

**Discipline Committee of the
Ontario College of Pharmacists**

**Citation: Ontario (College of Pharmacists) v. Adamo and Lifestyle Pharmacy & Candy Bar
I.D.A., 2250556 Ontario Inc., 2015 ONCPDC 16
Date: 2015-08-27**

IN THE MATTER of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c.18, as amended;

AND IN THE MATTER of the *Pharmacy Act, 1991*, S.O. 1991, c.36, as amended, and Ontario Regulation 681/93 made thereunder, as amended by Ontario Regulation 217/94, and as otherwise amended;

AND IN THE MATTER of Ontario Regulation 551, R.R.O. 1990, made under the *Drug and Pharmacies Regulation Act*, R.S.O. 1990, c.H.4, as amended;

AND IN THE MATTER of a hearing of allegations of proprietary/professional misconduct/incompetence before the Discipline Committee of the Ontario College of Pharmacists as referred by the Accreditation/Inquiries, Complaints and Reports Committee against Marilyn Adamo and Lifestyle Pharmacy & Candy Bar I.D.A., 2250556 Ontario Inc.;

BETWEEN:)	
)	
ONTARIO COLLEGE OF PHARMACISTS)	Farah Malik For Ontario College of Pharmacists
)	
)	Katharine Neufeld Attending for Ontario College of Pharmacists
- and -)	
)	
MARILYN ADAMO (REGISTRATION #203872))	Michael Blinick For the Member
)	
LIFESTYLE PHARMACY & CANDY BAR I.D.A., 2250556 ONTARIO INC. (ACCREDITATION #302189))	Marilyn Adamo, R.Ph. In Attendance
)	
)	Marco Mendicino Independent Legal Counsel
)	
)	
Panel Members:)	Heard: June 2, 2015
Akhil Pandit Pautra, R. Ph., Chair)	Decision Released: June 2, 2015
Lavinia Adam, R.Ph.T.)	Written Decision Released: August 27, 2015
Don Organ, R.Ph.)	
Javid Khan, Public Member)	
Sylvia Moustacalis, Public Member)	

DECISION AND REASONS FOR DECISION

I. Introduction

- [1] This matter came on for hearing before a panel of the Discipline Committee on June 2, 2015, at the Ontario College of Pharmacists (“the College”) in Toronto.
- [2] It proceeded by way of an Agreed Statement of Facts and a Joint Submission on Order.

II. The Allegations

- [3] The allegations against the Member as stated in the original Notice of Hearing, dated July 16, 2014 (Exhibit 1), are as follows:

1. She committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Pharmacy Act, 1991*, S.O. 1991, c. 36, as amended, and subsection 1(2) of *Ontario Regulation 681/93*, as amended, in that, while engaged in the practice of pharmacy as director, shareholder, Designated Manager and/or dispensing pharmacist at Lifestyle Pharmacy & Candy Bar I.D.A. in Windsor, Ontario, she failed to maintain a standard of practice of the profession with respect to:

- a. dispensing and/or allowing the pharmacy to dispense narcotics and/or controlled drugs to her spouse in breach of an undertaking entering into on January 7, 2013, from on or about February 1, 2013 to on or about December 31, 2013.

2. She committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Pharmacy Act, 1991*, S.O. 1991, c. 36, as amended, and subsection 1(30) of *Ontario Regulation 681/93*, as amended, in that, while engaged in the practice of pharmacy as director, shareholder, Designated Manager and/or dispensing pharmacist at Lifestyle Pharmacy & Candy Bar I.D.A. in Windsor, Ontario, she engaged in conduct or performed an act or acts relevant to the practice of pharmacy that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional with respect to:

- a. dispensing and/or allowing the pharmacy to dispense narcotics and/or controlled drugs to her spouse in breach of an undertaking entering into on January 7, 2013, from on or about February 1, 2013 to on or about December 31, 2013.

3. She committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Pharmacy Act*,

1991, S.O. 1991, c. 36, as amended, and subsection 1(2) of *Ontario Regulation 681/93*, as amended, in that, while engaged in the practice of pharmacy as director, shareholder, Designated Manager and/or dispensing pharmacist at Lifestyle Pharmacy & Candy Bar I.D.A. in Windsor, Ontario, she failed to maintain a standard of practice of the profession with respect to:

- a. failing to keep records as required of narcotic prescriptions, from on or about May 1, 2011 to on or about December 31, 2011, contrary to s. 40 of the *Narcotic Control Regulations*, C.R.C., c. 1041, as amended.

4. She committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Pharmacy Act, 1991*, S.O. 1991, c. 36, as amended, and subsection 1(13) of *Ontario Regulation 681/93*, as amended, in that, while engaged in the practice of pharmacy as director, shareholder, Designated Manager and/or dispensing pharmacist at Lifestyle Pharmacy & Candy Bar I.D.A. in Windsor, Ontario, she failed to keep records as required respecting her patients with respect to:

- a. failing to keep records as required of narcotic prescriptions and/or hardcopies, from on or about May 1, 2011 to on or about December 31, 2011, contrary to s. 40 of the *Narcotic Control Regulations*, C.R.C., c. 1041, as amended.

5. She committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Pharmacy Act, 1991*, S.O. 1991, c. 36, as amended, and subsection 1(22) of *Ontario Regulation 681/93*, as amended, in that, while engaged in the practice of pharmacy as director, shareholder, Designated Manager and/or dispensing pharmacist at Lifestyle Pharmacy & Candy Bar I.D.A. in Windsor, Ontario, she contravened, while engaged in the practice of pharmacy, a federal or provincial law or municipal by-law with respect to the distribution, sale or dispensing of any drug or mixture of drugs, and in particular:

- a. s. 40 of the *Narcotic Control Regulations*, C.R.C., c. 1041, as amended, by failing to keep records as required of narcotic prescriptions and/or hardcopies, from on or about May 1, 2011 to on or about December 31, 2011.

6. She committed an act or acts of professional misconduct as provided by subsection 51(1)(c) of the *Health Professions Procedural Code* of the *Pharmacy Act, 1991*, S.O. 1991, c. 36, as amended, and subsection 1(30) of *Ontario Regulation 681/93*, as amended, in that, while engaged in the practice of pharmacy as director, shareholder, Designated Manager and/or dispensing pharmacist at Lifestyle Pharmacy & Candy Bar I.D.A. in Windsor, Ontario, she engaged in conduct or performed an act or acts relevant to the practice of pharmacy that, having regard to all the circumstances, would reasonably

be regarded by members of the profession as disgraceful, dishonourable or unprofessional with respect to:

- a. failing to keep records as required of narcotic prescriptions and/or hardcopies, from on or about May 1, 2011 to on or about December 31, 2011, contrary to s. 40 of the *Narcotic Control Regulations*, C.R.C., c. 1041, as amended.

- [4] Counsel for the College provided a second Notice of Hearing dated August 5, 2014, relating to allegations of proprietary misconduct against the Member and Lifestyle Pharmacy & Candy Bar I.D.A., 2250556 Ontario Inc. This Notice of Hearing was identified as an Amended Notice of Hearing.
- [5] Counsel for the College requested to make two amendments to the Notice of Hearing dated August 5, 2014, with respect to allegations 1(a) and 2(a). The Member consented to the two amendments. The Panel granted the request and amended the Notice of Hearing dated August 5, 2014.
- [6] The Amended Notice of Hearing dated August 5, 2014 was marked as Exhibit 2.
- [7] The allegations against the Member and Lifestyle Pharmacy & Candy Bar I.D.A., 2250556 Ontario Inc. as stated in the Amended Notice of Hearing, dated August 5, 2014, (Exhibit 2) are that they committed acts of proprietary misconduct as follows:
 1. Committed an act or acts of proprietary misconduct as provided by subsection 140 of the *Drug and Pharmacies Regulation Act*, as amended, and subsection 50(24) of *Ontario Regulation 58/11*, as amended, in that they contravened a law of Canada or Ontario or any municipal by-law with respect to the distribution, purchase, sale or dispensing of any drugs or product in a pharmacy, and in particular:
 - a. S. 43 of the *Narcotic Control Regulations*, C.R.C., c. 1041, as amended, under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, and/or s. G.03.012 of the *Food and Drug Regulations*, C.R.C., c. 870, as amended, to the *Food and Drugs Act*, R.S.C. 1985, c. F-27, as amended, and/or s. 7(1)(a)(b) of the *Benzodiazapines and Other Targeted Substances Regulations*, S.O.R./2000-271 under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, in that they failed to take all reasonable steps that were necessary to protect narcotics, controlled drugs and targeted substances on the premises of the pharmacy or under their control against loss or theft or to take steps necessary to ensure their security, including failure to count and reconcile narcotics, controlled drugs and targeted substances at least every six months from on or about February 18, 2013 to on or about January 29, 2014.
 2. Committed an act or acts of proprietary misconduct as provided by subsection 140 of the *Drug and Pharmacies Regulation Act*, as amended, and subsection 50(30) of

Ontario Regulation 58/11, as amended, in that they engaged in conduct or performed an act relevant to the business of a pharmacy that would reasonably be regarded by members as disgraceful or dishonourable with respect to:

- a. Contravening s. 43 of the *Narcotic Control Regulations*, C.R.C., c. 1041, as amended, under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, and/or s. G.03.012 of the *Food and Drug Regulations*, C.R.C., c. 870, as amended, to the *Food and Drugs Act*, R.S.C. 1985, c. F-27, as amended, and/or s. 7(1)(a)(b) of the *Benzodiazapines and Other Targeted Substances Regulations*, S.O.R./2000-271 under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, in that they failed to take all reasonable steps that were necessary to protect narcotics, controlled drugs and targeted substances on the premises of the pharmacy or under their control against loss or theft or to take steps necessary to ensure their security, including failure to count and reconcile narcotics, controlled drugs and targeted substances at least every six months from on or about February 18, 2013 to on or about January 29, 2014; and/or
- b. Dispensing and/or allowing the pharmacy to dispense narcotics and/or controlled drugs to Ms Adamo's spouse in breach of an undertaking entering into on January 7, 2013, from on or about December 1, 2013 to on or about January 28, 2014, as listed in Appendix A.

III. Member's Position

- [8] The Member admitted the allegations as set out in the original Notice of Hearing dated July 16, 2014. The Member also admitted the allegations on behalf of herself and Lifestyle Pharmacy & Candy Bar I.D.A., 2250556 Ontario Inc. as stated in the Amended Notice of Hearing, dated August 5, 2014
- [9] The panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

IV. Agreed Statement of Facts

- [10] Counsel for the College advised the Panel that agreement had been reached on the facts and filed an Agreed Statement of Facts as Exhibit 3, which provided as follows:

MEMBER AND PHARMACY

1. Marilyn Adamo ("Member") has been a registered member of the Ontario College of Pharmacists ("College") since April 18, 1997. At all material times, she was the Designated Manager of Lifestyle Pharmacy and Candy Bar I.D.A. ("Lifestyle"), which has operated in Windsor, Ontario since December 1, 2010.

2. At all material times, the Member was also the sole director and shareholder of 2250556 Ontario Inc., the corporation that owns Lifestyle and the holder of Certificate of Accreditation #302189 (2250556 Ontario Inc. and Lifestyle are collectively referred to herein as the “Pharmacy”).
3. The Member has no prior discipline history with the College.

ALLEGATIONS

4. The allegations of professional misconduct against the Member are set out in the Notice of Hearing dated July 16, 2014 (**Exhibit 1**). The allegations of proprietary misconduct against both the Member and the Pharmacy are set out in the Amended Notice of Hearing dated August 5, 2014 (**Exhibit 2**).

FACTS

Pharmacy’s Level I Inspection under the DPRA on March 17, 2011

5. On March 17, 2011, the Pharmacy was subject to a routine inspection conducted pursuant to s. 148 of the *Drug and Pharmacies Regulation Act*, R.S.O. 1990, c. H.4, as amended (“DRPA”). The inspection identified a number of practice issues, including the following:
 - (a) the Pharmacy was open to the public without the presence of a pharmacist. In particular, the accredited pharmacy area was unsupervised;
 - (b) the Pharmacy’s narcotic prescription file had missing prescriptions;
 - (c) documentation relating to Lifestyle’s narcotic inventory could not be produced. Specifically, the Member could not produce physical narcotic counts and hard copies of narcotic sales reports because she had forgotten the narcotics key that day; and,
 - (d) a number of narcotic medications were dispensed to both the Member herself and her spouse.
6. Several days afterward, the College’s Registrar appointed investigators under s. 75(1)(a) of the *Health Professions Procedural Code* (“Code”) to inquire into and examine the Member’s practice at the Pharmacy. On April 12, 2011, the College’s Inquiries, Complaints and Reports Committee (“ICRC”) approved of this appointment.

Results of First Investigation under s. 75(1)(a) of the Code (Investigation #2011068)

7. The results of this first s. 75(1)(a) investigation yielded a number of practice concerns, most of which were dealt with in a decision of the ICRC dated June 9, 2014. Specified allegations of professional misconduct relating to missing prescriptions and/or hard copies, however, were referred to the Discipline Committee for further disposition.

8. In particular, this investigation revealed that of 500 narcotic prescriptions reviewed between the period of May 2, 2011 to December 16, 2011, twenty-four (24) prescriptions and/or hard copies were missing or not available.

9. Although the Member subsequently submitted missing records as part of her response to the College's investigation, fourteen (14) of these narcotic prescription hard copies were re-printed approximately two or more years after the initial processing of the prescription or refill. Of these fourteen (14) hard copy narcotic prescriptions, at least five (5) prescriptions related to patients who were family members of the Member.

Inspections Directed by the Accreditation Committee in 2011 and 2012

10. While the first s. 75(1)(a) investigation was taking place, the College's Accreditation Committee ("AC") directed re-inspections at the Pharmacy's premises on three further occasions in 2011 and 2012. A number of recurring and related practice issues were flagged during all re-inspections, in spite of detailed action plans filed by the Member throughout. Notably:

- (a) during the Level II Inspection conducted on June 24, 2011:
 - (i) the Pharmacy's narcotic prescription filing was incomplete and in disarray, contrary to s. 40 of the *Narcotic Control Regulations* ("NCR"). In particular, 38 of 93 prescriptions for narcotics and controlled drugs were missing from the period of December 20, 2010 to April 27, 2011;
 - (ii) of 98 regular prescriptions checked for the period of June 3, 2011 to June 8, 2011, 29 were missing;
 - (iii) at least four prescriptions for narcotics and controlled drugs contained discrepancies related to duplicate prescriptions (i.e. filling prescriptions from copies), prescriptions filled without authorizations (i.e. verbal refills) and no intervals for controlled drugs;
- (b) during the Level III Inspection conducted on November 26, 2011:

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- (i) at least seven prescription discrepancies were identified, including unauthorized reduced quantities. In particular, a reduced quantity of [a controlled drug] was dispensed to the Member's spouse without an authorizing signature on his part;
 - (ii) although all of the Pharmacy's narcotics were stolen during a robbery on March 31, 2011, no inventory count / reconciliation had been carried out since;
 - (iii) it was determined that, in general, no reconciliations were being done to pinpoint any shortages of narcotics, controlled drugs and targeted substances in the Pharmacy's inventory;
- (c) during the Level IV Inspection conducted on August 28, 2012:
- (i) narcotic prescriptions were misfiled;
 - (ii) there were several narcotic and controlled drug prescription discrepancies, including five missing physician signatures; and,
 - (iii) the Pharmacy lacked an audit procedure to reconcile its inventory of narcotics, controlled drugs and targeted substances every six months.

Undertaking given by the Member to the College on January 7, 2013

11. On December 19, 2012, the AC advised the Member that it was concerned that the Pharmacy appeared to be dispensing controlled substances to the Member's spouse. The AC was also concerned that the Member's spouse appeared to be involved in the narcotic and controlled drug reconciliation processes at the Pharmacy.

12. Accordingly, the AC asked the Member to provide the following Acknowledgment / Undertaking ("Undertaking") to the College:

"...

NOW THEREFORE I, Marilyn Adamo, on behalf of myself and the Pharmacy, do hereby undertake that:

the Pharmacy will no longer dispense narcotics or controlled drugs to my spouse; and,

the Pharmacy will no longer involve my spouse in the reconciliation or physical count of narcotics / controlled drugs."

13. On January 7, 2013, the Member, in both her personal capacity and as the Pharmacy's Designated Manager, Director, and Officer, executed this Undertaking (**Exhibit 4**). She did so voluntarily and with an opportunity to obtain independent legal advice about its contents.

14. In executing the Undertaking, the Member acknowledged that in the event of a breach, the AC and/or the ICRC could refer allegations of professional misconduct and/or proprietary misconduct to the College's Discipline Committee.

15. Following receipt of the Undertaking, the AC proceeded to close its inspection file without taking any further action against either the Member or the Pharmacy.

Results of Second Investigation under s. 75(1)(a) of the Code (Investigation #2013460)

16. Meanwhile, on November 6, 2013, yet another s. 75(1)(a) investigation into the Member's practice was commenced, based on information obtained during the first investigation. On November 28, 2013, the ICRC approved this additional appointment of investigators.

17. The results of this second s. 75(1)(a) investigation yielded the following concerns, among others:

- (a) according to the Pharmacy's Patient Profile report for the Member's spouse for the period February 1, 2013 to December 11, 2013, the Pharmacy continued to dispense narcotic and controlled medications to the Member's spouse on a regular basis during the same time period, in breach of the Undertaking entered into;
- (b) at least forty-four (44) of the Member's spouse's narcotics prescriptions were processed and filled by the Pharmacy between February 12, 2013 and December 9, 2013. Of these forty-four (44) hard copy prescriptions, thirty (30) were signed by the Member herself and a pharmacy technician on staff. Eleven (11) narcotics prescriptions were signed by relief pharmacist [Relief Pharmacist 1] alone and the remaining three (3) narcotics prescriptions were signed by both the Member and [Relief Pharmacist 1];
- (c) according to [Relief Pharmacist 1], she was not made aware of the Member's and Pharmacy's Undertaking to the College; and,
- (d) the Member advised that while her spouse was responsible for managing the business and financial side of the Pharmacy, he was no longer involved in the reconciling or counting of narcotics.

Pharmacy's Level I Inspection under the DPRA on January 29, 2014

18. On January 29, 2014, the Pharmacy underwent another routine Level I Inspection pursuant to the DPRA and its Regulations. This Inspection revealed a number of recurring practice concerns, including overdue reconciliations of narcotics, controlled drugs and targeted substances. In particular, the last reconciliation of narcotics, controlled drugs and targeted substances occurred on February 18, 2013. Also, twenty-one controlled drug prescriptions and two narcotic prescriptions for the Member's spouse had been filled and dispensed by the Pharmacy from December 6, 2013 to January 23, 2014.

Referrals of Specified Allegations of Proprietary Misconduct and Professional Misconduct

19. On June 4, 2014, the AC referred specified allegations of proprietary misconduct to the Discipline Committee in respect of both the Pharmacy and the Member (Exhibit 2). On June 9, 2014, the ICRC referred specified allegations of professional misconduct to the Discipline Committee in respect of the Member only (Exhibit 1).

ICRC's Interim Order under s. 37(1) of the Code

20. On July 23, 2014, the ICRC made an interim order, pursuant to s. 37(1) of the *Code*, imposing the following term, condition or limitation on the Member's certificate of registration: The Member cannot dispense medications to herself or family, including, but not limited to, her father-in-law and her husband.

Pharmacy's Re-Inspection Level II under the DPRA on December 15, 2014

21. On December 15, 2014, the Pharmacy underwent a Level II Re-Inspection pursuant to the DPRA and its Regulations. This Re-Inspection revealed that the Level I Inspection practice concerns relating to the Pharmacy's overdue reconciliations of narcotics, controlled drugs and targeted substances were assessed as "Meets Standards." This Re-Inspection also revealed that no narcotic or controlled drug prescriptions were found for the Member's spouse.

LAW RELATING TO NARCOTICS RECORD KEEPING

22. The *Narcotic Control Regulations* ("NCR") require a pharmacist to keep and retain records relating to narcotic sales and purchases, including narcotic prescriptions and/or hardcopies.

LAW RELATING TO PROTECTING DRUGS AGAINST LOSS OR THEFT

23. The *NCR*, as well as the *Food and Drug Regulations* and the *Benzodiazepines and Other Targeted Substances Regulations*, also require a pharmacist to take all reasonable steps that are necessary to protect narcotics, controlled drugs, and targeted substances on her premises or under her control against loss or theft.

ADMISSIONS OF PROFESSIONAL MISCONDUCT AND PROPRIETARY MISCONDUCT

24. The Member admits that she committed the acts of professional misconduct as alleged in the Notice of Hearing dated July 16, 2014 (**Exhibit 1**).

25. Likewise, the Member admits, on behalf of herself and the Pharmacy, that she and the Pharmacy committed the acts of proprietary misconduct as alleged in the Amended Notice of Hearing dated August 5, 2014 (**Exhibit 2**).

26. In particular, the Member admits that while engaged in the practice of pharmacy as director, shareholder Designated Manager and/or dispensing pharmacist at the Pharmacy, she: (i) failed to maintain a standard of practice of the profession; and (ii) engaged in conduct relevant to the practice of pharmacy that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional:

- (a) with respect to dispensing and/or allowing the Pharmacy to dispense narcotics and/or controlled drugs to her spouse in breach of the Undertaking entered into on January 7, 2013, from on or about February 1, 2013 to on or about December 31, 2013.

27. The Member also admits that while engaged in the practice of pharmacy as director, shareholder Designated Manager and/or dispensing pharmacist at the Pharmacy, she: (i) failed to maintain a standard of practice of the profession; (ii) failed to keep records as required respecting her patients; (iii) contravened s. 40 of the *Narcotic Control Regulations*, C.R.C. c. 1041, as amended; and, (iv) engaged in conduct relevant to the practice of pharmacy that, having regard to all the circumstances, would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional:

- (a) with respect to failing to keep records as required of narcotic prescriptions, from on or about May 1, 2011 to on or about December 31, 2011.

28. The Member admits that she and the Pharmacy contravened s. 43 of the *Narcotic Control Regulations*, c. 1041, as amended, under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, and/or s. G.03.012 of the *Food and Drug Regulations*, C.R.C., c. 870, as amended, to the *Food and Drugs Act*, R.S.C. 1985, c. F-27, as amended, and/or s. 7(1)(b) of the *Benzodiazapines and Other Targeted Substances Regulations*, S.O.R. / 2000-271 under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended:

(a) in that they failed to take all reasonable steps that were necessary to protect narcotics, controlled drugs and targeted substances on the premises of the Pharmacy or under their control against loss or theft or to take steps necessary to ensure their security, including failure to count and reconcile narcotics, controlled drugs and targeted substances at least every six months on or about February 18, 2013 to on or about January 29, 2014.

29. Likewise, the Member admits that she and the Pharmacy, in contravening s. 43 of the *Narcotic Control Regulations*, c. 1041, as amended, under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, and/or s. G.03.012 of the *Food and Drug Regulations*, C.R.C., c. 870, as amended, to the *Food and Drugs Act*, R.S.C. 1985, c. F-27, as amended, and/or s. 7(1)(b) of the *Benzodiazapines and Other Targeted Substances Regulations*, S.O.R. / 2000-271 under the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, as amended, (i) engaged in conduct relevant to the business of pharmacy that would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional:

(a) with respect to failing to take all reasonable steps that were necessary to protect narcotics, controlled drugs and targeted substances on the premises of the Pharmacy or under their control against loss or theft or to take steps necessary to ensure their security, including failure to count and reconcile narcotics, controlled drugs and targeted substances at least every six months on or about February 18, 2013 to on or about January 29, 2014; and,

(b) with respect to dispensing and/or allowing the Pharmacy to dispense narcotics and/or controlled drugs to the Member's spouse in breach of an Undertaking entered into on January 7, 2013, from on or about December 1, 2013 to on or about January 28, 2014, as listed in Appendix A to **Exhibit 2**.

V. Decision on Findings

[11] The panel considered the Agreed Statement of Facts and decided that the evidence contained in that document, together with the Member's admissions, are sufficient for the

College to discharge its onus and prove the allegations set out in the two Notices of Hearing on a balance of probabilities.

[12] Accordingly, the panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1, 2, 3, 4, 5, and 6 of the Notice of Hearing dated July 16, 2014.

[13] Additionally, the panel finds that the Member and Lifestyle Pharmacy & Candy Bar I.D.A., 2250556 Ontario Inc. committed acts of proprietary misconduct as stated in paragraphs 1 and 2 of the Amended Notice of Hearing, dated August 5, 2014

VI. Reasons for Findings

[14] The reason for the Panel's decision is that the facts set out in the Agreed Statement of Facts support the Member's admissions of professional and proprietary misconduct.

VII. Joint Submission on Order and Costs

A. Proposed Order

[15] Counsel for the College advised the Panel that an agreement had been reached on the appropriate Order in this case and filed a Joint Submission on Order as Exhibit 5, which provided as follows:

1. The Ontario College of Pharmacists ("College"), Ms. Marilyn Adamo ("Member") and 2250556 Ontario Inc. c.o.b. as Lifestyle Pharmacy and Candy Bar IDA in Windsor, Ontario ("Pharmacy") agree and jointly submit that this Panel of the Discipline Committee ("Panel") make the following order:

- (a) an Order requiring the Member to appear before the Panel to be reprimanded immediately following the hearing on June 2, 2015. This reprimand is to be made available on the College's website and/or Public Register;
- (b) an Order directing the Registrar to suspend the Member's certificate of registration for a period of four (4) months, one (1) month of which shall be remitted if the Member complies with subparagraphs 1(c)(i) and (ii) of this Order by June 6, 2016. The first three (3) months of the suspension shall commence on July 15, 2015, and shall run without interruption until October 15, 2015, inclusive. Any further period of suspension which is not remitted shall be served beginning on June 6, 2016 and shall run without interruption until July 5, 2016, inclusive;
- (c) an Order directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

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- (i) the Member is to successfully complete the Professional Problem Based Ethics (ProBE) Program offered by the Center for Personalized Education for Physicians,¹ with an unconditional pass, at the Member's own expense;
 - (ii) the Member shall, at her own expense, attend at least two (2) mentoring sessions with a practice mentor selected by the College's Manager of Investigations and Resolutions ("Mentor") at the Mentor's primary place of practice, following the Member's own return to the practice of pharmacy on October 15, 2015.

Prior to the mentoring sessions, the Member must provide the Mentor with the following:

- (a) a copy of both Notices of Hearing dated July 16, 2014 and August 5, 2014;
- (b) a copy of the Agreed Statement of Facts dated June 2, 2015;
- (c) a copy of the Joint submission on Order dated June 2, 2015;
- (d) a copy of the Discipline Committee's Decision and Reasons, when available; and
- (e) a copy of the Order of the Discipline Committee, when available.

The Member's sessions with the Mentor shall address:

- (A) the Member's conduct as described in the Agreed Statement of Facts;
- (B) proper record keeping of narcotics, controlled drugs and targeted substances; and,
- (C) protection, including counting and reconciliation, of a pharmacy's inventory of narcotics, controlled drugs and targeted substances.

At the conclusion of the mentoring sessions, the Member must provide a written direction to the Mentor to forward his or her report to the Registrar within thirty (30) days from the date of the last mentoring session. The Member's written direction to the Mentor shall specify that the Mentor's Report ("Report") shall:

- (1) confirm the dates of all sessions attended by the Member;

¹ See <http://www.cpepdoc.org/programs-courses/probe-ontario> for a fulsome Course description and for information on how to sign up for the ProBE Course.

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- (2) confirm that the topics identified in subparagraphs 1(c)(ii)(A), (B) and (C) were covered with the Member; and,
 - (3) include an assessment as to whether the Member has the requisite skills and knowledge to complete regular counts and reconciliations of narcotics, controlled drugs and targeted substances inventory on her own.
- (iii) the Member shall not:
- (1) act as a Designated Manager in any pharmacy; or,
 - (2) practise independently in the community;
- until the terms, conditions and limitations at paragraph 1(c)(i) and (ii) above are removed, as provided for in subparagraph 1(c)(vi) below;
- (iv) neither the Member nor the Pharmacy shall dispense narcotics, controlled drugs or targeted substances to the Member herself or her family members, including the Member's spouse [Spouse];
- (v) the Member's practice is to be monitored by way of a maximum of four (4) unannounced inspections by a representative of the College during a twenty-four (24) month period commencing on July 6, 2016, at the Member's expense. The Member shall fully cooperate with these inspections and shall reimburse the College \$600 for each inspection, to be paid immediately after each inspection. These monitoring inspections are in addition to any routine inspections conducted by the College pursuant to s. 148 of the *Drug and Pharmacies Regulation Act*, R.S.O. 1990 c. H.4, as amended;
- (vi) the terms, conditions and limitations referred to in subparagraphs (i), (ii) and (iii):
- (1) are in addition to, and apply irrespective of any other Order made by this Committee or any other Committee of the College; and,
 - (2) shall be removed when the Registrar receives both satisfactory confirmation of the Member's successful completion of the ProBE Program and a satisfactory Report confirming that the Member has the requisite skills and knowledge to complete regular counts and reconciliations of narcotics, controlled drugs and targeted substances inventory on her own.

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- (vii) The term, condition and limitation referred to in subparagraph (v) shall be automatically removed on July 6, 2018;
- (d) an Order requiring the Member to pay the College's costs fixed in the amount of \$5,000 by way of five (5) monthly installments of \$1,000 each. Such monthly installments are to be made payable by certified cheque to the Ontario College of Pharmacists and will commence on the 2nd day of July, 2015 and are to continue on the 2nd day of each month thereafter, with the last installment payment due on November 2, 2015. If a payment date falls on a public holiday or weekend, the applicable installment payment is due on the next business day.
2. **CLARITY NOTE:** The requirement to complete the remedial programs specified in paragraphs 1(c) (i) and (ii) above as terms, conditions or limitations on the Member's certificate of registration cannot be relieved by serving the remitted portion of the suspension referred to in paragraph 1(b).
3. The Member acknowledges that pursuant to section 56 of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, the decision and reasons, or a summary thereof, will be published in the College's annual report and may be published in any other publication of the College with the Member's name.
4. The Member acknowledges that this Joint Submission as to Order is not binding upon the Panel.
5. The Member acknowledges that she has had the chance to receive, and in fact has received, independent legal advice.

B. College's Submissions

- [16] Counsel for the College submitted in support of the Joint Submission on Order, that the Panel should consider an appropriate order that would address matters of public protection, general and specific deterrence and provide appropriate opportunity for remediation for the Member.
- [17] Counsel for the College submitted that the Joint Submission on Order was agreed upon by the parties involved and negotiated by competent counsel and although not binding on the Panel, it should not be rejected unless it is contrary to public interest and would bring the administration of justice into disrepute. [*R. v. Haufe*, 2007 ONCA 515 CanLII]
- [18] Counsel for the College submitted that public protection will be served since practice restrictions to not act as a Designated Manager in any pharmacy, or practice independently in the community until the terms conditions and limitations at paragraph 1(c)(i) and (ii) of the order are fulfilled.

- [19] Furthermore, general deterrence for the profession will be achieved through a four month suspension which will send a strong message to the pharmacy community and emphasize the importance of complying with any undertaking agreed to with the College
- [20] Specific deterrence will be achieved through a four month suspension to be served with one month remitted, the mentorship program ordered, costs ordered, an oral reprimand and an unconditional pass at the ProBE course.
- [21] Counsel for the College submitted that rehabilitation of the Member will be achieved through the completion of the mentorship provision which would cover, but is not limited to, proper record keeping and proper counting and reconciliation of narcotics and controlled drugs
- [22] Mitigating factors submitted by Counsel for the College include no history with the Discipline Committee, cooperation with College proceedings, and admission of allegations in the Notice of Hearing saving valuable time and expenses that may be associated with a contested hearing.
- [23] Aggravating factors submitted by Counsel for the College include four levels of inspections that led to an Undertaking entered to in 2013 which was consequently breached. Counsel submitted that this reflected very poorly on the Member's governability.
- [24] Counsel for the College submitted that there were three types of misconduct present which include a breach of undertaking, a failure to maintain accurate narcotic records, and failure to count and reconcile narcotic, controlled and targeted substances which resulted in the pharmacy's inability to protect against loss and theft.
- [25] Counsel presented *Ontario (College of Physicians and Surgeons of Ontario) v. Wu, H.*, 2013 ONCPSD 22 (CanLII) and *Bayang v. College of Physicians and Surgeons of Ontario* (1993), OAC 141 (Ont. Div. Ct.) relating to a breach of an undertaking.
- [26] Counsel presented *Ontario (College of Pharmacists) v. Barrett*, 2015 ONCPDC 1(CanLII) relating to controlling and maintaining accurate narcotic records. Barrett failed to take all reasonable steps to protect narcotics and keep records of narcotic sales and purchases.
- [27] Counsel presented *Ontario (College of Pharmacists) v. Zachidniak*, 2015 ONCPDC 2 (CanLII) and *Barrett*, relating to counting and reconciling narcotic, controlled and targeted substances

C. Member's Submissions

- [28] Counsel for the Member submitted in support of the Joint Submission on Order that several Member specific mitigating circumstances should be considered when accepting Order presented.

- The pharmacy opened in December 2010 at which time the Member was the only one operating it with no additional staff due to financial hardship.
- The Member was limited on the ability of hiring staff but she was committed to the practice of pharmacy and to provide care for her patients
- However, the financial stability achieved now has allowed the Member to hire outside staff allowing her to be compliant with College obligations which is evident from the last inspection
- In addition to the challenges faced by the Member in operating a new pharmacy, counsel presented a letter from her doctor relating to significant levels of stress and family health issues

[29] A brief was submitted containing various letters of acknowledgement of the exceptional service provided to her patients and the community. This was further recognized by her receiving “The Biz Dedicated To Senior’s Service” award in 2013.

[30] *Ontario (College of Pharmacists) v. Fahmy*, 2014 ONCPDC 8 (CanLII) and *Ontario (College of Pharmacists) v. Guirguis*, 2014 ONCPDC 4 (CanLII) cases relating to practice issues were presented in reference to the way this member was operating the pharmacy shortly after opening. Counsel submitted that in this case the lack of maintenance of standards of practice was due to a lack of resources and did not cause any risk to the public. Counsel submitted that even though there were clear issues with the Member’s practice, they are less severe compared to those found in the presented case law.

[31] *Ontario (College of Physicians and Surgeons) v. Maytham*, 2011 ONSC 6875 (CanLII), *Ontario (College of Physicians and Surgeons) v. Gay*, 2005 OCPSD 2 (CanLII) and *Ontario (College of Physicians and Surgeons of Ontario) v. Saul, D. G.*, 2014 ONCPSD 29 were presented relating to breach of undertaking leading to shorter durations in suspension.

[32] In response to submissions made by the Member’s counsel, Counsel for the College submitted that *Gay* and *Re Saul*, both related primarily to breach of undertaking. However, this case also includes misconduct for failure to keep records and protect narcotic and controlled substances inventory from theft or loss.

VIII. The Order

[33] The Panel accepts the Joint Submission on Order and accordingly makes an Order:

1(a) an Order requiring the Member to appear before the Panel to be reprimanded immediately following the hearing on June 2, 2015. This reprimand is to be made available on the College’s website and/or Public Register;

1(b) an Order directing the Registrar to suspend the Member’s certificate of registration for a period of four (4) months, one (1) month of which shall be remitted if

the Member complies with subparagraphs 1(c)(i) and (ii) of this Order by June 6, 2016. The first three (3) months of the suspension shall commence on July 15, 2015, and shall run without interruption until October 15, 2015, inclusive. Any further period of suspension which is not remitted shall be served beginning on June 6, 2016 and shall run without interruption until July 5, 2016, inclusive;

1(c) an Order directing the Registrar to impose the following terms, conditions and limitations on the Member's certificate of registration:

- (i) the Member is to successfully complete the Professional Problem Based Ethics (ProBE) Program offered by the Center for Personalized Education for Physicians,² with an unconditional pass, at the Member's own expense;
- (ii) the Member shall, at her own expense, attend at least two (2) mentoring sessions with a practice mentor selected by the College's Manager of Investigations and Resolutions ("Mentor") at the Mentor's primary place of practice, following the Member's own return to the practice of pharmacy on October 15, 2015.

Prior to the mentoring sessions, the Member must provide the Mentor with the following:

- (a) a copy of both Notices of Hearing dated July 16, 2014 and August 5, 2014;
- (b) a copy of the Agreed Statement of Facts dated June 2, 2015;
- (c) a copy of the Joint submission on Order dated June 2, 2015;
- (d) a copy of the Discipline Committee's Decision and Reasons, when available; and
- (e) a copy of the Order of the Discipline Committee, when available.

The Member's sessions with the Mentor shall address:

- (A) the Member's conduct as described in the Agreed Statement of Facts;
- (B) proper record keeping of narcotics, controlled drugs and targeted substances; and,

² See <http://www.cpepdoc.org/programs-courses/probe-ontario> for a fulsome Course description and for information on how to sign up for the ProBE Course.

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- (C) protection, including counting and reconciliation, of a pharmacy's inventory of narcotics, controlled drugs and targeted substances.

At the conclusion of the mentoring sessions, the Member must provide a written direction to the Mentor to forward his or her report to the Registrar within thirty (30) days from the date of the last mentoring session. The Member's written direction to the Mentor shall specify that the Mentor's Report ("Report") shall:

- (1) confirm the dates of all sessions attended by the Member;
- (2) confirm that the topics identified in subparagraphs 1(c)(ii)(A), (B) and (C) were covered with the Member; and,
- (3) include an assessment as to whether the Member has the requisite skills and knowledge to complete regular counts and reconciliations of narcotics, controlled drugs and targeted substances inventory on her own.

(iii) the Member shall not:

- (1) act as a Designated Manager in any pharmacy; or,
- (2) practise independently in the community;

until the terms, conditions and limitations at paragraph 1(c)(i) and (ii) above are removed, as provided for in subparagraph 1(c)(vi) below;

- (iv) neither the Member nor the Pharmacy shall dispense narcotics, controlled drugs or targeted substances to the Member herself or her family members, including the Member's spouse [Spouse];
- (v) the Member's practice is to be monitored by way of a maximum of four (4) unannounced inspections by a representative of the College during a twenty-four (24) month period commencing on July 6, 2016, at the Member's expense. The Member shall fully cooperate with these inspections and shall reimburse the College \$600 for each inspection, to be paid immediately after each inspection. These monitoring inspections are in addition to any routine inspections conducted by the College pursuant to s. 148 of the *Drug and Pharmacies Regulation Act*, R.S.O. 1990 c. H.4, as amended;
- (vi) the terms, conditions and limitations referred to in subparagraphs (i), (ii) and (iii):

- (1) are in addition to, and apply irrespective of any other Order made by this Committee or any other Committee of the College; and,
- (2) shall be removed when the Registrar receives both satisfactory confirmation of the Member's successful completion of the ProBE Program and a satisfactory Report confirming that the Member has the requisite skills and knowledge to complete regular counts and reconciliations of narcotics, controlled drugs and targeted substances inventory on her own.

(vii) The term, condition and limitation referred to in subparagraph (v) shall be automatically removed on July 6, 2018;

1(d) an Order requiring the Member to pay the College's costs fixed in the amount of \$5,000 by way of five (5) monthly installments of \$1,000 each. Such monthly installments are to be made payable by certified cheque to the Ontario College of Pharmacists and will commence on the 2nd day of July, 2015 and are to continue on the 2nd day of each month thereafter, with the last installment payment due on November 2, 2015. If a payment date falls on a public holiday or weekend, the applicable installment payment is due on the next business day.

2. **CLARITY NOTE:** The requirement to complete the remedial programs specified in paragraphs 1(c) (i) and (ii) above as terms, conditions or limitations on the Member's certificate of registration cannot be relieved by serving the remitted portion of the suspension referred to in paragraph 1(b).

IX. Reasons for Order

[34] In determining the appropriate order in this particular case we remind ourselves that the primary purpose of these proceedings is protection of the public; however, in addition to the public interest we must also consider both the interests of the profession as a whole as well as the particular circumstances of the individual member.

[35] When we consider the public interest we are mindful that the public must have confidence in the profession's ability to regulate itself effectively and in a manner that protects the public.

[36] When we consider the interests of the profession we recognize that this Panel owes a duty to enforce and maintain the high standards of practice that the public expects of our members and that members expect of themselves. In each case the Panel must consider the extent to which a message to the profession is required to make it clear that the conduct in question will not be tolerated.

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- [37] And thirdly, we must consider the unique and particular circumstances of the Member. The order must be appropriate, fair and reasonable to the Member's circumstances and to the nature of the admitted allegations.
- [38] In reaching our decision, the Panel considered that the order is appropriate based on the Member's specific circumstances and the case law presented to the Panel by both counsel
- [39] Public protection will be served by the imposition of practice restrictions on the Member.
- [40] General Deterrence will be achieved through a four month suspension which will send a strong message to the pharmacy community to maintain standards of practice, maintain accurate records, especially for narcotic and controlled substances, and emphasize the importance of complying with any undertaking agreed to with the College
- [41] Specific deterrence will be achieved through a four month suspension to be served with one month remitted, the mentorship program ordered, an oral reprimand and an unconditional pass at the ProBE course.
- [42] Rehabilitation of the Member will be achieved through the completion of the mentorship provision which would cover, but is not limited to, proper record keeping and proper counting and reconciliation of narcotics and controlled drugs.
- [43] Mitigating factors highlighted include:
- A. No history with the Discipline Committee;
 - B. Complete cooperation with College proceedings, and admission of allegations saving valuable time and expenses that may be associated with a contested hearing; and
 - C. Reference letters provided by the Member's patients outlining her excellent patient care.
- [44] Aggravating factors highlighted include
- A. Four levels of inspections led to an Undertaking entered in 2013 which was consequently breached which reflects poorly on the Member's governability; and
 - B. Although no risk to the public occurred, there was a significant potential risk of divergence of narcotics and controlled substances due to lack of monitoring, recordkeeping and inventory control.

I, Akhil Pandit Pautra sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Chairperson

Date

Panel Members

Lavinia Adam, R.Ph.T.

Don Organ, R.Ph.

Javaid Khan, Public Member

Sylvia Moustacalis, Public Member

APPENDIX A
Prescriptions Dispensed by Date

Dispensing in breach of undertaking

Item	Date Dispensed	Rx#	Drug	Patient	Physician
1.	Dec. 6, 2013	N203139	[Controlled drug]	[Member's Spouse]	[Physician A]
2.	Dec. 9, 2013	N203146	[Narcotic]	[Member's Spouse]	[Physician A]
3.	Dec. 18, 2013	N203213	[Controlled drug]	[Member's Spouse]	[Physician A]
4.	Dec. 19, 2013	N203214	[Controlled drug]	[Member's Spouse]	[Physician A]
5.	Dec. 20, 2013	N203225	[Controlled drug]	[Member's Spouse]	[Physician A]
6.	Dec. 21, 2013	N203226	[Controlled drug]	[Member's Spouse]	[Physician A]
7.	Dec. 22, 2013	N203230	[Controlled drug]	[Member's Spouse]	[Physician A]
8.	Dec. 23, 2013	N203231	[Controlled drug]	[Member's Spouse]	[Physician A]
9.	Dec. 24, 2013	N203243	[Controlled drug]	[Member's Spouse]	[Physician A]
10.	Dec. 25, 2013	N203245	[Controlled drug]	[Member's Spouse]	[Physician A]
11.	Dec. 26, 2013	N203249	[Controlled drug]	[Member's Spouse]	[Physician A]
12.	Dec. 27, 2013	N203250	[Controlled drug]	[Member's Spouse]	[Physician A]
13.	Dec. 28, 2013	N203253	[Controlled drug]	[Member's Spouse]	[Physician A]
14.	Dec. 29, 2013	N203260	[Controlled drug]	[Member's Spouse]	[Physician A]
15.	Dec. 30, 2013	N203262	[Controlled drug]	[Member's Spouse]	[Physician A]
16.	Dec. 31, 2013	N203266	[Controlled drug]	[Member's Spouse]	[Physician A]
17.	Jan. 1, 2014	N203277	[Controlled drug]	[Member's Spouse]	[Physician A]
18.	Jan 2, 2014	N203278	[Controlled drug]	[Member's Spouse]	[Physician A]
19.	Jan. 3, 2014	N203279	[Controlled drug]	[Member's Spouse]	[Physician A]
20.	Jan. 4, 2014	N203282	[Controlled drug]	[Member's Spouse]	[Physician A]
21.	Jan. 16, 2014	N203316	[Controlled drug]	[Member's Spouse]	[Physician A]
22.	Jan 22, 2014	N203329	[Controlled drug]	[Member's Spouse]	[Physician A]
23.	Jan. 23, 2014	N203338	[Narcotic]	[Member's Spouse]	[Physician A]