

THE COLLEGE OF PHARMACISTS OF MANITOBA

In the matter of: *The Pharmaceutical Act, C.C.S.M., c.P60*

And in the matter of: **Adel Adly Helmy AbouHammra, a pharmacist registered with the College of Pharmacists of Manitoba**

DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

Pursuant to the Amended Notice of Hearing (the “Notice”) dated January 21, 2022, 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 February 23, 2022, with respect to charges formulated by the College alleging that Mr. Adel Adly Helmy AbouHammra (“Mr. AbouHammra”), 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, at Nations-First Pharmacy (the “Pharmacy”), 102-19 Pine Street, Pine Falls, Manitoba, Mr. AbouHammra:

1. failed to secure narcotics and controlled substances in contravention of: section 43 of the *Narcotic Control Regulations, C.R.C., c. 1041*, (the “NCRs”), subsection 72(1)(a) of the *Benzodiazepine and Other Targeted Substances Regulations, SOR/2000-217*, (the “BOTSRs”), subsection G.03.012 of the *Food and Drug Regulations, C.R.C., c. 870* (the “FDRs”), and, the *Narcotic and Controlled Drug Accountability Guidelines*, or any of them, in that he:
 - a) failed to establish, implement, ensure compliance with, and maintain policies and procedures to protect narcotics and controlled substances in contravention of: subsections 56(1)13 and 65(1) of the *Pharmaceutical Regulation, Man Reg 185/2013* (the “Regulation”), or either of them;
 - b) STAYED;
 - c) STAYED;
 - d) failed to investigate discrepancies in the inventory of narcotics and controlled drugs in contravention of subsections 2.3.2.3 and 2.3.2.4 of the DDS Practice Direction, or either of them;
 - e) STAYED;

- f) failed to perform and record physical inventory counts of narcotics and controlled drugs in contravention of subsections: 2.3.2.2 of the DDS Practice Direction, and subsections 2.1.1, 2.1.2, and 2.1.3 of the RI Practice Direction, or any of them:

- g) failed to perform an inventory count, and maintain a record of expired, damaged, or patient returned drugs included in the *Controlled Drugs and Substances Act* (S.C. 1996, c. 19) (the “CDSA”) in contravention of: subsection 2.3.2.2 of the DDS Practice Direction and subsections 2.1.1, 2.1.2, and 2.1.3 of the RI Practice Direction, or any of them;

- h) on multiple occasions between August 2013 and January 2020, failed to submit Loss and Theft Reports for Controlled Substances and Precursors to the Office of Controlled Substances, Health Canada, in contravention of: section 42 of the NCRs, section G.03.013 of the FDRs, subsection 72(2) of the BOTSRs, and, section 2.3.2.5 of the DDS Practice Direction, or any of them;

- i) on multiple occasions between August 2013 and January 2020, and January 2016 to January 2020, failed to submit Loss and Theft Reports for Controlled Substances and Precursors to the College, in contravention of section 2.3.2.5 of the DDS Practice Direction;

- j) failed to manage and/or protect the narcotic inventory at the Pharmacy, in that he:
 - i. failed to securely store the SNS-oxycodone/acetaminophen inventory, Tylenol[®] with Codeine No. 3[®], and various generic acetaminophen/caffeine/codeine 8mg preparations including Stanley brand, inventory in a narcotic safe in contravention of sections 2.2.8, and 2.2.15 of the Facilities Practice Direction, or either of them;

 - ii. failed to enter certain Tylenol[®] with Codeine No. 3[®] inventory upon receipt of a narcotic from a licenced dealer in contravention of section 30 of the NCRs;

 - iii. STAYED;

- k) STAYED;

2. STAYED;

3. STAYED; and,

4. STAYED.

The hearing into the charges convened on February 23, 2022. Mr. Jeffrey Hirsch (“Mr. Hirsch”) and Ms. Sharyne Hamm appeared as counsel on behalf of the Complaints Committee. Mr. AbouHammra

appeared unrepresented before the Panel. He was encouraged to retain counsel, but he declined. Mr. Joseph Pollock appeared as counsel to the Panel.

Mr. AbouHammra admitted that:

- a) he was at the time of the hearing, and all times pertinent to the charges, a member of the College;
- b) he was at the time of the hearing, and all times pertinent to the charges, the owner of the Pharmacy; and
- c) the time limits set forth in sections 46(2) and 46(3) of the Act had been met.

Mr. AbouHammra waived the reading of the charges, following which:

- a) The Complaints Committee entered a stay of proceedings with respect to counts 1(b), 1(c), 1(e), 1(j)(iii), 1(k), 2, 3, and 4; and
- b) Mr. AbouHammra entered a plea of not guilty to all remaining counts.

Evidence

The Panel heard the evidence of two witnesses presented by the Complaints Committee. The first was Dr. Brent Booker, Assistant Registrar – Review and Resolution of the College. The second was Mr. Ken Zink, a contract investigator who investigated the complaint on the behalf of the Complaints Committee.

Dr. Booker explained to the Panel the statutory and regulatory provisions, as well as the guidelines and practice directions referenced in the counts. Mr. Zink explained to the Panel the substance of his investigation, including his discussions with Mr. AbouHammra. Mr. AbouHammra was given an opportunity to cross-examine both Dr. Booker and Mr. Zink. After Mr. Hirsch closed the case on behalf of the Complaints Committee, Mr. AbouHammra was given an opportunity to testify on his own behalf. Mr. AbouHammra did not call any other witnesses.

After Mr. AbouHammra closed his case, Mr. Hirsch made submissions on behalf of the Complaints Committee and Mr. AbouHammra made submissions on his own behalf.

Following the submissions of the parties, the Panel deliberated and then reconvened to inform the parties that it has found Mr. AbouHammra guilty on all counts. The Panel advised the Parties that written reasons would follow. The Panel also gave the parties an opportunity to speak to the penalty to be imposed by the Panel.

In arriving at its decision, the Panel concluded that the evidence established that Mr. AbouHammra's conduct demonstrated professional misconduct, conduct unbecoming a member, or displayed a lack of skill or judgment in the practice of pharmacy or operation of a pharmacy, as described in section 54 of the Act.

Decision

Count 1(a)

The Panel concluded the evidence showed that the Policy and Procedure Manual (the “P&P”) excerpts for the Pharmacy were insufficient for the proper protection of narcotics and controlled substances. There was minimal information provided in the P&P that would allow proper and consistent practice for the management of narcotic and controlled drug inventory of the Pharmacy.

Count 1(d)

The Panel concluded that the evidence showed a significant number of unexplained discrepancies, 49 in total, for narcotic and controlled substances within the Kroll pharmacy management system that did not have any explanation or documentation for the adjustment of inventory. Mr. AbouHammra did not provide any evidence or any explanation for the lack of documentation for the 49 unexplained discrepancies. The Panel concluded that Mr. AbouHammra failed to investigate the unexplained discrepancies in the inventory of narcotics and controlled drugs in contravention of subsections 2.3.2.3 and 2.3.2.4 of the DDS Practice Direction.

Count 1(f)

The Panel concluded that testimony of Mr. Zink together with the exhibits filed by the Complaints Committee illustrated that there were no physical inventory counts of narcotics and controlled drugs which are to be recorded and performed at least every three months. The evidence showed that Mr. AbouHammra admitted that physical counts of narcotics and controlled drugs were not performed at least every three months. While Mr. AbouHammra disputed that physical counts were not performed, he failed to present any evidence indicating that physical inventory counts were performed and recorded in compliance of subsections 2.3.2.2 of the DDS Practice Direction and subsections 2.1.1, 2.1.2, and 2.1.3 of the RI Practice Direction.

Count 1(g)

The Panel concluded that the evidence showed there were expired, damaged or patient returned narcotics and controlled drugs on site of the Pharmacy that did not have inventory count records in contravention of subsection 2.3.2.2 of the DDS Practice Direction and subsections 2.1.1, 2.1.2, and 2.1.3 of the RI Practice Direction. The evidence showed a destruction of records for narcotic and controlled substances destroyed in 2017. However, Mr. AbouHammra failed to provide any evidence or explanation why there were no records for inventory counts for the expired, damaged or patient returned drugs included in the CDSA and identified at the time of the investigation.

Count 1(h)

While Mr. AbouHammra indicated that he submitted Loss and Theft Reports for Controlled Substances and Precursors to the Office of Controlled Substances, Health Canada for the armed robberies that had occurred at Nations First Pharmacy, no reports were submitted for any of the 49 instances of unexplained discrepancies.

Count 1(i)

While Mr. AbouHammra indicated that he submitted Loss and Theft Reports for Controlled Substances and Precursors to the College for the armed robberies that had occurred at Nations First Pharmacy, no reports were submitted for any of the 49 instances of unexplained discrepancies.

Count 1(j)(i)

The Panel concluded that the evidence showed there were Tylenol[®] with Codeine No. 3[®], various generic acetaminophen/caffeine/codeine 8mg preparations including Stanley brand, and SNS-oxycodone/acetaminophen inventory not secured within a narcotic safe in contravention of sections 2.2.8, and 2.2.15 of the Facilities Practice Direction. The volumes of drug were significant - cases of bottles. Leaving this number of narcotic drugs unsecured can place the community at risk. Mr. AbouHammra did not provide any evidence showing that there was an attempt to find suitable storage facilities or safes to secure the narcotic inventory.

Count 1(j)(ii)

The Panel concluded that 12,000 tablets of Tylenol[®] with Codeine No. 3[®] - one case - could not be accounted for during the investigation of the narcotic inventory. The evidence showed that the tablets were found and stored in the Nations First Pharmacy stockroom in contravention of Section 30 of the NCRs. The 12,000 tablets of Tylenol[®] with Codeine No. 3[®] had been sent to First Nations Pharmacy several months previous to the investigator visit and had not been entered as inventory upon receipt by Mr. AbouHammra.

Penalty

Mr. Hirsch submitted that Mr. AbouHammra should:

1. pay a fine for lack of compliance in the amount of \$5,000;
2. be prohibited from being a pharmacy manager for two years;
3. be prohibited from being a preceptor for two years;
4. be required to successfully complete a remedial quality assurance program, arranged by the College, with the associated costs to be paid by Mr. AbouHammra; and,
5. pay \$50,000 in contribution to the costs of investigating and prosecuting the case against him.

Mr. Abou Hammra submitted that:

1. no fine should be assessed;
2. he be permitted to continue as pharmacy manager and eligible as a preceptor;
3. he participate in a remedial professional development program, excluding content on ethics, for which he would bear the associated costs; and,
4. he pay \$25,000 in contribution to the costs of investigating and prosecuting the case against him.

Order

The Panel ordered that Mr. AbouHammra:

1. pay a fine in the amount of \$5,000;
2. is prohibited from being a preceptor for a period of two years;
3. must successfully complete a remedial quality assurance program as set out by the College. Costs for this program are to be paid by Mr. AbouHammra;
4. submit to the Registrar quarterly physical narcotic, controlled and targeted drugs counts and manual adjustment reports for a one-year period; and
5. pay \$50,000 in contribution to the costs of investigating and prosecuting the case against him. It should be noted that this amount is less than 40% of the total costs of the hearing.

In arriving at its decision, the Panel considered:

1. There was recognition by the Complaints Committee that there was no dishonesty, diversion, or moral culpability on Mr. AbouHammra's behalf.
2. Mr. AbouHammra showed willingness to take remedial training designed through the quality assurance program of the College.
3. Mr. AbouHammra continued as a pharmacist and pharmacy manager/owner from the time of the investigation up to the hearing date of February 25, 2022, without further incident.
4. This was Mr. AbouHammra's first disciplinary hearing.
5. The penalty must reflect the risks resulting from Mr. AbouHammra's actions and the impact to staff, patients and community when there is improper record keeping, storage and management of narcotics and controlled substances.
6. The impact on the community and surrounding area of Pine Falls, if this Panel were to prevent Mr. AbouHammra from being a pharmacy manager for two years.

Based on the foregoing, the Panel is satisfied that this disposition should serve to act as a deterrent, both general and specific, while at the same time ensuring that the public's interest is protected and the public's confidence is maintained.

DATED at Winnipeg, Manitoba this 31st day of March, 2022.

THE COLLEGE OF PHARMACISTS OF MANITOBA
Ron Eros
Chair, Discipline Panel