

## **DECISION AND ORDER OF THE DISCIPLINE COMMITTEE**

Pursuant to the Amended Notice of Hearing (the “Notice”) dated August 22, 2019, 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 November 24, 2021, with respect to charges formulated by the College alleging that Mr. Shouren Bose (“Mr. Bose”), 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 Health Plus Pharmacy (the “Pharmacy”), 1075 Autumnwood Drive, Winnipeg, Manitoba, Mr. Bose:

1. breached a condition contained in the Order and Decision of the Discipline Committee dated March 3, 2015 (the “Order”), which prohibited him from having ordering and/or signing authority for drugs covered under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19 in contravention of section 18 of the *Pharmaceutical Regulation*, Man Reg 185/2013 (the “Regulation”) by:
  - a. on or about July 16, 2018, ordered five patches of Mylan-Fentanyl 50 mcg and five patches of Mylan-Fentanyl 100 mcg from another community pharmacy;
  - b. STAYED;
  - c. on or about August 16, 2018, ordered a 5ml vial of fentanyl citrate 50 ug/ml from another community pharmacy;
  - d. STAYED; and,
  - e. STAYED;
2. STAYED;
3. STAYED; and,
4. between January 2019 and April 2019, on approximately 10 occasions, dispensed narcotics with no or insufficient documentation of authorization from the prescriber, in contravention of subsection 31(2)(b) of the *Narcotic Control Regulations* (C.R.C., c. 1041) (the “NCR”), subsection 69 of the Regulation, and Statements 2 and 7 of *The Code of Ethics*, or any of them.

The hearing into the charges convened on November 24, 2021. Mr. Jeffrey Hirsch (“Mr. Hirsch”) and Ms. Sharyne Hamm appeared as legal counsel on behalf of the Complaints Committee. Mr. Richard Beamish (“Mr. Beamish”) and Mr. Jessie Rock appeared with and on behalf of Mr. Bose. Mr. David Marr (“Mr. Marr”) appeared as legal counsel to the Discipline Committee (the “Panel”).

A Statement of Agreed Facts (the “Statement”) was filed in which Mr. Bose admitted:

1. his membership in the College.
2. valid service of the Notice and the Amended Notice of Hearing dated August 22, 2019, and that the College complied with the requirements of sub-sections 46(2) and 46(3) of the Act.
3. he had no objection to the composition of any of the Panel members or to legal counsel to the Panel on the basis of bias, a reasonable apprehension of bias or a conflict of interest.
4. he graduated with his pharmacy degree from the University of Manitoba in 2000.
5. he has been registered as a pharmacist under the Act since June 29, 2000.
6. he voluntarily surrendered his pharmacist’s license on September 27, 2013.
7. at all times material to this proceeding, he was a member of the College as a practising pharmacist in Manitoba.

The parties further agreed that:

1. the College disciplined Mr. Bose through a decision and order of the College’s Discipline Committee dated March 3, 2015 (the “Order”) which provided that:
  - a. Mr. Bose be suspended for one year, commencing July 8, 2014, and ending July 8, 2015;
  - b. During the time he was suspended, Mr. Bose was required:
    - i. to complete a chemical abuse assessment approved by the Registrar and provide the Registrar with the findings;
    - ii. to comply with all recommendations from the chemical abuse assessment and provide monthly reports in writing to the Registrar; and,
    - iii. to make and maintain contact with the Pharmacists at Risk Committee and instruct the Committee to contact the Registrar should he fail to maintain a satisfactory relationship with the Committee;
  - c. Upon completion of the period of suspension, Mr. Bose was able to apply for re-instatement of his pharmacist license, subject to all of the re-licensing requirements of the College;
  - d. Upon relicensing with the College, the following conditions would be placed on Mr. Bose’s license:
    - i. He could not be a pharmacy manager;
    - ii. He could not be a preceptor;

- iii. He could not have ordering / signing authority for drugs covered under the *Controlled Drugs and Substances Act*; and,
    - iv. He could not work in a pharmacy without another person present in the dispensary;
  - e. Upon relicensing with the College, Mr. Bose was required to advise the pharmacy manager in all pharmacies who employed him in some capacity that:
    - i. Monthly narcotic inventory verification counts must occur;
    - ii. Another pharmacist must verify all calculations for compounding medication before the compounding begins; and,
    - iii. He has restrictions placed on his license as set out above.
2. Mr. Bose resumed practice as a pharmacist as of September 29, 2015, subject to the following conditions:
  - a. He cannot be a pharmacy manager;
  - b. He cannot be a preceptor;
  - c. He cannot have ordering / signing authority for drugs covered under the *Controlled Drugs and Substances Act*; and,
  - d. He cannot work in a pharmacy without another person present in the dispensary.
3. Mr. Bose has been employed as a pharmacist at the Pharmacy commencing October 2015.
4. Mr. Bose, through a numbered company, is a 75% owner of the Pharmacy.
5. On November 15, 2017, the conditions were varied by the College such that Mr. Bose was no longer required to complete and provide monthly chemical abuse assessments and no longer required to maintain contact with the Pharmacists at Risk Committee. All other conditions, listed above at paragraph 12 in the Agreed Statement of Facts (paragraph 1 herein) (the “Conditions”), remained in place.
6. Mr. Bose satisfied the College with respect to his narcotic addiction recovery efforts.
7. Mr. Bose reviewed the Amended Notice, as well as the Statement of Agreed Facts, and admitted 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 tendered, be substantially in accordance with these facts.

Mr. Bose entered a plea of guilty to count 4, and in so doing he admitted to the conduct described therein and that it demonstrated professional misconduct, or a lack of knowledge or skill or judgment in the practice of pharmacy or operation of a pharmacy as described in section 54 of the Act.

The Complaints Committee entered a stay of proceedings with respect to counts 1. b), d), e), 2, and 3 in the Amended Notice of Hearing.

With respect to counts 1(a) and (c), while admitting to the conduct described therein, Mr. Bose denied that his actions were a breach of any of the Conditions and denied that it demonstrated professional misconduct, or a lack of knowledge or skill or judgment in the practice of pharmacy or operation of a pharmacy as described in section 54 of the Act. Accordingly, Mr. Bose entered a plea of not guilty to these two counts, and counsel to the Complaints Committee and Mr. Bose made separate submissions on these issues.

In the Statement, pertaining to count 1. a), the parties agreed that:

1. The Investigator conducted a review of the Pharmacy's narcotic records and observed a number of emergency narcotic drug purchases from Shoppers Drug Mart #542 ("SDM"). The Investigator obtained records from SDM which indicated that on July 16, 2018, a request for transfer for five patches of Mylan-Fentanyl 50 mcg and five patches of Mylan Fentanyl 100 mcg (the "Fentanyl Patches") was placed from the Pharmacy.
2. Mr. Bose was present in the Pharmacy on July 16, 2018. A patient required the Fentanyl Patches on an emergent basis. Mr. Bose contacted SDM to confirm whether they had fentanyl patches that could be transferred to the Pharmacy to fill the emergency order.
3. SDM confirmed that they had the Fentanyl Patches in stock and could make the emergency transfer. SDM prepared a request for the Fentanyl Patches and Mr. Bose signed the request. On July 17, 2018, SDM delivered the Fentanyl Patches to the Pharmacy to fill the patient's prescription.

In the Statement, pertaining to count 1(c), the parties agreed that:

1. SDM records indicate that on August 16, 2018, a request for transfer for a 5ml vial of fentanyl citrate 50 ug/ml (the "Fentanyl Vial") was placed from the Pharmacy.
2. Mr. Bose was present in the Pharmacy on August 16, 2018. A patient required the Fentanyl Vial on an emergent basis. Mr. Bose contacted SDM to confirm whether they had a fentanyl vial that could be transferred to the prescribing physician to fill the request.
3. SDM confirmed that they had the Fentanyl Vial in stock and could make the emergency transfer. Mr. Bose hand-wrote a request for the Fentanyl Vial and Mr. Bose's name was used on the request. On August 17, 2018, the Fentanyl Vial was delivered to the prescribing physician.

The parties made separate submissions as to whether Mr. Bose’s “requests for transfer” of the Fentanyl Patches and Fentanyl Vial, constituted orders, and, as such, was a breach of any of the Conditions.

After reviewing the authorities, documentary evidence, the agreed facts and hearing the submissions of counsel for the parties, the Panel found pertaining to both counts 1(a) and (c), that Mr. Bose had contravened section 18 of the Regulation which states:

A member may engage only in those aspects of the practice of pharmacy, and perform included practices,

(a) that he or she has the requisite knowledge, skill and judgment to provide or perform and that are appropriate to his or her area of practice; and,

(b) in accordance with any conditions of his or her license.

The Panel considered section 45(1)(b) of the Narcotic Control Regulations which states:

45(1) A pharmacist may, on receiving a written order for a narcotic

b) sell or provide to another pharmacist the quantity of the narcotic that is specified in the order as being required for emergency purposes, if the order is signed and dated by the other pharmacist.

The panel found that Mr. Bose’s “transfer requests” did in fact constitute orders as required under the Narcotic Control Regulations.

The Panel determined that Mr. Bose was aware of the Conditions imposed on his practicing licence, but proceeded to order the Fentanyl Patches and Fentanyl Vial, thereby exhibiting a lack of judgment and contravening the licence condition which prohibited him from having ordering / signing authority for drugs covered under the *Controlled Drugs and Substances Act*.

The Panel found Mr. Bose guilty of professional misconduct, having displayed a lack of knowledge or lack of skill or judgment in the practice of pharmacy, and conduct unbecoming a member in accordance with section 54 of the Act.

Counsel for the Complaints Committee and Mr. Bose made a joint recommendation on disposition, that in accordance with section 54, 55 and 56 of the Act Mr. Bose:

1. be fined in the amount of \$5,000.00; and,
2. be ordered to pay a contribution to the costs of the investigation and hearing in the amount of \$20,000.00.

After having reviewed the authorities provided to the Panel regarding joint recommended dispositions and the joint recommendation submitted by the counsel for the parties, the Panel ordered that Mr. Bose:

1. pay a fine in the amount of \$5,000.00; and,
2. pay a contribution to the costs of the investigation and hearing in the amount of \$20,000.00.

In arriving at its decision, the Panel considered Mr. Bose's admissions of guilt, and the cooperative discussions between counsel for the parties. The Panel also considered the remaining conditions on the practicing licence of Mr. Bose, being:

1. Mr. Bose cannot be a pharmacy manager or a preceptor;
2. Mr. Bose cannot order at any practice site, drugs covered under the *Controlled Drugs and Substances Act*;
3. Mr. Bose cannot work on his own and must always have another trained person in the dispensary working with him at all times; and,
4. Mr. Bose is to advise his pharmacy manager(s) that monthly narcotic inventory counts must be done at their practice sites, another licensed pharmacist must verify all calculations for medication compounding before the compounding begins and of the restrictions noted above.

Based on the foregoing, the Panel was 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 4<sup>th</sup> day of January, 2022.

Shannon Trapp  
Panel Chair