

# Discipline Decision

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## Carl Byrne

Pursuant to the Amended Notice of Hearing (the "Notice") dated the 23rd day of December, 2016, it was alleged that Mr. Carl Byrne, being a pharmacist under the provisions of *The Pharmaceutical Act*, C.C.S.M. c. P60 (the "Act") and a registrant of the College of Pharmacists of Manitoba (the "College"), was guilty of professional misconduct, conduct unbecoming a member contravening the *Act*, the *Practice Direction: Standards of Practice - Community* (the "Practice Direction"), the *Code of Ethics* (the "Code"), or demonstrated an incapacity or unfitness to practise pharmacy, or displayed a lack of skill or judgment in the practice of pharmacy, or any of the above, as described in section 54 of the *Act*.

On Monday, April 24, 2017, the Discipline Committee convened to address the charges. Mr. Jeff Hirsch appeared as counsel on behalf of the Complaints Committee. Mr. Barry Sinder appeared with and as legal counsel for Mr. Byrne. Mr. Byrne entered a guilty plea to the following charges in that:

- between November 21, 2013, and July 9, 2015, as a pharmacist at Walmart Pharmacy located at 1016 Manitoba Avenue, Selkirk, Manitoba ("Walmart"), Mr. Byrne removed a drug or drugs listed in a schedule to the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 (the "CDSA"), without being authorized by a prescription in contravention of sections 69, 70, and 71 of the *Pharmaceutical Regulation*, M.R. 185/2013 (the "Regulation"), or any of them; sections 31(1) and 43 of the *Narcotic Control Regulations*, C.R.C., c. 1041 (the "NCRs"), or either of them; sections G03.002 and G03.012 of the *Food and Drug Regulations* C.R.C., c.870 (the "FDRs"), or either of them; Statements VIII and X of the *Code*;

sections 1 and 7 of the *Practice Direction*; and, the College's *Narcotic & Controlled Drug Accountability Guidelines* (the "Accountability Guidelines") or any of them;

- between November 21, 2013, and July 9, 2015, as a pharmacist at Walmart, Mr. Byrne stole cash and merchandise from Walmart and thereby failed to act with honesty, integrity, and respect for the profession in contravention of section 7 of the *Practice Direction*, and in contravention of his ethical obligations outlined in Statements VIII or X of the *Code*, or any of them;
- between November 21, 2013, and July 9, 2015, as a pharmacist at Walmart, in order to conceal his diversion of narcotics from Walmart, Mr. Byrne fabricated prescriptions of a drug or drugs listed in a schedule to the *CDSA*, and thereby failed to act with honesty, integrity, and respect for the profession in contravention of section 7 of the *Practice Direction*, and in contravention of his ethical obligations outlined in Statements VIII or X of the *Code*, or any of them;
- between November 21, 2013, and July 9, 2015, as a pharmacist at Walmart, in order to conceal his diversion of narcotics from Walmart, Mr. Byrne failed to enter invoices of a drug or drugs listed in a schedule to the *CDSA* into the store perpetual inventory system as required by section 30 of the *NCRs*, and section G03.001 of the *FDRs*, and in contravention of section 7 of the *Practice Direction*, and the *Accountability Guidelines*, or any of them;

- between November 21, 2013, and July 9, 2015, as a pharmacist at Walmart, in order to conceal his diversion of narcotics from Walmart, Mr. Byrne manually adjusted the inventory amounts of narcotics in contravention of section 43 of the *NCRs*, section G03.012 of the *FDRs*, Statements VIII and X of the *Code*, section 7 of the *Practice Direction*, and, the *Accountability Guidelines*, or any of them;
- between approximately August 2015 and January 15, 2016, as a pharmacist at Loblaw Pharmacy located at 2132 McPhillips Avenue, Winnipeg, Manitoba ("Loblaw"), Mr. Byrne removed a drug or drugs listed in a schedule to the *CDSA*, without being authorized by a prescription in contravention of: sections 69, 70, and 71 of the *Regulation*, or any of them; sections 31(1) and 43 of the *NCRs*, or either of them; sections G03.002 and G03.012 of the *FDRs*, or either of them; Statements VIII and X of the *Code*; sections 1 and 7 of the *Practice Direction*, or either of them; and, the *Accountability Guidelines* or any of them;
- between approximately August 2015 and January 15, 2016, as a pharmacist at Loblaw, in order to conceal his diversion of narcotics from Loblaw, Mr. Byrne manually adjusted the inventory amounts of narcotics in contravention of section 43 of the *NCRs*, section G03.012 of the *FDRs*, Statements VIII and X of the *Code*, section 7 of the *Practice Direction*, and, the *Accountability Guidelines*, or any of them; and,

- between approximately August 2015 and January 15, 2016, as a pharmacist at Loblaw, Mr. Byrne stole merchandise from Loblaw and thereby failed to act with honesty, integrity, and respect for the profession in contravention of section 7 of the *Practice Direction*, and in contravention of your ethical obligations outlined in Statements VIII or X of the *Code*, or any of them.

After having had the opportunity to review the authorities provided to the Discipline Committee and having considered the submissions of legal counsel, the Discipline Committee is of the view that the sanctions contained in a joint disposition should serve to satisfy that the public's interest is protected and the public's confidence is retained. As a result, and in accordance with sections 54, 55 and 56 of the Act, the Discipline Committee ordered that:

1. Mr. Byrne pay a fine in the amount of \$25,000.00;
2. Mr. Byrne pay a contribution to the costs of the investigation and this prosecution in the amount of \$15,000.00;
3. Mr. Byrne be prohibited from having signing/ordering authority for drugs covered under the Controlled Drugs and Substances Act;
4. Mr. Byrne be required to advise the pharmacy manager at any pharmacy which employs him that the pharmacy must conduct monthly narcotic inventory verification counts;
5. Mr. Byrne be prohibited from being a pharmacy manager for 5 years;

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## Carl Byrne, Cont'd

6. Mr. Byrne be prohibited from being a preceptor for 5 years;
7. Mr. Byrne continue with updated counselling satisfactory to the College for 5 years;
8. Mr. Byrne provide proof of successful completion of his current treatment program;
9. Mr. Byrne submit to random drug and alcohol screening at his own cost and at a location to be determined by the College for 5 years;
10. Mr. Byrne continue to meet regularly with Pharmacists at Risk for 5 years; and
11. Mr. Byrne complete in 2017-2018 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.

In arriving at its decision, the Discipline Committee considered:

- a) Mr. Byrne's efforts in rehabilitation;
- b) that much of Mr. Byrne's actions and misconduct were driven by addiction;
- c) that the Complaints Committee of the College recommended that the Discipline Committee consider Mr. Byrne's recovery status with respect to his addiction; and
- d) that Mr. Byrne voluntarily surrendered his practicing licence for 15 months during the process of complaints and discipline action. While voluntarily surrendering his practicing licence is not the same as suspension of his licence by the College, the outcome is similar in that there was a loss of income and inability to practice pharmacy.