

THE COLLEGE OF PHARMACISTS OF MANITOBA

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

And in the matter of: **Judy Lee-Wing, a pharmacist registered with the College of Pharmacists of Manitoba**

DECISION AND ORDER OF THE DISCIPLINE COMMITTEE

Pursuant to the Notice of Hearing dated February 11, 2021 (the “Notice”), an Amended Notice of Hearing dated March 8, 2021 (the “Amended Notice”) and a Re-Amended Notice of Hearing dated June 22, 2022 (the “Re-Amended Notice”), a hearing was conducted by the Discipline Committee of the College of Pharmacists of Manitoba (the “College”) at the law offices of Thompson Dorfman Sweatman LLP, Suite 1700 at 242 Hargrave Street, Winnipeg, Manitoba on June 27, 2022, with respect to charges alleging that Judy Lee-Wing, 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 has displayed a lack of knowledge, 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, in or about 2019 she:

1. operated an unlicensed pharmacy at 2251 Pembina Highway, Winnipeg, Manitoba, in contravention of section 63 of the *Act*;
2. without authorization, purchased cannabis from a person not authorized to sell cannabis, in contravention of section 101.14 of *The Liquor and Gaming and Cannabis Control Act, C.C.S.M. c. L153* (the “LGCCA”);
3. [STAY];
4. compounded a preparation using a drug not authorized for sale in Canada in contravention of section 80 of the Pharmaceutical Regulation, Man Reg 185/2013 (the “Regulation”);
5. failed to document and keep a record of the compounding activities in contravention of section 8.0 of the Extemporaneous Compounding Guideline; section 7.2.1 of the NAPRA guidelines to Pharmacy Compounding-October 2006; sections 56(1)12 and 79(3) of the Regulation; and sections 2.1.1, 2.1.2 and 2.1.3 of the Practice Direction-Records and Information, or any of them;
6. without authorization sold and/or distributed CBD, an illicit cannabis product, in contravention of section 69(1) of the *Cannabis Act*, section 101.13(1) of the LGCCA, section 4 of the Pharmaceutical (General Matters) Regulation 194/2013, and section 80(a) of the Regulation, or any of them;

7. dispensed a drug without a valid prescription in contravention of section 171(b) of the Cannabis Regulations SOR/2018-144, section 2(3) of the *Act*, and section 69(1) of the Regulation, or any of them;
8. failed to obtain the required professional liability insurance as a practicing pharmacist in contravention of sections 14(e) and 123 of the Regulation, or either of them;
9. promoted cannabis via your website “canna-care.ca” in contravention of subsections 17(1) a and (c) of the *Cannabis Act*, sections 126(1), 126(2) and 129(1) of the Regulation, and section 2.12 of the Practice Direction-Advertising in Manitoba, or any of them; and
10. [STAY].

At the hearing, Jeff Hirsch attended as legal counsel to the Complaints Committee, David Marr attended as legal counsel to the Panel of the Discipline Committee (the “Panel”), and Jennifer Sokal attended with, and as legal counsel to, Judy Lee-Wing.

A Statement of Agreed Facts was filed in which the parties agreed to the following:

I. Jurisdiction, Service and Panel Composition

1. Judy Lee-Wing admitted her membership in the College of Pharmacists of Manitoba (the “College”).
2. A Notice of Hearing was issued on February 11, 2021.
3. The prosecution prepared and served an Amended Notice of Hearing to add an additional count.
4. The prosecution prepared and served a Re-Amended Notice of Hearing.
5. Ms. Lee-Wing admitted valid service of the Notice, Amended Notice, and the Re-Amended Notice and that the College complied with the requirements of sub-sections 46(2) and 46(3) of the *Act*.
6. Ms. Lee-Wing 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.

II. Practice and Discipline History

7. Ms. Lee-Wing graduated with her pharmacy degree from the University of Manitoba in 1991.
8. Lee-Wing was registered as a pharmacist under the *Act* commencing on July 18, 1991.
9. At all times material to this proceeding, Ms. Lee-Wing was a member of the College as a practising pharmacist in Manitoba.
10. Ms. Lee-Wing has a lengthy employment history, as follows:
 - (a) July 1991 to January 1994: Ms. Lee-Wing was employed by Metro Drugs at multiple locations;

- (b) January 1994 to November 1994: Ms. Lee-Wing was employed as pharmacy manager at The Medicine & Health Shop;
- (c) November 1994 to December 2000: Ms. Lee-Wing was employed as a pharmacy manager at Zellers, during which time she also took a maternity leave;
- (d) Beginning in December 2000, Ms. Lee-Wing was self employed;
- (e) May 2001 to May 2002: Ms. Lee-Wing was employed at Churchill RHA Inc. Pharmacy;
- (f) May 2002 to November 2002: Ms. Lee-Wing was employed at Point Douglas Pharmacy;
- (g) November 2002 to June 2003: Ms. Lee-Wing was employed at Al-Shifa Pharmacy;
- (h) June 2003 to May 2004: Ms. Lee-Wing was employed at Drugstore Pharmacy on Kenaston Blvd.;
- (i) May 2004 to July 2004: Ms. Lee-Wing was employed at Drugstore Pharmacy on Bison Drive;
- (j) July 2004 to August 2004: Ms. Lee-Wing was employed at The Medicine Chest;
- (k) November 2004 to November 2006: Ms. Lee-Wing was employed at Drugstore Pharmacy on Bison Drive;
- (l) November 2006 to May 2008: Ms. Lee-Wing was employed at Pharmasave on Grant Avenue;
- (m) February 2009 to September 2010: Ms. Lee-Wing was employed at Alentex Pharmacy;
- (n) Ms. Lee-Wing became employed as a pharmacist at St. Amant Inc. Pharmacy in September 2010;
- (o) Between June 19, 2015 and November 21, 2018, she was employed in the Pharmacy Department of the Winnipeg Regional Health Authority;
- (p) Ms. Lee-Wing was not listed on the College Registry as being employed between November 21, 2018 and December 3, 2019, at which time she was listed as being self-employed and doing relief work;
- (q) From October 8, 2020 to December 1, 2021, Ms. Lee-Wing was employed at Innomar Pharmacy, 179 Commerce Drive in Winnipeg, Manitoba;
- (r) From December 1, 2021 to December 26, 2021, Ms. Lee-Wing was employed in the Pharmacy Department of Shared Health;
- (s) From December 26, 2021 to January 25, 2022, Ms. Lee-Wing was employed by Rexall Pharmaplus on 35 Lakewood Boulevard in Winnipeg, Manitoba; and

- (t) From January 25, 2022 to the present date, Ms. Lee-Wing has been employed by Rexall Pharmaplus on 971 Corydon Avenue in Winnipeg, Manitoba.

11. Ms. Lee-Wing has no previous discipline history with the College.

Regarding admission and plea, the Statement of Agreed Facts stated that:

12. Ms. Lee-Wing has reviewed the Re-Amended Notice as well as the Statement of Agreed Facts (the "Statement"), admitted the truth and accuracy of the facts in the Statement and that the witnesses and other evidence available to the College would, if called and otherwise tendered, be substantially in accordance with these facts.
13. Ms. Lee-Wing tendered no evidence and made no submissions on the issue of professional misconduct, other than to admit that the conduct hereinafter described demonstrates professional misconduct as described in section 54 of the *Act*.
14. Ms. Lee-Wing agreed to and did enter a plea of guilty to counts 1, 2, 4, 5, 6, 7, 8 and 9 as set out in the Re-Amended Notice.
15. The Complaints Committee agreed to and entered a stay of proceedings with respect to counts 3 and 10 of the Re-Amended Notice.

Count 1

- 1.1 Count 1 alleges that Ms. Lee-Wing, in or about 2019, operated an unlicensed pharmacy at the Premises in contravention of section 63 of the *Act*. Section 2(1) of the *Act* states that the practice of pharmacy consists of the following practices, among others:
- (a) the compounding, dispensing and retail sale of drugs;
 - (b) monitoring drug therapy and advising on the contents, therapeutic values and hazards of drugs; and
 - (c) identifying and assessing drug-related problems and making recommendations to prevent or resolve them.
- 1.2 The *Act* defines a "pharmacy" as "a facility used for any aspect of the practice of pharmacy, including a satellite facility and every other facility, wherever located, used in the practice."
- 1.3 The *Act* defines a "pharmacy license" as "a licence of any category authorizing the operation of a pharmacy, and issued to an owner."
- 1.4 Ms. Lee-Wing held a practicing pharmacist's license in 2019. There was no pharmacy license issued for the Premises in 2019.
- 1.5 It was Ms. Lee-Wing's practice at the Premises to consult with patients with respect to the use of CBD and to dispense or sell CBD to patients. She also provided counselling and information about the use of CBD to patients who attended at her office at the Premises. Ms. Lee-Wing also provided information regarding other prescription drugs to patients, as well as altered patients' over the counter drug therapy and conducted medication reviews with patients.

- 1.6 During the initial site visit, Ken Zink, a Field Officer for the College, observed and photographed a sign on the door of Ms. Lee-Wing's office at the Premises. The sign identified Ms. Lee-Wing as a "Pharmacist Consultant."
- 1.7 During this period, Ms. Lee-Wing operated a website, Canna-Care.ca (the "Website") on which she indicated that she was a licensed pharmacist.
- 1.8 Ms. Lee-Wing admits her conduct described above constitutes the operation of a pharmacy by her, and further admits that at no time were the Premises licensed by the College to operate as a pharmacy.

Count 2

- 2.1 Count 2 alleges that Ms. Lee-Wing, without authorization, purchased cannabis from a person not authorized to sell cannabis, in contravention of section 101.14 of the LGCCA.
- 2.2 All phytocannabinoids are regulated under the *Cannabis Act*. CBD is a phytocannabinoid produced by the cannabis plant. CBD and products containing CBD are subject to all of the rules and requirements that apply to cannabis under the *Cannabis Act* and its Regulations. This includes CBD derived from industrial hemp plants, as well as CBD derived from other varieties of cannabis.
- 2.3 CBD and all products containing CBD, such as cannabis oil, can only be possessed for sale and sold by a provincially or territorially authorized cannabis retailer or federally-licensed seller of cannabis for medical purposes.
- 2.4 For a few months prior to November 14, 2019, Ms. Lee-Wing operated a CBD dispensary in the Premises, providing both topical and oral CBD remedies to her patients.
- 2.5 During the November 14, 2019 site visit, Mr. Zink asked Ms. Lee-Wing to identify her CBD supplier. Ms. Lee-Wing initially refused to divulge her CBD source but did subsequently admit that her supplier was an unauthorized and unlicensed cannabis provider.
- 2.6 During the November 14, 2019 site visit, Mr. Zink observed a large inventory of CBD products, which Ms. Lee-Wing admitted to selling for both topical and oral use.
- 2.7 On November 3, 2020, in response to an inquiry made by Mr. Zink, Ms. Lee-Wing advised by email that her supplier for her CBD products was Okanagan CBD.
- 2.8 On November 13, 2020, Mr. Zink phoned Okanagan CBD and was advised by a customer service representative that Okanagan CBD sources their CBD from hemp oil from North American organic farms. The customer service representative admitted that Okanagan CBD was not a federally licensed or provincially authorized supplier of CBD.

Count 4

- 4.1 Count 4 alleges that Ms. Lee-Wing, in or about 2019, compounded a preparation using a drug not authorized for sale in Canada in contravention of section 80 of the Pharmaceutical Regulation, Man Reg 185/2013 (the "Regulation").
- 4.2 Section 80 of the Regulation prohibits members from selling, dispensing or using in a compounded preparation any drug that is not authorized for sale by Health Canada.
- 4.3 CBD is not authorized for sale by Health Canada.
- 4.4 During his site visit on November 14, 2019, Mr. Zink observed a large inventory of CBD products, as well as vegetable and olive oil dilutants, weighing scales and glassware.
- 4.5 During the relevant period, the Website indicated: "For a nominal fee, Cannaderm safely and professionally incorporates your own CBD oil into an over-the-counter (OTC) base that is appropriate for you."
- 4.6 During the course of the investigation, Mr. Zink and others at the College requested that Ms. Lee-Wing provide documentation of her practice. Ms. Lee-Wing stated that any documents she kept with respect to dispensing CBD from the Premises were damaged by a flood in her garage and were thrown away.
- 4.7 Mr. Zink obtained patient records for 133 patients from Pembina Medical Centre which also operated out of the Premises.
- 4.8 In the patient records for at least 11 patients, Ms. Lee-Wing documented that she compounded and provided topical preparations using CBD in combination with certain over-the-counter drugs, including methyl salicylate, triethanolamine, diclofenac, Lanacane and triethanolamine, triethanolamine and methyl salicylate, and Anusol Plus and zinc oxide.

Count 5

- 5.1 Count 5 alleges that Ms. Lee-Wing, in or about 2019, failed to document and keep a record of the compounding activities in contravention of section 8.0 of the Extemporaneous Compounding Guideline, section 7.2.1 of the NAPRA Guidelines to Pharmacy Compounding – October 2006, subsections 56(1)12 and 79(3) of the Regulation and sections 2.1.1, 2.1.2 and 2.1.3 of the Practice Direction-Records and Information (the "RI-PD"), or any of them.
- 5.2 Section 8.0 of the Extemporaneous Compounding Guideline requires that a pharmacist document, on a dispensing worksheet or on the reverse of the prescription, certain information regarding the compounding of the drug. This information includes the patient name, compound name and strength, name, manufacturer and lot number of each raw material used, the formulation stating quantity and percent weight or volume of each raw material, and a description of each step and equipment used in the compounding process, among other things.
- 5.3 The Regulation and the RI-PD require that a pharmacist create, maintain and retain records as required under the *Act*.

- 5.4 During the course of the investigation, Mr. Zink and others at the College requested that Ms. Lee-Wing provide documentation of her practice. Ms. Lee-Wing stated that any documents she kept with respect to dispensing CBD from the Premises were damaged by a flood in her garage and were thrown away.
- 5.5 Ms. Lee-Wing was unable to produce any documentation which appropriately recorded her compounding activities, as described in Count 4 herein.

Count 6

- 6.1 Count 6 alleges that Ms. Lee-Wing, in or about 2019, without authorization, sold and/or distributed CBD, an illicit cannabis product, in contravention of subsections 69(1) of the *Cannabis Act*, section 101.13(1) of the *LGCCA*, section 4 of the Pharmaceutical (General Matters) Regulation, 194/2013, and section 80(a) of the Regulation, or any of them.
- 6.2 Unless authorized pursuant to the *Cannabis Act* and provincial legislation, it is prohibited to possess, sell or distribute cannabis.
- 6.3 The *Cannabis Act* defines illicit cannabis as cannabis that was not obtained from an authorized and licensed provider.
- 6.4 During the November 14, 2019 site visit, Ms. Lee-Wing admitted to Mr. Zink that she was selling CBD for both topical and oral use.
- 6.5 At the time, neither Ms. Lee-Wing nor her business under the Website name of Canna-Care.ca were listed on the Health Canada website as a licensed supplier of cannabis. Ms. Lee-Wing was also not in possession of a federal exemption to sell cannabis.

Count 7

- 7.1 Count 7 alleges that Ms. Lee-Wing, in or about 2019, dispensed a drug without a valid prescription in contravention of subsection 171(b) of the Cannabis Regulations, SOR/2018-144 (the "Cannabis Regulations"), subsection 2(3) of the *Act*, and section 69(1) of the Regulation, or any of them.
- 7.2 Subsection 171(b) of the Cannabis Regulations permits a pharmacist to sell, distribute or administer a prescription drug to a person if the sale, distribution or administration is in accordance with a written order or prescription signed and dated by a practitioner.
- 7.3 Subsection 69(1) of the Regulation prohibits a drug from being dispensed without authorization from a practitioner, whether verbally or in writing.
- 7.4 Based upon the records obtained through the Pembina Medical Clinic, from August 2, 2019 to November 18, 2019, Ms. Lee-Wing dispensed CBD to 133 patients. There are no prescription records for any of these 133 patients.

Count 8

- 8.1 Count 8 alleges that Ms. Lee-Wing, in or about 2019, failed to obtain the required professional liability insurance as a practicing pharmacist in contravention of sections 14(e) and 123 of the Regulation, or either of them.

- 8.2 Section 123 of the Regulation requires all members to be covered by professional liability insurance that provides a minimum of \$2,000,000.00 of coverage per claim or per occurrence and a minimum \$4,000,000.00 annual aggregate.
- 8.3 Section 14(e) of the Regulation requires applicants for a pharmacist license to provide a declaration that they are covered by professional liability insurance in accordance with section 123.
- 8.4 Ms. Lee-Wing was registered as a practicing pharmacist in 2019.
- 8.5 On Ms. Lee-Wing's application for a 2019 practicing pharmacist's license, she declared that she was covered for professional liability insurance that met the requirements of section 123 of the Regulation.
- 8.6 At Mr. Zink's request, Ms. Lee-Wing provided him with copies of all her recent insurance documentation.
- 8.7 These documents show that she had professional liability insurance in the amount of \$1,000,000.00 per claim and a \$1,000,000.00 annual aggregate for the period from July 1, 2018 to June 30, 2019. Ms. Lee-Wing did not have insurance for the period of July 1, 2019 to November 29, 2019, at which time she purchased new professional liability coverage with the statutorily required limits.

Count 9

- 9.1 Count 9 alleges that Ms. Lee-Wing, in or about 2019, promoted cannabis via the website Canna-care.ca in contravention of subsections 17(1)(a) and (c) of the *Cannabis Act*, section 126(1) and (2) and 129 of the Regulation, and section 2.12 of the Practice Direction – Advertising in Manitoba, or any of them.
- 9.2 Subsections 17(1)(a) and (c) of the *Cannabis Act* prohibit the promotion of cannabis, or any service related to cannabis, including by communicating information about its price or distribution or by means of a testimonial or endorsement.
- 9.3 Subsection 126(2) of the Regulation requires members to ensure that any advertising is factual, does not use descriptive or qualifying words such as "professional", "trusted", "prompt", "licensed", etc., does not use the word "specialist" or a word with similar meaning, and is in keeping with the honour and integrity of the image of a pharmacist and the practice of pharmacy.
- 9.4 Section 129 of the Regulation allows for the advertising of the price of a prescription drug and the fee for dispensing it so long as certain conditions are met.
- 9.5 Section 2.12 of the Practice Direction – Advertising in Manitoba Pharmacies states that advertising shall not contravene federal legislation regarding drugs, diseases or natural health products.
- 9.6 The Website for Ms. Lee-Wing's business included certain claims, including:
 - (a) "Highly effective in relieving pain, swelling and muscle stiffness"; and
 - (b) "Our remedies are of high quality and have proven therapeutic value".

- 9.7 The Website for Ms. Lee-Wing's business also included testimonials from previous customers, which included statements such as:
- (a) "Amazing product. Thank you, Judy";
 - (b) "It's just amazing"; and
 - (c) "Her consult is worth every penny. The tincture works great".
- 9.8 Ms. Lee-Wing promoted the fact that she was a licensed pharmacist while carrying on her CBD business. On her office door at the Premises, she displayed a poster which listed her name, contact information and the title "Pharmacist Consultant".
- 9.9 Ms. Lee-Wing also maintained a Facebook page, which identified her as both a pharmacist and pharmacist consultant, while at the same time including that she provided CBD topicals to patients. The Website also made numerous references to the fact that she was a licensed pharmacist, including the following phrases with respect to her CBD remedies:
- (a) "developed by a licensed pharmacist in Canada";
 - (b) "we have over 25 years of diverse experience in pharmacy including caring for people in the community, long term care, and in the hospital";
 - (c) "Our pharmacist plays a much-needed role in working to ensure the safe and appropriate use of cannabis"; and
 - (d) "Our pharmacists can help to identify possible drug-related problems, interactions, side effects, and adverse drug reactions which might occur in combination with CBD."

Upon considering the Agreed Statement of Facts, this Panel finds pursuant to section 54 of the *Act* that Judy Lee-Wing is guilty of professional misconduct, conduct unbecoming a member and has displayed a lack of knowledge or skill or judgment in the practice of pharmacy or in operation of a pharmacy and, therefore pursuant to section 56 of the *Act*, this Panel ordered that Judy Lee-Wing:

1. pay to the College as a contribution towards the costs of the investigation and hearing the sum of \$7,500.00 on or before June 27, 2023;
2. pay to the College a fine of \$4,500.00 on or before June 27, 2023; and,
3. pursuant to section 55(3) of the *Act*, may not be a pharmacy manager or preceptor for a period of five (5) years commencing on February 11, 2021.

In arriving at its decision, the Panel considered Ms. Lee-Wing's admissions of guilt which alleviated what would have been a lengthy and complicated hearing, and her lack of any prior history of discipline, and is satisfied that this disposition should serve to act as a deterrent to her and in general, while at the same time ensuring that the public interests are protected and the public's confidence is maintained.

DATED at Winnipeg, Manitoba this 18th day of August, 2022.

Shannon Trapp
Panel Chair