in accredited ethics (as determined by the College) in addition to the required hours of professional development for 5 years after relicensure;

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8. have a condition placed on his practising licence that he is required to inform his pharmacy manager of his practice conditions with confirmation of compliance of this condition directly from the pharmacy manager to the Registrar;
9. be fined in the amount of \$5,000.00; and,
10. shall be made to pay a contribution to the costs of the investigation and this prosecution in the amount of \$50,000.00.

Mr. Burczynski opposed the Committee's submission that his certificate of registration be cancelled or that he be prohibited from being an owner of a pharmacy for 5 years, arguing that he was not 100% at fault. Instead, Mr. Burczynski submitted that in accordance with sections 54, 55 and 56 of *The Act* that he:

1. be suspended from the practice of pharmacy for a period of six months from the date of the decision; and,
2. pay a contribution to the costs of the investigation and this prosecution in the amount of \$12,500.00.

Mr. Burczynski did not make any submission with respect to the balance of the submissions made by Mr. Hirsch.

Subsequent to the January 22, 2019, appearance, the Panel, through its counsel, asked Mr. Hirsch for the rationale for imposing restrictions on Mr. Burczynski's signing and ordering authority for drugs covered under the *CDSA*. Mr. Hirsch subsequently advised counsel for the Panel that the Committee had withdrawn that request.

After having reviewed the authorities provided to the Panel and having considered the submissions of Mr. Hirsch and Mr. Burczynski, this Panel orders that Mr. Burczynski:

1. is suspended from the practice of pharmacy for a period of one year from the date of this decision;
2. is prohibited from being an owner of a pharmacy during and for five years after the completion of his practice suspension;
3. is prohibited from being a preceptor for five years after the completion of his practice suspension;
4. is prohibited from being a pharmacy manager for five years after the completion of his practice suspension;
5. have a condition placed on his practising licence that he must advise the pharmacy manager at any pharmacy which employs him that the pharmacy must conduct monthly narcotic inventory verification counts for five years after the completion of his practice suspension;
6. have a condition placed on his practising licence that he is required to inform his pharmacy manager of his practice conditions with confirmation of compliance of this condition directly from the pharmacy manager to the Registrar;

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7. is required to complete a 200-hour internship after his suspension is complete with the supervision of a preceptor approved by the College;
8. pay a fine in the amount of \$5,000.00; and,
9. pay a contribution to the costs of the investigation and this prosecution in the amount of \$50,000.00.

In arriving at its decision, the Panel considered Mr. Burczynski's:

1. continuous unwillingness to communicate with the College staff over the course of the investigation leading to significant cost to the College;
2. purposely misleading and lying to the College regarding his own personal health for his personal gain;
3. inability to take responsibility for his actions until hours before the hearing, and continuing to blame others despite his agreement to the Statement of Facts; and,
4. failure to respond to direction by the College and the negative impact his conduct has had on the profession.

Note: The Panel wishes to correct an error contained in paragraph 18 of the Agreed Statement of Facts wherein it was stated that Mr. Burczynski's practicing certificate is currently subject to certain conditions. The conditions referenced therein have been imposed on Mr. Burczynski's pharmacist license and not his practicing certificate.