

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, BEING CHAPTER H-7
OF THE REVISED STATUTES OF ALBERTA, 2000**

**AND IN THE MATTER OF A TRIBUNAL HEARING REGARDING THE CONDUCT OF KEVIN MCNIFF,
A REGULATED MEMBER OF THE ALBERTA COLLEGE OF PARAMEDICS**

**DECISION OF THE HEARING TRIBUNAL OF THE
ALBERTA COLLEGE OF PARAMEDICS – FILE #23-26**

The hearing of the Hearing Tribunal was held on September 16, 2024, via videoconference.

Present were:

The members of the Hearing Tribunal of the Alberta College of Paramedics (the “College”):

B. Lamarche, Chair, Regulated Member;
D. Mroszczak, Regulated Member;
A. Otway, Public Member; and
S. Gingrich, Public Member.

Also present were:

J. Kirk, Complaints Director for the College;
B. Maxston, K.C., Legal Counsel for the Complaints Director;

K. McNiff, Investigated Member;

A. Chisholm, Independent Legal Counsel for the Hearing Tribunal;
M. Connell, Hearings Director for the College; and
C. Forster, Court Reporter.

Opening of the Hearing

1. The hearing opened and all participants present introduced themselves for the record.

Preliminary Issue

2. The parties advised that there were no objections to the members of the Hearing Tribunal and no objections of a preliminary or jurisdictional nature. Neither party applied to close the hearing.

Amended Notice of Hearing

3. At the hearing, the Allegations against Mr. McNiff were as follows:

1) On or about March 29, 2023, to April 2, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you:

- a) Improperly removed fentanyl from your employer's custody; and/or
- b) Lied to a colleague about the purpose for maintaining an IV in your arm during your work rotation,

which conduct constitutes unprofessional conduct as defined in section 1(1)(pp)(ii), (iii), and/or (xii) of the *Health Professions Act* and/or contravenes Standard of Practice 1.1 and/or Code of Ethics provisions 3.2 and 3.3.

2) On or about March 29, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you breached your employer's *Storage and Dispensing: International SOS Procedure* by:

- a) Failing to properly destroy controlled medications;
- b) Failing to properly document the destruction of controlled medications; and/or
- c) Failing to have the destruction of controlled medications witnessed,

which conduct constitutes unprofessional conduct as defined in section 1(1)(pp)(ii), (iii), and/or (xii) of the *Health Professions Act* and/or contravenes Standard of Practice 1.1 and/or Code of Ethics provisions 3.2 and 3.3.

3) On or about March 29, 2023, to April 2, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you breached your employer's *Drug and Alcohol Program Policy* by:

- a) Self-administering controlled substances, prescription drugs, and/or non-prescription drugs during your work rotation including, but not limited to, methylenedioxymethamphetamine ("MDMA") and/or tetrahydrocannabinol ("THC");
- b) Failing to notify your supervisor of your use during your work rotation of controlled substances, prescription drugs, and/or non-prescription drugs; and/or
- c) Refusing to participate in a mandatory alcohol and drug test,

which conduct constitutes unprofessional conduct as defined in section 1(1)(pp)(ii), (iii), and/or (xii) of the *Health Professions Act* and/or contravenes Standard of Practice 1.1 and/or Code of Ethics provisions 3.2, 3.3, and 3.4.

4) In relation to the events described in charges 1, 2, and 3 above, you failed to immediately self report to the Registrar of the Alberta College of Paramedics:

- a) The relevant details of any physical, cognitive, psychological, and/or emotional condition that may negatively impact your work or is reasonably likely to negatively

impact your work in the future including, but not limited to, post traumatic stress disorder (“PTSD”) and/or a narcotics addiction; and/or

- b) Your deviation from the College’s Code of Ethics, Standards of Practice, and/or any other policies or procedures that govern the paramedic profession,

which conduct constitutes unprofessional conduct as defined in section 1(1)(pp)(ii), (iii), and/or (xii) of the *Health Professions Act* and/or contravenes Standards of Practice 1.1 and 1.4 and/or Code of Ethics provisions 3.2, 3.3, 3.4, and 4.4.

Documents Before the Hearing Tribunal

4. The following documents were marked as Exhibits to the hearing:

- Exhibit 1: Amended Notice of Hearing, Notice to Attend, and Notice to Produce (the “Notice of Hearing”), dated May 21, 2024;
- Exhibit 2: Employer Complaint Letter, dated April 6, 2023;
- Exhibit 3: Email from K. McNiff to M.M., dated April 25, 2023;
- Exhibit 4: International SOS Investigation Report (the “Investigation Report”), dated April 24, 2023;
- Exhibit 5: J. Kirk Section 118 Direction email to K. McNiff, dated May 4, 2023;
- Exhibit 6: K. McNiff response to Section 118 email, dated May 24, 2023;
- Exhibit 7: *Drug and Alcohol Program Policy*, dated November 11, 2021; and
- Exhibit 8: *Storage and Dispensing: International SOS Procedure*, dated June 1, 2022.

Opening Statement of the Complaints Director

5. Mr. Maxston advised that the Amended Notice of Hearing (Exhibit 1) contained four charges of unprofessional conduct against Mr. McNiff and reviewed each of the charges for the Hearing Tribunal.

6. Mr. Maxston submitted that the onus is on the Complaints Director to prove the facts that relate to the charges and that those facts constitute unprofessional conduct on a balance of probabilities.

7. He referred the Hearing Tribunal to section 1(1)(pp) of the *Health Professions Act* (the “HPA”), which defines “unprofessional conduct” in part as:

(pp) “unprofessional conduct” means one or more of the following, whether or not it is disgraceful or dishonourable:

- (ii) contravention of this Act, a code of ethics or standards of practice;
- (iii) contravention of another enactment that applies to the profession;
- (xii) conduct that harms the integrity of the regulated profession;

8. Mr. Maxston clarified that the other enactment he is referring to in relation to section 1(1)(pp)(iii) is a controlled substance legislation.

9. He also explained that the Hearing Tribunal could consider the College’s Code of Ethics and Standards of Practice and use its knowledge, training, and experience as members of the profession, as well as its common sense and good judgement, to assess Mr. McNiff’s conduct.

10. Mr. Maxton advised the Hearing Tribunal of section 79(5) of the HPA that states the Hearing Tribunal may receive evidence in any matter it sees fit and is not bound by the rules of evidence applicable to court proceedings. He emphasized that the Hearing Tribunal’s task is to properly assess the weight of the evidence.

11. Mr. Maxston indicated that the Complaints Director intended to call four witnesses. He briefly summarized the evidence he expected each witness to provide.

12. Mr. Maxston concluded his opening statement by summarizing the case from the Complaints Director’s perspective. He anticipated that Mr. McNiff’s testimony would relate to his PTSD and a narcotic addiction, and how those conditions may relieve him of responsibility for his actions. Mr. Maxton referred the Hearing Tribunal to the Alberta Court of Appeal decision in *Wright v College and Association of Registered Nurses of Alberta (Appeals Committee)*, 2012 ABCA 267 (“*Wright*”) which holds that while a hearing tribunal can look to medical conditions and addictions during the penalty phase of a hearing, those conditions do not excuse a member from responsibility for their unprofessional conduct.

Opening Statement of the Investigated Member

13. Mr. McNiff indicated he had a letter of incident, with admissions related to his drug use. Mr. McNiff further admitted to his failings related to proper documentation.

14. However, Mr. McNiff clarified that at no time did he refuse to take a drug test, and rather, when he was called to complete one, he had a family emergency requiring him to leave work. Mr. McNiff also stated that he does not admit to removing any narcotics from his employer’s custody.

15. Mr. McNiff emphasized that his conditions do not excuse his behaviour, but that he requests some understanding from the College.

Witnesses

16. The following individuals were called as witnesses for the Complaints Director over the course of the hearing:

- 1) Kristen Faas;
- 2) Peter Tate;
- 3) Eric Einagel; and
- 4) Tim Ford.

17. Mr. McNiff did not call any witnesses but chose to testify on his own behalf.

18. The following is a summary of the testimony given by each witness.

Kristen Faas

19. Ms. Faas stated that she has been the Health, Safety, and Compliance Manager for International SOS for approximately seven years. Ms. Faas explained that she is responsible for supporting the medical services management team with all safety and quality matters, including leading incident investigations and other safety and quality-related tasks.

20. Ms. Faas confirmed that she was familiar with Mr. McNiff, who was an advanced care paramedic employed by International SOS. Ms. Faas briefly outlined the duties of an advanced care paramedic.

21. Ms. Faas discussed the Employer Complaint Letter she submitted to the College (Exhibit 2) as part of her duty to report any unprofessional conduct.

22. Ms. Faas testified that on March 29, 2023, Mr. McNiff presented to a clinic on site to replace two ampoules of fentanyl but that no ampoules were given back to the lead healthcare practitioner at the clinic.

23. Ms. Faas stated that on March 31, 2023, Mr. McNiff asked a co-worker to start an IV on him under the pretense of practice or training, and afterwards, when the co-worker went to remove the IV, Mr. McNiff stated he wanted to leave the IV in to facilitate the administration of kidney medication on himself. Ms. Faas noted that there was no witness to the administration of the kidney medication or knowledge as to when the IV was removed after this time.

24. Ms. Faas detailed that on April 1, 2023, a discrepancy was found in the Emergency Response Team ("ERT") controlled medication log whereby two ampoules of fentanyl were listed as either expired or removed on March 29, 2023, without properly documenting the destruction of the controlled substance. She confirmed that there were no witnesses to the wastage of the two ampoules of fentanyl when asking members of the ERT.

25. Ms. Faas stated that when Mr. McNiff was asked about the discrepancy, he stated that he destroyed the fentanyl in the ERT station sink and that the ampoules were tossed in the garbage rather than a sharps container.

26. Ms. Faas then called Mr. Tate, who was the supervisor at the time, to initiate internal reporting and investigatory procedures. She believed Mr. McNiff may have kept the ampoules fentanyl that were reissued by the clinic for his personal use. The International SOS operations manager was notified, and a reasonable cause drug test was discussed with management. Ms. Faas noted that Mr. McNiff then called Mr. Tate on the phone, stating that he had a family emergency and was leaving the worksite.

27. Ms. Faas stated that the International SOS operations manager called Mr. McNiff to inform him of the request for a drug and alcohol test, which he refused due to his family emergency. Ms. Faas indicated that when the drug test was rescheduled, Mr. McNiff said he would not be able to attend and that regardless, he would not pass it.

28. Ms. Faas detailed that security was then contacted, and a site ban was issued for Mr. McNiff. She explained that as security and Mr. Tate packed up Mr. McNiff's belongings, a container with an IV lock and what appeared to be an 18-gauge blunt needle was discovered. Ms. Faas indicated that the RCMP and Office of Controlled Substances Canada were also notified because of the potential theft of a controlled substance.

29. Ms. Faas then discussed the Investigation Report (Exhibit 4) that she prepared in response to the discrepancy in the controlled medication log and Mr. McNiff's conduct both before and after the events. Ms. Faas provided general details of the investigation process.

30. During her investigation, Ms. Faas found that as Mr. Tate began calling ERT members to see if they had witnessed the destruction of the controlled medication, witness accounts indicated that Mr. McNiff had been in near proximity to Mr. Tate during the conversations. Within the hour, Mr. McNiff asked another co-worker to drive him to the site parking lot as he had a family emergency.

31. Ms. Faas testified that an audit was conducted into all the medication on the site which confirmed that no fentanyl on site was set to expire at the end of March. Ms. Faas clarified that the expiration date was verified through the pharmacy records of all orders of controlled substances and that the removed fentanyl in question was listed as set to expire in May.

32. Ms. Faas continued by stating that on April 2, 2023, Mr. McNiff sent a text to a co-worker admitting to his drug abuse. Ms. Faas also indicated there were contradictions between witness statements and Mr. McNiff's statements related to the destruction of the fentanyl.

33. Ms. Faas detailed a recorded interview she had with Mr. McNiff on April 10, 2023, where he stated that he had a drug addiction issue and that the IV set up by the co-worker on March 31 was for another drug to be self-administered during his working rotation. Ms. Faas

stated that Mr. McNiff detailed his drug abuse resulted from dental work he undertook in Mexico in 2023 but that the fentanyl in question was improperly destroyed and not used by him or removed from the site.

34. Ms. Faas stated that the conclusion of the Investigation Report included findings that Mr. McNiff had contravened section 7.12 of the *Storage and Dispensing: International SOS Procedure* (Exhibit 8), by failing to follow the proper procedure for destroying a controlled substance.

35. Ms. Faas testified that it was clear Mr. McNiff had been taking controlled substances during his employment on-site and that he failed to comply with his employer's documentation procedures.

36. Ms. Faas confirmed that at the time of her report to the College, Mr. McNiff was initially suspended from work for six days.

37. Ms. Faas discussed International SOS' *Drug and Alcohol Program Policy* (Exhibit 7). Ms. Faas confirmed that the *Drug and Alcohol Program Policy* requires employees to take a reasonable cause drug test when requested and explained that a failure to do so would result in the termination of one's employment.

38. During cross-examination, Ms. Faas indicated that, to her knowledge, Mr. McNiff did not complete a drug test within the time it was requested to measure the possibility of drugs within his system.

39. In response to questions from the Hearing Tribunal, Ms. Faas confirmed that a drug test was completed outside the time frame it needed to be completed and that the *Drug and Alcohol Program Policy* required completion of drug test when a request is made.

40. Ms. Faas described the standard operating procedure and practice for the disposal of expired medication per the *Storage and Dispensing: International SOS Procedure*, and that in the Surmount Medsite, disposal would need to be done in the view of the lead healthcare practitioner on site or with another witness, signed off by two individuals, with ampoules disposed of in the sharps container.

Peter Tate

41. Mr. Tate stated he has been employed by International SOS as a fire captain at the Surmount Medsite since 2018 and described the responsibilities of his role, including acting as a supervisor to Mr. McNiff.

42. Mr. Tate explained the procedure for removing and destroying expired medication. He noted that the expiry of a drug is documented in the controlled medication log, and that the medication would need to be drawn into a syringe and disposed of in the sharps container with a witness present and that both parties would sign off in the controlled medication log.

43. Mr. Tate noted that the process for disposing of unexpired medication was the same as expired medication but that in the case of unexpired medication, there would need to be justification for its disposal. Mr. Tate stated that there are two controlled medication logs, one for the clinic and one for the ambulance.

44. Mr. Tate clarified that the discrepancy in this case occurred in the documentation of the controlled medication log in the ambulance where the fentanyl ampoules were missing.

45. Mr. Tate then detailed his involvement in the International SOS investigation of Mr. McNiff, indicating he was first informed on April 1, 2023, that two ampoules of fentanyl had been disposed of by Mr. McNiff. Mr. Tate stated that the controlled medication log did not have either of the two required signatures per the *Storage and Dispensing: International SOS Procedure*.

46. Mr. Tate explained that when he arrived at the clinic, he was told about the IV placement that occurred on March 31 between Mr. McNiff and his co-worker. Mr. Tate noted that team members confirmed that they had not witnessed any removal or disposal of medications, at which point he escalated the situation by contacting his manager. His manager determined that a reasonable cause drug test was going to be requested from Mr. McNiff as required under the circumstances by the *Drug and Alcohol Program Policy*. Mr. Tate provided details concerning how the drug test would be administered and best practices for the completion of a drug test.

47. Mr. Tate testified that after calling his manager, he received a phone call from Mr. McNiff that he had a family emergency and had to leave the site immediately. Mr. Tate noted that this was not the first time Mr. McNiff had had a family emergency to attend to. Mr. Tate allowed Mr. McNiff to leave the site.

48. Mr. Tate stated that Mr. McNiff's refusal to take the reasonable cause drug test was a violation of the *Drug and Alcohol Program Policy* and resulted in his ban from the site.

49. Mr. Tate described that he and the security team went to Mr. McNiff's room as part of their procedure and found an IV catheter and a blunt 18-gauge needle.

50. Mr. Tate confirmed that he did not find any evidence of the fentanyl ampoules in his search of the sharp containers or the garbage; however, he clarified that it was reasonable the ampoules would not be in the garbage as it is disposed of on a daily basis.

51. On cross-examination, Mr. Tate explained that the time frame for a drug test would depend on the opiate being tested for, and that fentanyl would show on a drug test within 12 or 24 hours based on his experience.

52. Mr. Tate confirmed that fentanyl would not be administered through a 50-millilitre bag and an IV line; however, Mr. Tate clarified that he did not find either of those items in his search of Mr. McNiff's room.

53. On re-examination, Mr. Tate stated that it is ideal to get a drug test within a two- or three-hour timeline to ensure drugs with shorter half-lives are captured on the results of the drug test.

54. Mr. Tate confirmed that the IV catheter and a blunt 18-gauge needle found in Mr. McNiff's room could have been used to administer the fentanyl.

55. In response to questions from the Hearing Tribunal, Mr. Tate indicated that it is very rare that controlled substances are used on the site by medical professionals.

56. Mr. Tate noted that policies and procedures related to controlled substances are generally adhered to, and that is how they recognized the missing entry in the logbook within 24 hours.

57. Mr. Tate detailed that where a person cannot attend to be tested at a given moment, they are given an opportunity to reschedule to complete a drug test as soon as possible.

Eric Einagel

58. Mr. Einagel described himself as a regulated member of the College since 2016 and was working as an advanced care paramedic and firefighter with International SOS at the Surmount Medsite.

59. Mr. Einagel detailed the events of March 31, 2023 that occurred between Mr. McNiff and himself in an ambulance during their work rotation together. Mr. Einagel stated that Mr. McNiff offered Mr. Einagel to practice starting an IV on him, which Mr. Einagel described as not being an unusual offer. After a couple of attempts, Mr. Einagel was able to get an IV started, but when he offered to remove the IV, Mr. McNiff told Mr. Einagel to leave it in so he could use it for his antibiotics.

60. Mr. Einagel stated that on April 1, 2023, he checked the medication on the ambulance he was on. He explained that he had circled one of the fentanyl entries in the ambulance's controlled medication log to remind him that it was about to expire at the end of March. However, when Mr. Einagel went to swap out the fentanyl ampoules, he noticed that it had already been replaced.

61. Mr. Einagel explained that the only people who could have replaced the fentanyl ampoules were Mr. McNiff and the clinic nurse, as he believed they had keys to access them.

62. When Mr. Einagel reviewed the ambulance's controlled medication log, he noted that he had seen some irregularities with the documentation. Mr. Einagel stated that while the poor documentation in the controlled medication log and the IV practice on March 31 as individual situations were not odd, when looked at together they raised concerns that Mr. McNiff may have stolen the fentanyl.

63. During cross-examination, Mr. Einagel confirmed that while he reviewed the ambulance's controlled medication log, he had not seen the clinic's controlled medication log.

64. Mr. Einagel clarified that he was not certain what Mr. McNiff had indicated to him that he was going to use in the IV for on March 31 and may have assumed it was for antibiotics.

65. In response to questions from the Hearing Tribunal, Mr. Einagel detailed the practice of destroying medication, including pouring medication down a drain or bucket and using a syringe that is disposed of in a sharps container.

66. Mr. Einagel confirmed that he carries two ampoules of fentanyl in a pouch on the ambulance. Mr. Einagel reiterated that he believed the fentanyl in the pouch was set to expire at the end of March.

Tim Ford

67. Mr. Ford confirmed that he is the Registrar at the College and described his duties for the Hearing Tribunal.

68. Mr. Ford described the College's Standard of Practice 1.1 as the general expectations of all regulated members to maintain an active permit, practice in accordance with the legislation, practice within the conditions and endorsements on the permit, and practice in accordance with an employer's policies and procedures.

69. Mr. Ford also described Standard of Practice 1.4 concerning self-reporting requirements for regulated members to self-assess their ability to provide care and report to the College anything that might affect their ability to provide care, such as physical, cognitive, psychological, and/or emotional conditions, and criminal charges against them.

70. Mr. Ford reviewed the College's Code of Ethics provisions 3.2, 3.3, 3.4, and 4.4. Mr. Ford stated that when a regulated member has identified anything that may impact their practice or their capacity to deliver care safely, they are required to report to the College to ensure the public receives safe and effective care from members of the profession.

71. Mr. Ford indicated that he reviewed the Investigation Report and noted Mr. McNiff's admissions concerning his addiction issues and PTSD. He stated those conditions would be reason to report to the College but that he had not received any self-report from Mr. McNiff.

72. Mr. Ford also reviewed the email from Mr. McNiff to M.M. dated April 25, 2023, which Mr. Ford stated confirmed his observations about Mr. McNiff's PTSD and drug use.

73. Mr. Ford stated that he was aware the College's Complaints Director issued a section 118 direction under the HPA for Mr. McNiff, which meant that Mr. McNiff had to stop practicing where it was deemed to be a risk to the public.

74. Mr. Ford confirmed that Mr. McNiff's practice permit had been cancelled effective November 1, 2023.

75. On cross-examination, Mr. Ford noted that the College does not pay for a regulated member's wages or treatment of PTSD, mental health, or addiction related issues. Mr. Ford stated that while he understands the difficulty regulated members may have with self-reporting, all regulated members of the profession must provide safe and effective care to the public.

76. On re-examination, Mr. Ford stated that practicing as a regulated member of the profession is a privilege and not a right, with benefits associated with being a member but responsibilities as well, such as self-reporting requirements.

77. In response to the Hearing Tribunal's questions, Mr. Ford clarified that the College does not have a duty to pay the wages of regulated members who are unable to practice due to self-reports.

Mr. McNiff

78. Mr. McNiff emphasized that the oral evidence of two of the Complainant Directors' witnesses indicated that the fentanyl in question was set to expire at the end of March. Mr. McNiff stated he picked up two replacements fentanyl ampoules and had a co-worker sign as a witness for the replacement. Mr. McNiff then made a phone call before disposing of the expired fentanyl; however, when he returned, there was no one around to witness the destruction.

79. Mr. McNiff clarified that the purpose of having Mr. Einagel do the IV start on March 31 was to allow Mr. Einagel to practice and also allow Mr. McNiff to administer his Buscopan

medication. Mr. McNiff detailed that he self-administered the Buscopan in the form of a 50-millilitre saline bag with crushed medication. He stated that at no point did he administer the fentanyl to himself.

80. Mr. McNiff also testified that at no point did he refuse to take a drug test, but rather, he was unable to take a drug test when initially requested. Mr. McNiff stated that because opiates last longer than a 24-hour period of time, there was an opportunity to have him take a drug test but that nothing was done by his employer to get it done at a later point in time.

81. On cross-examination, Mr. McNiff clarified the comments he made during the April 10, 2023 interview in the Investigation Report concerning the use of Bisorphina. He also confirmed that he had self-administered Buscopan during his work rotation. Mr. McNiff admitted that self-administering the drugs that he used could have impaired his ability to practice safely and effectively.

82. Mr. McNiff reviewed the email he sent to M.M. on April 25, 2023 (Exhibit 3). He confirmed his admission in the email concerning the self-administration of THC pills and crushing and injecting with saline, MDMA, and pain pills to help him with his PTSD.

83. Mr. McNiff also reviewed a text he had sent to a co-worker which was included in the Investigation Report and confirmed his admission of self-administration therein.

84. Mr. McNiff confirmed that at least one of the controlled medication logs, which appears in the Investigation Report, excludes a signature line and that there was no documentation or witnesses to the destruction of the fentanyl. Mr. McNiff admitted that his destruction of the fentanyl was inconsistent with the *Storage and Dispensing: International SOS Procedure*.

85. Mr. McNiff reviewed the email sent to him by Ms. Kirk, dated May 4, 2023 (Exhibit 5) and his response to her on May 24, 2023 (Exhibit 6). Mr. McNiff confirmed that he had been suffering from a drug addiction to pain medication and other narcotics. Mr. McNiff noted that while it was not known to him at the time of the alleged conduct, he now realizes he had been suffering from PTSD. Mr. McNiff admitted that he did not self-report his drug addiction or PTSD to the College.

86. In response to questions from the Hearing Tribunal, Mr. McNiff confirmed that he did take a drug test the day after it was requested, which included a screening for fentanyl. Mr. McNiff stated that the drug test would have been submitted to his employer, and that he did not receive a copy of the results.

Closing Statement of the Complaints Director

87. Mr. Maxston submitted that the Allegations were factually proven on a balance of probabilities, based in part on Mr. McNiff's own admissions, and that the proven conduct rose to the level of unprofessional conduct.

88. Mr. Maxston emphasized that the type of conduct described in the Allegations is entirely inconsistent with the obligations of a healthcare professional and presents a public protection issue.

89. Mr. Maxston submitted that the Complaints Director recognized the human elements associated with the Allegations. However, while Mr. McNiff accepted responsibility for his actions, this does not provide an excuse for the need to consider these matters in the context of professional discipline under the HPA.

90. With respect to Allegation 1(a), Mr. Maxston clarified that the Allegation does not contain an element of Mr. McNiff using the fentanyl and that the expiry of the fentanyl is an irrelevant factor. Instead, Mr. Maxston submitted that the key consideration is whether the fentanyl was improperly removed. Mr. Maxston emphasized the evidence provided by Mr. Tate concerning the discovery of the discrepancy in the controlled medication logs within 24 hours and the evidence of Ms. Faas concerning the comprehensive review of the serial numbers and ordering of the fentanyl ampoules.

91. With respect to Allegation 1(b), Mr. Maxston submitted that Mr. McNiff admitted to lying to his co-worker concerning the IV start, which was not only done for practice but to administer drugs and that Mr. McNiff admitted to self-administering to drugs when working at the Surmount Medsite.

92. With respect to Allegation 2, Mr. Maxston submitted that Mr. McNiff was candid in saying that proper procedures were not followed in the destruction of the fentanyl as there was no documentation, witnesses, and no fentanyl ampoules in the sharps container.

93. With respect to Allegation 3(a), Mr. Maxston submitted that Mr. McNiff admitted to his self-administration of MDMA and THC in his email to M.M. and that Mr. McNiff admitted to the same in his testimony.

94. With respect to Allegation 3(b), Mr. Maxston submitted that Mr. McNiff's failure to notify his supervisor of his controlled substance use during his work rotation was not contested.

95. With respect to Allegation 3(c), Mr. Maxston submitted that the evidence of Ms. Faas was that a drug test did not occur on the day it was requested and that both she and Mr. Tate testified that this was a breach of the *Drug and Alcohol Program Policy* to have a drug test done as soon as reasonably possible. Mr. Maxston submitted that the onus of providing evidence to contradict the evidence of the Complaints Director was on Mr. McNiff, who failed to provide such evidence.

96. With respect to Allegation 4, Mr. Maxston submitted that Mr. Ford provided clear and compelling evidence for the lack of self-reporting by Mr. McNiff. Furthermore, despite Mr.

McNiff's concerns surrounding self-reporting and the consequences associated with doing so, Mr. Ford testified to the importance of self-reporting obligations to the protection of the public.

97. Mr. Maxston again referred the Hearing Tribunal to the decision in *Wright* and provided a summary of the case. Mr. Maxston submitted that the law recognizes that individuals like Mr. McNiff cannot always control their actions due to certain medical conditions but that this is not a defence to unprofessional conduct, and there is still a requirement to comply with professional regulatory laws. The appropriate forum to address the considerations of one's medical condition is made in the penalty phase after a finding of unprofessional conduct.

Closing Statement of the Investigated Member

98. Mr. McNiff submitted that he accepts full liability with respect to his admitted conduct. Mr. McNiff highlighted his 30 years of experience providing emergency services to the public and the difficulties he experienced. Mr. McNiff noted that he has not practiced as a paramedic for over a year at the time of the hearing.

99. Mr. McNiff concluded apologizing for his failings and by requesting the Hearing Tribunal to be lenient in its decision-making.

Decision of the Hearing Tribunal on Unprofessional Conduct

100. The Hearing Tribunal carefully considered the evidence of the witnesses, the documents entered in as exhibits, and the oral submissions of the parties. The Hearing Tribunal also considered that many of the facts were not in dispute and that Mr. McNiff made several admissions with respect to his conduct.

101. The burden of proving the Allegations is on the Complaints Director. There is no onus on Mr. McNiff to disprove the Allegations against him. In considering the evidence, the Hearing Tribunal applied the standard of proof of the balance of probabilities.

102. The Hearing Tribunal finds that Allegations 2, 3(a), 3(b), and 4 were proven and constitute unprofessional conduct as defined in sections 1(1)(pp)(ii) and (xii) of the HPA.

103. In respect of the remaining allegations and particulars, the Hearing Tribunal finds that Allegation 1 was not factually proven by the Complaints Director on a balance of probabilities. The Hearing Tribunal finds Allegation 3(c) was factually proven, but that the conduct did not rise to the level of unprofessional conduct.

104. The Hearing Tribunal notes that no detailed or specific submissions were made by the Complaints Director with respect to the cited contravention of a controlled substance legislation. Therefore, the Hearing Tribunal does not find that the proven conduct in Allegations 2, 3(a), 3(b), and 4 meets the definition on unprofessional conduct under section 1(1)(pp)(iii) of the HPA.

Reasons for Findings of the Hearing Tribunal

Allegation 1: On or about March 29, 2023, to April 2, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you:

- a) Improperly removed fentanyl from your employer's custody; and/or
- b) Lied to a colleague about the purpose for maintaining an IV in your arm during your work rotation

105. With respect to Allegation 1(a), the Hearing Tribunal finds that the Complaints Director did not provide sufficient evidence to prove that Mr. McNiff improperly removed fentanyl from his employer's custody. The Hearing Tribunal noted that to prove the removal, there would need to be evidence that Mr. McNiff took the fentanyl and removed it from the work site. While there is evidence that Mr. McNiff did not dispose of the fentanyl in accordance with expected policies as alleged in Allegation 2, the Hearing Tribunal concluded that it did not have evidence before it that Mr. McNiff removed it from his employer's custody, improperly or otherwise.

106. For the reasons above, the Hearing Tribunal does not find the conduct alleged in Allegation 1(a) to have been proven on a balance of probabilities.

107. With respect to Allegation 1(b), the Hearing Tribunal similarly finds that there was insufficient evidence to prove that Mr. McNiff lied about the purposes of maintaining the IV in his arm during his work rotation.

108. The Hearing Tribunal recognized that there were a number of ambiguities arising concerning the purpose of maintaining the IV on March 29, 2023, including the notes from the April 10, 2023 interview with Mr. McNiff and the evidence in his oral testimony. However, the Hearing Tribunal carefully examined the testimony of Mr. Einagel, who had first-hand evidence of the event in question as the colleague who was alleged to have been lied to. Mr. Einagel himself indicated that he was not certain about the reasons why Mr. McNiff told him he wished to maintain the IV in his arm.

109. With insufficient evidence that Mr. McNiff lied to Mr. Einagel concerning his explanation for maintaining the IV in his arm, the Hearing Tribunal does not find that the conduct alleged in Allegation 1(b) is made out on a balance of probabilities.

Allegation 2: On or about March 29, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you breached your employer's *Storage and Dispensing: International SOS Procedure* by:

- a) Failing to properly destroy controlled medications;
- b) Failing to properly document the destruction of controlled medications; and/or
- c) Failing to have the destruction of controlled medications witnessed

110. Allegation 2 concerns Mr. McNiff's breach of his employer's *Storage and Dispensing: International SOS Procedure* by failing to properly destroy controlled medications, failing to document the destruction of controlled medications, and failing to have the destruction of controlled medications witnessed. The Hearing Tribunal had the benefit of reviewing *Storage and Dispensing: International SOS Procedure* in full as an exhibit.

111. The Hearing Tribunal gave significant weight to Mr. McNiff's admissions made during his submissions and testimony, as well as the admissions by Mr. McNiff in his correspondence and interviews referred to in the exhibits that he did not follow proper procedures for destroying the fentanyl in accordance with the *Storage and Dispensing: International SOS Procedure*.

112. The *Storage and Dispensing: International SOS Procedure* clearly requires that controlled substances, including fentanyl, be destroyed in a very specific manner, including having an individual witness the destruction process and documenting witnessing of the destruction process. The *Storage and Dispensing: International SOS Procedure* also provides instructions concerning how the controlled substance is to be properly destroyed, and ampoules are required to be broken and emptied into biohazard waste with the glass disposed of in the sharps container.

113. The Hearing Tribunal considered the discrepancies and improper documentation in the ERT controlled medication log, such that Mr. McNiff failed to sign the log himself or have a second individual witness sign the log. Mr. McNiff admitted that he did not have a witness to the destruction of the controlled substance. The Hearing Tribunal recognized that Mr. McNiff attempted to explain that circumstances may have prevented him from following the established procedure but did not dispute the fact he failed to meet the requirements set out in the *Storage and Dispensing: International SOS Procedure*.

114. Based on the above, the Hearing Tribunal finds the conduct in Allegations 2(a), (b), and (c) to be proven.

115. Mr. McNiff's failure to abide by the *Storage and Dispensing: International SOS Procedure* in the destruction of the fentanyl represents a significant failure that was a clear contravention of the College's Standards of Practice and Code of Ethics, both of which expressly require members of the profession to abide by the policies set by their employers. The College's Standard of Practice 1.1 states that:

A regulated member must:

- 1. Maintain an active practice permit at a recognized designation level to practice.*
- 2. Practice in accordance with all applicable legislation and regulatory documents.*
- 3. Practice within the condition(s) and endorsement(s) placed on their practice permit.*
- 4. Practice in accordance with employers' practice setting policies and procedures.*

116. Provisions 3.2 and 3.3 of the Code of Ethics set out the responsibilities members of the professions have to themselves:

- 3.2 *Practice in accordance with legislation including the Health Professions Act of Alberta Paramedic Professions Regulation, Code of Ethics, Standards of Practice and all other documents and policies used to govern the paramedic profession*
- 3.3 *Maintain good character and reputation by fostering a professional identity, following the Code of Ethics and Standards of Practice, and demonstrating honesty and integrity in all interactions*

117. Mr. McNiff's failure to destroy the fentanyl in accordance with his employer's policies was a marked departure from the conduct expected of a member of the College. The proper destruction of a controlled substance such as fentanyl is important in preventing its misuse. The failure to document that destruction or have it witnessed also puts the integrity of the profession at risk and undermines the trust the public has in the responsible management of controlled substances.

118. The Hearing Tribunal finds that Mr. McNiff's conduct was a contravention of the College's Standards of Practice and Code of Ethics and harmed the integrity of the profession, both of which constitute unprofessional conduct.

Allegation 3: On or about March 29, 2023, to April 2, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you breached your employer's Drug and Alcohol Program Policy by:

- a) Self-administering controlled substances, prescription drugs, and/or non-prescription drugs during your work rotation including, but not limited to, methylenedioxymethamphetamine ("MDMA") and/or tetrahydrocannabinol ("THC");
- b) Failing to notify your supervisor of your use during your work rotation of controlled substances, prescription drugs, and/or non-prescription drugs; and/or
- c) Refusing to participate in a mandatory alcohol and drug test

119. Allegations 3(a) and (b) concern Mr. McNiff's breach of his employer's *Drug and Alcohol Program Policy* by self-administering substances such as MDMA and THC during Mr. McNiff's work rotation and failing to notify his supervisor of the use of those substances. Allegation 3(c) concerns Mr. McNiff's breach of the *Drug and Alcohol Program Policy* by refusing to participate in a mandatory drug and alcohol test. The Hearing Tribunal had the benefit of reviewing excerpts from the *Drug and Alcohol Program Policy* entered in as an exhibit.

120. With respect to Allegations 3(a) and (b), the Hearing Tribunal again gave significant weight to the admissions of Mr. McNiff made during the hearing. Mr. McNiff admitted to his use of substances during his work rotation, which included MDMA and THC, as evidenced and confirmed by him in exhibits provided in the hearing, including his email to M.M. on April 25,

2023, and correspondence exchanged between him and his co-workers. Mr. McNiff also admitted that he did not notify his supervisor of this use. The evidence before the Hearing Tribunal suggests that Mr. McNiff's substance use was not brought to his supervisor's attention until after it was discovered during the investigation.

121. Based on the above, the Hearing Tribunal finds Mr. McNiff's conduct as alleged in Allegations 3(a) and (b) proven on a balance of probabilities.

122. With respect to Allegation 3(c), the Hearing Tribunal found that a reasonable cause drug test was requested on April 1, 2023 and booked for 1 PM. The request was then communicated to Mr. McNiff. It is clear, based on the testimony of the parties and the Investigation Report, that Mr. McNiff indicated he would not be able to make a drug test that was booked due to a family emergency he was attending to. Mr. McNiff was then rebooked for a drug test at 3 PM that same day to accommodate his circumstances, but again indicated that he would not be able to attend the rebooked drug test due to the family emergency. He also admitted that he would not pass the drug test regardless due to his self-administration of several drugs.

123. The Hearing Tribunal considered the language of the *Drug and Alcohol Program Policy* and its sections concerning drug testing. The Hearing Tribunal found that the *Drug and Alcohol Program Policy* stated that "[a]n employee may not refuse to immediately comply with a request made by an Intl. SOS or client representative for an alcohol or drug test."

124. While the Hearing Tribunal recognized that Mr. McNiff may not have outright refused to take the alcohol and drug test, he failed to comply with his employer's request to take the drug test which required immediate compliance. The Hearing Tribunal finds the conduct in Allegation 3(c) proven on a balance of probabilities.

125. The Hearing Tribunal finds that the proven conduct with respect to Allegations 3(a) and (b) is a breach of the College's Standards of Practice and Code of Ethics. For the same reasons addressed for the findings of unprofessional conduct in relation to Allegation 2, Mr. McNiff was required to follow the policies and procedures set out by his employer, including the *Drug and Alcohol Program Policy*.

126. In the Hearing Tribunal's assessment of unprofessional conduct, it also reviewed provision 3.4 of the College's Code of Ethics, which states the following responsibility a regulated member of the profession holds with themselves:

3.4 Maintain mental and physical capacity by identifying and seeking treatment for any serious injury; mental, behavioural or physical condition; or any other condition that has immediately or may affect over time, their ability to practice safely and competently, and refraining from practicing while their ability to provide appropriate and competent care is compromised

127. Mr. McNiff admittedly took substances that not only breached his employer's policies but also impaired his ability to maintain the mental and physical capacity necessary for his safe and competent practice as a regulated member of the profession. The substances Mr. McNiff took, including MDMA and THC, are known to impair one's ability to provide essential care to those who rely on members of the profession, posing a serious failure that Mr. McNiff himself admitted to. Likewise, Mr. McNiff's failure to report his use during his work rotations prevented his supervisor from taking the necessary measures to protect the public from the risk Mr. McNiff posed due to his impairment.

128. These failings jeopardize the trust the public has in the College in ensuring safe and competent care. The Hearing Tribunal finds Mr. McNiff's proven conduct in Allegations 3(a) and (b) to constitute unprofessional conduct.

129. With respect to Allegation 3(c), while the Hearing Tribunal recognized that Mr. McNiff was non-compliant with and breached his employer's *Drug and Alcohol Program Policy*, it does not find that the conduct rises to the level of unprofessional conduct.

130. The Hearing Tribunal considered the reasonableness of requesting Mr. McNiff to complete the drug test within 24 hours when he communicated to his employer that he had a family emergency. In Mr. Tate's testimony, he affirmed that he had given Mr. McNiff permission to leave the site for a family emergency and testified that Mr. McNiff had made similar requests in the past to leave to attend to a family emergency. This permission was granted before the drug test was ordered.

131. The Hearing Tribunal did not have evidence before it to suggest that Mr. McNiff had attempted to purposefully avoid the drug test. In fact, Mr. McNiff acknowledged several times that he would have failed the drug test had he taken it. The Hearing Tribunal also considered that Mr. McNiff testified to having done the drug test the day after it was requested. The testimony of Ms. Faas and Mr. Tate emphasized the need to have the drug test completed upon request but their evidence failed to address the fact that Mr. McNiff did take a drug test the next day, or why a drug test taken within 24 hours was insufficient in the circumstances.

132. The Hearing Tribunal recognizes that the standard for findings of unprofessional conduct is a marked departure from the conduct expected of members of the professions. Therefore, while Mr. McNiff breached the *Drug and Alcohol Program Policy*, the Hearing Tribunal did not find that doing so was unreasonable given his circumstances, especially because Mr. McNiff testified to having completed the drug test as soon as he was able to.

Allegation 4: In relation to the events described in charges 1, 2, and 3 above, you failed to immediately self report to the Registrar of the Alberta College of Paramedics:

- a) The relevant details of any physical, cognitive, psychological, and/or emotional condition that may negatively impact your work or is reasonably likely to negatively

impact your work in the future including, but not limited to, post traumatic stress disorder (“PTSD”) and/or a narcotics addiction; and/or

- b) Your deviation from the College’s Code of Ethics, Standards of Practice, and/or any other policies or procedures that govern the paramedic profession

133. Allegation 4 concerns Mr. McNiff’s failure to self-report to the College concerning the conditions that may negatively impact his work, such as his PTSD and narcotics addiction, and his deviations from the College’s Code of Ethics and Standards of Practice.

134. The Hearing Tribunal heard the evidence of Mr. Ford, who, as the Registrar for the College, was able to testify that he had no record of any reporting from Mr. McNiff. The Hearing Tribunal also gave significant consideration again to Mr. McNiff’s admission of failing to self-report to the College his condition and failings with respect to the Code of Ethics and Standards of Practice. The Hearing Tribunal finds that the conduct alleged in Allegation 4(a) and (b) is proven on a balance of probabilities.

135. The Hearing Tribunal considered the provisions of the College’s Standards of Practice and Code of Ethics cited above in its assessment of unprofessional conduct concerning Allegation 4. In addition to those noted above, the Hearing Tribunal referred to Standard of Practice 1.4, which requires that a regulated member must self-report to the College Registrar:

Any relevant details including any physical, cognitive, psychological and/or emotional condition that may negatively impact the regulated member’s work or is reasonably likely to negatively impact their work in the future

136. Additionally, the Hearing Tribunal referred to provision 4.4. of the Code of Ethics, which also sets out the responsibility of a regulated member to self-report:

4.4 Self-report infractions and incapacity to the College when a regulated member identifies any deviation from the Code of Ethics, Standards of Practice or any other policies or procedures that govern the paramedic profession, or identifies any area of physical incapacity that could reasonably impair the ability to practice safely and competently

137. The Hearing Tribunal noted that during the cross-examination of Mr. Ford and in his own testimony, Mr. McNiff expressed several reasons as to why he chose not to self-report and the consequences that would result from him doing so and the College’s lack of financial support for treatment and wages if he were to be terminated from his employment.

138. The decision in *Wright* reaffirms that a regulated member’s dependency on drugs and alcohol does not excuse them from responsibility for their unprofessional conduct. Likewise, the Hearing Tribunal finds that Mr. McNiff’s addictions and the consequences that would flow from his self-reporting do not lessen his duty to self-report and the unprofessional conduct that arises from failing to do so. The consideration of Mr. McNiff’s personal circumstances as they

relate to his addiction is a consideration to be made by the Hearing Tribunal when deciding the appropriate sanction.

139. Mr. Ford testified to the importance of a regulated member's duty to self-report to maintain the integrity of the profession and the public's faith in the College's ability to self-regulate and establish a process of transparency and accountability. Practicing as a paramedic is a privilege that comes with a number of responsibilities, including the duty to self-report.

140. The Hearing Tribunal finds that Mr. McNiff's failure to self-report in Allegations 4(a) and (b) represents a marked departure from the standard of conduct expected of a regulated member of the profession and that the conduct constitutes unprofessional conduct.

Conclusion

141. The Hearing Tribunal finds that Allegations 2, 3(a), 3(b), and 4 were proven on a balance of probabilities and that Mr. McNiff's proven conduct amounted to unprofessional conduct as defined under the HPA. The Hearing Tribunal dismisses Allegations 1 and 3(c).

142. The Hearing Tribunal is prepared to receive submissions from the Complaints Director and Mr. McNiff about appropriate sanction orders to be made. The Hearing Tribunal directs that the parties contact the Hearings Director within two weeks from the receipt of this decision to advise whether they wish to provide sanction submissions in writing or by way of oral submissions. If the parties prefer to proceed in writing, the Hearing Tribunal will consider the parties requests in respect of a schedule for those submissions. Once these responses are received, the Hearing Tribunal will provide further directions.

For the Hearing Tribunal of the Alberta College of Paramedics

A handwritten signature in black ink, appearing to read 'Bradley Lamarche', written over a horizontal line.

Bradley Lamarche, Chair

Dated October __29__, 2024

**IN THE MATTER OF THE *HEALTH PROFESSIONS ACT*, BEING CHAPTER H-7
OF THE REVISED STATUTES OF ALBERTA, 2000**

**AND IN THE MATTER OF A TRIBUNAL HEARING REGARDING THE CONDUCT OF KEVIN MCNIFF,
A REGULATED MEMBER OF THE ALBERTA COLLEGE OF PARAMEDICS**

**DECISION ON SANCTIONS OF THE HEARING TRIBUNAL OF THE
ALBERTA COLLEGE OF PARAMEDICS – FILE #23-26**

A Hearing Tribunal of the Alberta College of Paramedics (the “College”) held a hearing to consider the conduct of Kevin McNiff. The members of the Hearing Tribunal are:

- B. Lamarche, Chair, Regulated Member;
- D. Mroszczak, Regulated Member;
- A. Otway, Public Member; and
- S. Gingrich, Public Member.

Introduction

1. On October 29, 2024, the Hearing Tribunal issued a written decision in which it found that Mr. McNiff’s conduct as alleged in Allegations 2, 3(a), 3(b), and 4 was proven and constituted unprofessional conduct as defined in the *Health Professions Act*:
 - 2) On or about March 29, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you breached your employer’s *Storage and Dispensing: International SOS Procedure* by:
 - a) Failing to properly destroy controlled medications;
 - b) Failing to properly document the destruction of controlled medications; and/or
 - c) Failing to have the destruction of controlled medications witnessed;
 - 3) On or about March 29, 2023, to April 2, 2023, while you were employed by International SOS at the Surmont Medsite in Alberta, Canada, you breached your employer’s *Drug and Alcohol Program Policy* by:
 - a) Self-administering controlled substances, prescription drugs, and/or non-prescription drugs during your work rotation including, but not limited to, methylenedioxymethamphetamine and/or tetrahydrocannabinol;
 - b) Failing to notify your supervisor of your use during your work rotation of controlled substances, prescription drugs, and/or non-prescription drugs;
 - 4) In relation to the events describes in charges 1, 2, and 3 above, you failed to immediately self report to the Registrar of the Alberta College of Paramedics:

- a) The relevant details of any physical, cognitive, psychological, and/or emotional condition that may negatively impact your work or is reasonably likely to negatively impact your work in the future including, but not limited to, post traumatic stress disorder and/or a narcotics addiction; and/or
- b) Your deviation from the College's Code of Ethics, Standards of Practice, and/or any other policies or procedures that govern the paramedic profession,

2. The Hearing Tribunal directed the parties to advise whether they wished to provide sanctions submissions in writing or in person at a further hearing date. The Hearings Director advised the Hearing Tribunal on January 8, 2025 that the parties agreed to proceed in writing.

The Joint Submission on Penalty

3. The Complaints Director and Mr. McNiff presented a Joint Submission regarding Penalty signed December 20 and 23, 2024. The parties submitted that the Joint Submission regarding Penalty included orders that were fair, reasonable, and proportionate.

4. The parties referred the Hearing Tribunal to the Supreme Court of Canada's decision in *R v Anthony-Cook*, 2016 SCC 43 ("*Anthony-Cook*"). In accordance with *Anthony-Cook*, disciplinary tribunals must give joint submissions significant deference. Disciplinary tribunals should not depart from the joint submission unless the proposed sanctions bring the administration of justice into disrepute or are otherwise contrary to the public interest.

5. The parties advised that the primary purpose of legislation governing professionals is protection of the public. The fundamental purpose of sanctions orders is to ensure that the public is protected from acts of unprofessional conduct and to ensure that the integrity of the profession is maintained in the eyes of the public.

6. The parties submitted a list of factors that the Hearing Tribunal could consider to determine an appropriate sanction:

- 1) The nature and gravity of the proven allegations;
- 2) The age and experience of the member;
- 3) The previous character of the member and in particular the presence or absence of any prior complaints or findings of unprofessional conduct;
- 4) The number of times the unprofessional conduct was proven to have occurred;
- 5) Whether the member had already suffered serious financial or other penalties as a result of the allegations having been made;
- 6) If applicable, the impact of the incident on the complainant;
- 7) The need to promote specific and general deterrence and, thereby, to protect the public and ensure safe and proper practice;
- 8) The need to maintain the public's confidence in the integrity of the profession; and

- 9) The degree to which the conduct that was found to have occurred was clearly regarded, by consensus, as being the type of conduct that would fall outside the range of permitted conduct.
7. The parties suggested that the Hearing Tribunal could also consider mitigating factors:
 - 1) Attitude since the unprofessional conduct occurred. Generally speaking, a less severe punishment should be imposed on an individual who genuinely recognizes that his or her conduct was wrong.
 - 2) Whether the unprofessional conduct was the member's first discipline finding or represents repeated behavior or a pattern of unprofessional conduct.
 - 3) Whether the member has admitted to the unprofessional conduct (which is generally taken as showing acceptance of responsibility for one's actions).
 8. The parties submitted that the following orders were consistent with the above factors and appropriate in light of Mr. McNiff's conduct and all the circumstances:
 - 1) The *Health Professions Act* s. 118 direction that Mr. McNiff cease practicing (per the May 4, 2023 letter he received) will remain in force until he completes the physical and mental examination described in order 3 on page 2 of that letter prior to reinstatement of his practice permit.
 - 2) Mr. McNiff must successfully complete the "PROBE: Ethics & Boundaries Program" two-day ethics course (the "Course") and must provide evidence of successful completion of the Course to the Complaints Director within six months of the date of the Hearing Tribunal's written sanctions decision. Mr. McNiff will be responsible for all of the costs associated with the Course and the Course will not count towards Mr. McNiff's continuing education requirements with the College.
 - 3) The Hearing Tribunal's written decision with Mr. McNiff's name will be published for 5 years on the College's website.
 - 4) There will be no late fee should Mr. McNiff reinstate his practice permit and there will be indication on his new practice permit of a prior suspension of practice permit.
 9. The parties attached a letter from the Complaints Director dated May 4, 2023 as Appendix "A" to the Joint Submission regarding Penalty. The letter includes Order 3 on page 2:
 3. Pursuant to s.118(1), I am directing that (i) you undergo a physical and mental examination by a psychiatrist or other healthcare provider approved by me in advance to determine your fitness to practice and (ii) the approved psychiatrist or healthcare provider provides me with a written report concerning your fitness to practice (the "Report"). The physical and mental examination and the Report must be obtained at your cost. The Report must be provided to me by no later than June 15, 2023.

10. The parties submitted that the proposed orders were appropriate as Mr. McNiff's conduct was below the required ethical standards for members of the profession of paramedicine and harmed the integrity of the profession. However, these were the first findings of unprofessional conduct for Mr. McNiff after a lengthy unblemished career. He admitted certain aspects of his proven unprofessional conduct and in doing so demonstrated that he accepted some responsibility for his actions.

11. In the parties' view, the recommended orders adequately addressed the findings of unprofessional conduct and promoted general and specific deterrence. The orders would also maintain the public's confidence in the integrity of the profession.

Decision of the Hearing Tribunal on Sanctions

12. The Hearing Tribunal considered the Joint Submission regarding Penalty and recognized that it owes deference to the parties' proposal. It accepts that it should not deviate from the proposed orders unless the Joint Submission regarding Penalty would bring the College's discipline process into disrepute or be contrary to the public interest.

13. After reviewing the Joint Submission regarding Penalty, the Hearing Tribunal agrees that the proposed penalties are reasonable considering the relevant circumstances and the findings of unprofessional conduct. The proposed sanctions are not contrary to the public interest and will not bring the College's discipline process into disrepute. As such, the joint submission does not rise to a level that warrants the Hearing Tribunal's interference.

14. The Hearing Tribunal notes, in relation to the first proposed order, that Mr. McNiff would be required to provide a written report from his healthcare provider to the Complaints Director by June 15, 2023. To ensure the parties' proposed order is capable of being enforced, the Hearing Tribunal authorizes the Complaints Director to vary the deadline by which Mr. McNiff must provide the written report.

15. For the above reasons, the Hearing Tribunal accepts the parties' joint submission regarding proposed sanctions orders.

Orders

16. The Hearing Tribunal makes the following orders:

- 1) The *Health Professions Act* s. 118 direction that Mr. McNiff cease practicing (per the May 4, 2023 letter he received) will remain in force until he completes the physical and mental examination described in order 3 on page 2 of that letter prior to reinstatement of his practice permit.

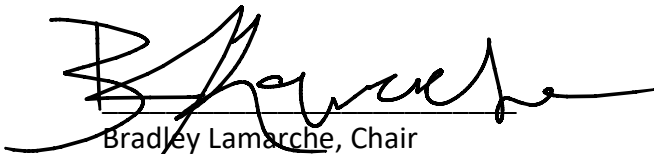
To ensure the Hearing Tribunal's order is complete, order 3 on page 2 of the letter is as follows:

3. Pursuant to s.118(1), I [the Complaints Director] am directing that (i) you [Mr. McNiff] undergo a physical and mental examination by a psychiatrist or other healthcare provider approved by me in advance to determine your fitness to practice and (ii) the approved psychiatrist or healthcare provider provides me with a written report concerning your fitness to practice (the "Report"). The physical and mental examination and the Report must be obtained at your cost. The Report must be provided to me by no later than June 15, 2023.

The Complaints Director may vary the date in order 3 by which Mr. McNiff must provide the written report to the Complaints Director.

- 2) Mr. McNiff must successfully complete the "PROBE: Ethics & Boundaries Program" two-day ethics course (the "Course") and must provide evidence of successful completion of the Course to the Complaints Director within six months of the date of the Hearing Tribunal's written sanctions decision. Mr. McNiff will be responsible for all of the costs associated with the Course and the Course will not count towards Mr. McNiff's continuing education requirements with the College.
- 3) The Hearing Tribunal's written decision with Mr. McNiff's name will be published for 5 years on the College's website.
- 4) There will be no late fee should Mr. McNiff reinstate his practice permit and there will be indication on his new practice permit of a prior suspension of practice permit.

For the Hearing Tribunal of the Alberta College of Paramedics



Bradley Lamarche, Chair

Dated January _28____, 2025