

NOVA SCOTIA COLLEGE OF PHARMACISTS

DECISION OF THE HEARING COMMITTEE

In the Matter of: Recommendation of Investigation Committee for Settlement Agreement
between the Nova Scotia College of Pharmacists and Mr. Evan John
(Jack) Davies

The Hearing Committee met April 9th, 2013 to consider the proposed Settlement Agreement being recommended for acceptance by the Investigation Committee regarding Mr. Jack Davies.

After a careful review of all of the information from Counsel for both the Nova Scotia College of Pharmacists and the Member provided including relevant precedents; and

After considering further clarification received from Counsel regarding the Settlement Agreement being separate and apart from the ongoing assessment of Jack Davies' fitness to practice due to addiction related issues, the Hearing Committee concluded that it is satisfied that it is in the best interests of the public to accept the Investigation Committee's recommendation and proceed with the Settlement Agreement as proposed.

The Hearing Committee, in accepting the recommendation, incorporates the Settlement Agreement as attached to this decision.

April 12th, 2013

Harriet Davies, Chair

A handwritten signature in cursive script that reads "Harriet Davies".

On behalf of Hearing Committee Members:

Harriet Davies

Edith Menzies

John Burgess

**PROVINCE OF NOVA SCOTIA
HALIFAX REGIONAL MUNICIPALITY**

IN THE MATTER OF: The *Pharmacy Act*, R.S.N.S. 2001, c.36 and Regulations
 made thereunder

-and-

IN THE MATTER OF: Mr. Evan John Davies, Pharmacist, [REDACTED]
 Westville, NS, [REDACTED]

SETTLEMENT AGREEMENT

WHEREAS pursuant to the *Pharmacy Act* of Nova Scotia, allegations were set out in a Registrar's complaint dated August 27th 2012, alleging that Mr. Davies breached provisions of the *Pharmacy Act* and Regulations made thereunder, and conducted himself in a way in which a Hearing Committee properly constituted under the *Pharmacy Act* could conclude that his conduct amounted to professional misconduct,

AND WHEREAS the Nova Scotia College of Pharmacists and Mr. Davies believe that a Settlement Agreement is the proper method of disposing of this matter,

AND WHEREAS the Nova Scotia College of Pharmacists and Mr. Davies agree to the following statement of facts:

1. **THAT** while engaged in the practice of pharmacy at [REDACTED] Pharmacy, located at [REDACTED], Stellarton, Nova Scotia (the Pharmacy) and/or while engaged as a pharmacy manager responsible for the day-to-day management of the Pharmacy, you engaged in professional misconduct and conduct unbecoming contrary to the *Pharmacy Act* and Regulations, in that:
 - (a) you acted unlawfully and without integrity in that you removed narcotics from the pharmacy inventory for personal use, without a valid prescription. These actions constitute a breach of the *Controlled Drug and Substances Act* (CDSA) and are contrary to the *Pharmacy Act* and Regulations, and *Code of Ethics*, in that:
 - (i) you removed the following narcotics, for personal use, from the inventory of [REDACTED] Pharmacy between January 2011 and January 2012:

5510 tabs of Endocet®
139 tabs of Tylenol #3®
30 tabs of Oxycontin® 20mg
126 tabs of Oxy-Ir® 10mg
26 tabs of Oxycontin® 15mg
64 tabs of PMS-Oxycodone® 10mg
6 tabs Oxycontin® 30mg
36 tabs of Pms- Oxycodone® 10mg
36 tabs of Oxy-Ir® 10mg
39 tabs of Oxy-Ir® 5mg
2 tabs of Oxycontin® 5mg
15 tabs of Oxycontin® 10mg
100ml of Novahistex DH®
3 bottles of 500ml of Tussionex® Liq.

(b) you replaced certain amounts of narcotics with other non narcotic drugs to avoid detection.

2. **THAT** while engaged in the practice of pharmacy at [REDACTED] Pharmacy, located at [REDACTED], Stellarton, Nova Scotia (the Pharmacy) and/or while engaged as a pharmacy manager responsible for the day-to-day management of the Pharmacy, you engaged in professional misconduct and conduct unbecoming contrary to the *Pharmacy Act* and Regulations, in that:

(a) you acted unlawfully and without integrity in that you forged a prescription for yourself by altering the quantity ordered so that you received twice as many narcotics as the prescriber authorized, and then processed the document as if it were genuine when you knew it was not. These actions are contrary to the *Criminal Code* of Canada and are contrary to the *Controlled Drugs and Substances Act*, the *Pharmacy Act* and Regulations, and the *Code of Ethics*, in that:

(i) Dr. [REDACTED] authorized a prescription to you for 200 Endocet, dated July 27, 2011. You altered the prescription by altering the quantity Dr. [REDACTED] ordered from 200 to 400 tablets. You then dispensed 400 tablets of Endocet to yourself pursuant to the altered prescription.

3. **THAT** while engaged in the practice of pharmacy at [REDACTED] Pharmacy, located at [REDACTED], Stellarton, Nova Scotia (the Pharmacy) and/or while engaged as a pharmacy manager responsible for the day-to-day management of the Pharmacy, you engaged in professional misconduct and conduct unbecoming contrary to the *Pharmacy Act* and Regulations, in that:

(a) you acted unlawfully and without honesty or integrity in that you altered narcotics in the general inventory, the result of which was patients receiving a drug whose effectiveness and quality had been compromised. These actions constitute a breach of the *Controlled Drugs and Substances Act* and are contrary to the *Pharmacy Act* and *Regulations* and the *Code of Ethics*, in that:

- (i) you altered a bottle of narcotic cough syrup, Tussionex®, by removing a quantity of Tussionex® from a bottle for your personal use. You replaced it with an OTC cough syrup. The bottle of Tussionex® remained in the inventory for general dispensing purposes.
- (ii) you altered the narcotic cough syrup, Novahistex DH® by removing a quantity for personal use and replacing it with another liquid. The altered container of Novahistex DH® remained in the inventory for general dispensing purposes.

4. **THAT** while engaged in the practice of pharmacy at [REDACTED] Pharmacy, located at [REDACTED], Stellarton, Nova Scotia (the Pharmacy) and/or while engaged as a pharmacy manager responsible for the day-to-day management of the Pharmacy, you engaged in professional misconduct and conduct unbecoming contrary to the *Pharmacy Act* and *Regulations*, in that:

(a) you acted unlawfully and without honesty or integrity in that you mislead an inspector of the NSCP by providing false reports regarding your relapse to substance abuse. This is a breach of Section 34(1) of the *Pharmacy Act* and constitutes professional misconduct as set out in Section 17 2(b) of the *Qualification and Professional Accountability Regulations*, in that:

(i) you mislead the NSCP on the following occasions:

- During an interview on March 8, 2012, you stated that your relapse did not recur until the fall of 2010. Contrary to this statement, you obtained the Tussionex® prescription under false pretences on January 26, 2010.
- By email dated March 10, 2012, you provided false statements regarding the prescription for Tussionex dated January 26, 2010; again misleading the NSCP regarding the prescription.
- During an interview on March 8, 2012, you denied altering Novahistex DH ®. You have now confirmed that you did divert Novahistex DH ® and misused it personally.

- During an interview on March 8, 2012, you falsely reported to the NSCP that you did not take outdated narcotics set aside for destruction and replace them with non-narcotics. You have now confirmed that you did replace the outdated narcotics you took with non-narcotics.
5. **THAT** while engaged in the practice of pharmacy at [REDACTED] Pharmacy, located at [REDACTED], Stellarton, Nova Scotia (the Pharmacy) and/or while engaged as a pharmacy manager responsible for the day-to-day management of the Pharmacy, you engaged in professional misconduct and conduct unbecoming contrary to the *Pharmacy Act* and Regulations, in that:
- (a) you acted unethically and without honesty and integrity in that you used your relationship with a physician, who was not your primary care provider, to obtain a narcotic under false pretenses for your personal use. This constitutes professional misconduct as set out in Section 17 2(b) of the *Qualification and Professional Accountability Regulations*, in that:
 - (i) In January 2010 you visited Dr. [REDACTED], a physician who is not your primary health care provider and with whom you had a non-patient / physician relationship. You presented to Dr. [REDACTED] symptoms of a cough that were not true and/or significantly exaggerated in order to obtain a prescription for Tussionex® cough syrup, with the intent of using this narcotic for your personal use.

Mr. Davies specifically acknowledges and agrees to all of the facts stated above.

The Nova Scotia College of Pharmacists and Mr. Davies hereby agree to the following disposition and settlement of this matter:

1. Mr. Davies acknowledges and agrees that his conduct noted above amounts to professional misconduct and conduct unbecoming contrary to the *Pharmacy Act* and Regulations.
2. A letter of reprimand in the form attached shall be placed on the file of Evan John (Jack) Davies.
3. The licence of Mr. Davies to practise pharmacy in Nova Scotia shall be suspended for a period of 12 months. The period of suspension shall run from January 5, 2012 to January 4, 2013. It is recognized by Mr. Davies that this suspension is separate and apart from the ongoing assessment of his fitness to practice due to addiction related issues.
4. Mr. Davies shall pay a fine of \$2,500.00 to the NSCP on or before April 30, 2013.

5. Mr. Davies shall pay a portion of the College's costs for this matter, fixed at the amount of \$10,000.00 to be paid in equal amounts monthly of \$833.00 over a twelve month period starting 30 days after he is eligible for re-licensure.
6. Mr. Davies hereby consents and agrees that notice of this settlement agreement shall be provided to Mr. Davies's present pharmacy manager and any future employers or pharmacy managers for five years from the date of his resumption of practice.
7. Mr. Davies hereby consents and agrees that the College may communicate with Mr. Davies's present pharmacy manager, and any future employers or pharmacy managers for five years from the date of his resumption of practice regarding any matters relating to this settlement agreement.
8. For a period of five years from his resumption of practice, Mr. Davies shall notify the Registrar of the NSCP of the name of his Primary Care Providers, including medical, dentistry, nurse practitioner, and pharmacy; and Mr. Davies consents that these Primary Care Providers may communicate with the College regarding his fitness to practice and will direct these practitioners to do so.
9. Mr. Davies will only consent to receiving prescriptions for narcotics prescribed for him by his Primary Care Providers, or someone referred to provide care for Mr. Davies by his Primary Care Providers and with the full knowledge of the Primary Care Providers save and except, Mr. Davies may receive a prescription for narcotics in an emergency situation. For clarity, emergency situation would be of the nature of a serious car accident or life threatening event.
10. Within 5 days of Mr. Davies receiving any authorized prescriptions for narcotics consistent with Article 9, Mr. Davies shall notify the NSCP of any narcotics prescribed to him. It is expressly agreed that the notification requirement set out in item 10 shall continue for as long as Mr. Davies has a license to practice pharmacy in Nova Scotia.
11. Other than as authorized by Article 9, it is expressly agreed by Mr. Davies that he shall abstain from and not use narcotics in any manner whatsoever.
12. There shall be publication with name, of the facts and details of the Settlement Agreement in accordance with Qualification and Professional Accountability Regulation, Section 21.
13. If Mr. Davies is determined to be fit for practice and returns to practice as a pharmacist licensed to practice in Nova Scotia, the following conditions shall be placed on Mr. Davies' license for a period of two years from the effective date of his resumption of practice as a licensed pharmacist:
 - a. Mr. Davies shall not hold the position of pharmacy manager at any pharmacy.

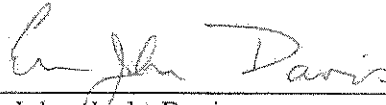
- b. It is the express agreement of Mr. Davies that he shall not order or receive narcotics or controlled drugs. Ordering or receiving narcotics or controlled drugs includes ordering or receiving narcotics or controlled drugs from wholesale suppliers and the ordering, receipt or purchase of narcotics or controlled drugs from other pharmacies.
 - c. The restrictions in 13(b) shall not apply if the ordering of narcotics or controlled drugs is required due to an unforeseen, urgent and exceptional requirement due to the unavailability of the pharmacy manager, or alternative pharmacist for a period greater than 72 hours.
 - d. The pharmacy manager where Mr. Davies practices shall report all discrepancies in the monthly narcotic reconciliation records of the pharmacy to the NSCP for two years from the date of his resumption of practice.
 - e. There shall be three (3) inspections performed of any pharmacy in which Mr. Davies is practicing within 24 months. The cost of the three (3) inspections shall be borne in full by Mr. Davies.
14. Mr. Davies shall enroll in, undertake, and successfully complete, within twelve months of the date of this Settlement Agreement, Mount Saint Vincent University's Business Ethics Course, BUSI 2250, or a reasonably similar course of study approved by the Registrar of the NSCP.
15. It is recognized by Mr. Davies that this Settlement Agreement is separate and apart from the ongoing assessment of his fitness to practice due to addiction related issues.

The Investigation Committee of the Nova Scotia College of Pharmacists and Mr. Evan John (Jack) Davies agree that this Settlement Agreement shall be put to a Hearing Committee of the Nova Scotia College of Pharmacists for its review.

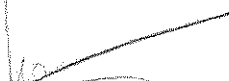
DATED at Halifax, Nova Scotia, this 27TH day of March, 2013



Susan Wedlake, Registrar, NSCP



Evan John (Jack) Davies



Leslie Reid, Chair, Investigation Committee