

**NOVA SCOTIA COLLEGE OF PHARMACISTS
HEARING COMMITTEE**

IN THE MATTER OF: The *Pharmacy Act*, R.S.N.S. 2001, c.36 and Regulations made thereunder and s.51(1)

-and-

IN THE MATTER OF: Stephen Gregory Tynes, Registrant

DECISION REGARDING NOVEMBER 30, 2020 VIRTUAL HEARING

This is the decision of the Hearing Committee in respect of a further request by the Nova Scotia College of Pharmacists (the College) for:

- a finding of professional misconduct and conduct unbecoming for failure to cooperate and breach of the Order for Production;
- an Order suspending Mr. Tynes' application for resumption of practice; and
- an order placing this matter in abeyance pending Mr. Tynes' compliance with the Production Order.

(a) Background

The history of this proceeding was reviewed in detail by this Hearing Committee in our recent decision of September 8th, 2020. We will not repeat that history in this decision.

In our decision of September 8th, 2020 this Hearing Committee directed that Mr. Tynes take certain steps in this proceeding within stipulated time frames. As will become clear in this decision, this Hearing Committee does not have any evidence that Mr. Tynes undertook any of the required actions within the stipulated period of time.

By correspondence dated October 15, 2020, Mr. Sterns writing on behalf of the College made the following request of this Hearing Committee:

“The College respectfully requests that the Hearing Committee convene a conference call. On that call, the College will renew its request for a finding of conduct unbecoming for failure to cooperate and breach of the Order for Production and an Order suspending Mr. Tynes' application for resumption of practice, or such other relief as the Committee deems just.”

In response to that request, this Hearing Committee advised Mr. Tynes and Mr. Sterns by correspondence dated October 21, 2020, that the Hearing Committee would reconvene the

Hearing on November 30, 2020 at 10:00 am or, alternatively if that date was not convenient for the parties, on December 7, 2020 commencing at 10:00 am. The Hearing Committee asked Mr. Tynes and Mr. Sterns to advise counsel to the Hearing Committee, Mr. Ingersoll, of their availability for both dates no later than Friday, October 23, 2020. This Hearing Committee advised the parties that it intended to select a date for hearing on October 26, 2020 and that once the date was chosen the matter would proceed. Specifically this Hearing Committee stated:

This Hearing Committee will reconvene this hearing virtually via Zoom to consider the above noted relief requested by the College. The Hearing Committee proposes convening this hearing virtually on November 30, 2020 at 10AM. If that date is not convenient for the parties the Hearing Committee is prepared to convene the hearing on December 7, 2020 at 10AM. The Hearing Committee is available on both days. We ask Mr. Tynes and Mr. Sterns to advise Mr. Ingersoll of their availability on both dates no later than Friday, October 23, 2020. On Monday, October 26, 2020 the Hearing Committee will choose the date for the hearing. Once a hearing date has been chosen, the hearing on this matter will resume notwithstanding the absence of any party.

That letter ended with the following notice:

For clarity, this virtual hearing will proceed regardless of whether any party fails to participate.

By email dated October 22, 2020 Mr. Sterns on behalf of the College advised this Hearing Committee, with a copy to Mr. Tynes, that the College was available for a virtual hearing on Monday, November 30, 2020 at 10:00 am but not on December 7, 2020.

As Mr. Tynes had not responded to Mr. Ingersoll, as required, on October 23, 2020, Mr. Ingersoll sent an email to Mr. Tynes on October 26, 2020, in which Mr. Ingersoll stated:

“Good morning Mr. Tynes. In reference to the correspondence of October 21, 2020 (attached), the College has advised of their availability on November 30, 2020.

Can you let me know please if you are available.”

In response to this request from Mr. Ingersoll, Mr. Tynes responded saying:

“Hello,

Given the results of the last meeting, my suspicions have been confirmed. Clearly, the Hearing Committee is merely a puppet for Mr. Sterns and the College. As such, I no longer wish to receive any correspondence from you,

Mr. Sterns, the College, or members of the Hearing Committee. I have blocked the relevant e-mail addresses, and I have changed mailing addresses and will not be having my mail forwarded. I will consider any attempt to circumvent these measures as a threat and will handle it as such. Any correspondence that I do receive will be documented and sent to the police as evidence to support criminal harassment charges against the individual or individuals involved. Thank you and goodbye.”

Following receipt of this communication, the Hearing Committee requested the College’s view as to how this matter should proceed. In response to that position, the College stated as follows:

- “In light of Mr. Tynes communication to the Hearing Committee, the College will not be contacting Mr. Tynes at this time;
- In light of Mr. Tynes communication to the Hearing Committee, the College recommends that the Hearing Committee not contact Mr. Tynes at this time;
- It is the position of the College that Mr. Tynes has been given notice of a pending hearing and his response is clear, he does not want further notice;
- Once the November 30th hearing is completed, the issue of contacting Mr. Tynes can be revisited.”

This Hearing Committee has had no further communication from Mr. Tynes.

The Hearing Committee accepts that Mr. Tynes was aware that the Hearing Committee had proposed a Hearing on November 30, 2020 subject to the availability of the parties and that the College had indicated its availability for a Hearing on November 30, 2020. Mr. Ingersoll sought to confirm Mr. Tynes’ availability for hearing on November 30, 2020. Mr. Tynes at no time indicated his availability for a Hearing on November 30, or any other date, and in fact took the position that he did not want any further communication from this Hearing Committee or the College. Mr. Tynes threatened to pursue the matter with the police if he received any communication from this Hearing Committee or the College. Finally this Hearing Committee accepts that Mr. Tynes was aware that the hearing of this matter would proceed in his absence and that notwithstanding that knowledge Mr. Tynes took no steps to indicate his willingness to participate but rather did just the opposite by telling this Hearing Committee that he had no intention of participating and threatening to engage the police if he was further contacted.

This Hearing Committee concludes that Mr. Tynes has unequivocally stated he does not wish to receive any communication from this Hearing Committee notwithstanding the fact that the Hearing Committee advised him it intended to convene a Hearing and would proceed with this hearing in the absence of either party. In all the circumstances, this Hearing Committee determined that this Hearing should proceed.

The Hearing proceeded virtually on November 30, 2020 in Mr. Tynes’ absence to consider the relief sought by the College in its correspondence of October 15, 2020. Present during the virtual Hearing were Mr. Sterns and Ms. Savary on behalf of the College as well as the three members of the Hearing Committee and Hearing Committee counsel, Mr. Ingersoll.

(b) The September 8, 2020 Decision

The parties to this matter were last before this Hearing Committee by way of virtual hearing held on July 14, 2020. At that time, the College took the position that Mr. Tynes had failed to cooperate with this process and had breached this Hearing Committee's Production Order issued on November 16, 2018 and that, as a result, this Hearing Committee should make a finding of conduct unbecoming against Mr. Tynes, suspend his ability to practice until he cooperates and complies with the Order and/or suspend Mr. Tynes application for resumption of practice until he has complied with the Order for Production and has provided the information.

This Hearing Committee rendered its decision in respect of that July 14, 2020 virtual hearing on September 8, 2020. In that Decision this Hearing Committee accepted the fact that Mr. Tynes had not produced any documents in response to the Production Order. This Hearing Committee stated:

This Hearing Committee accepts that Mr. Tynes has not produced any information or documentation in response to the College's request for particulars or the production order other than the information which he provided to the College on May 7, 2018. That lack of production has delayed this matter and has delayed the College's consideration of Mr. Tynes' application to resume the practice of pharmacy.

In that Decision, this Hearing Committee determined that its preference, at that time, was not to place the matter in abeyance because of the consequences of an abeyance on Mr. Tynes' application to resume the practice of pharmacy. This Hearing Committee also stipulated that its preference was to address the issue of whether Mr. Tynes had engaged in conduct unbecoming due to his failure to produce relevant documents and to a later stage in the proceeding. The Hearing Committee issued a direction to Mr. Tynes to take the following steps to advance the matter.

1. Production of all relevant non-privileged documents in Mr. Tynes' possession or control including documents which may be in the possession of third parties. These documents must be produced within thirty (30) days of this decision.
2. Identification of each individual document in Mr. Tynes' possession or control which he asserts is not subject to the Production Order on the basis of privilege together with the basis on which the privilege is claimed. This list of privileged documents (but not the documents) must be produced within thirty (30) days of this decision. This Hearing Committee will convene a call with the parties to address the process by which this Hearing Committee will assess the claim of privilege in respect of each document.
3. Production of a certified copy of his current criminal record check. Mr. Tynes must produce this document within sixty (60) days of this decision.

4. Production of the transcripts of all Mr. Tynes' appearances in court in relation to the following charges:

2014

1 count animal cruelty – charges dropped by crown attorney (October 2015)

2015

2 counts of uttering threat, 1 count of threatening conduct – charges dropped by crown attorney (June 2016)

Possession of a prohibited device (over capacity magazine) – plea bargain – conditional discharge, 5-year firearms prohibition (October 2016)

2016

1 count assault – plea bargain – conditional discharge (February 2017)

2017

1 count attempted theft, 2 counts breach of probation – found not guilty on all charges (February 2018)

5. Mr. Tynes must submit proof to this Hearing Committee via Mr. Ingersoll that all of the required transcripts have been requested within thirty (30) days of this decision. Mr. Tynes must produce the transcripts immediately upon his receipt of the transcripts. The Hearing Committee directs Mr. Tynes to provide notice to the Hearing Committee via Mr. Ingersoll if for any reason all of the transcripts cannot be obtained in which case the Hearing Committee will convene the parties to discuss next steps.

6. Mr. Tynes must produce the relevant non-privileged documents, the list of privileged documents, the criminal record check and the transcripts by delivering them to the Nova Scotia College of Pharmacists c/o Scott Sterns, Merrick Jamieson Sterns Washington & Mahody, 5475 Spring Garden Road, Suite 503, Halifax, NS, B3J 3T2.

7. Following Mr. Tynes' production of the relevant non-privileged documents, the criminal record check and the transcripts with respect to the above noted charges, this Hearing Committee will convene a hearing at which Mr. Tynes will make himself available for questioning regarding the charges.

- (c) Lack of compliance with the September 8, 2020 decision

The College provided a written submission on October 28, 2020 and a supplemental submission on November 26, 2020. At the hearing on November 30, 2020 Mr. Sterns reviewed in detail the history of this matter commencing with Mr. Tynes initial request for to resume practice as a pharmacist on June 14, 2017.

In its written and oral submissions the College submitted and this Hearing Committee accepts that notwithstanding the September 8, 2020 direction and the prior Production Order, Mr. Tynes has not produced any documentation in this matter. Not only has Mr. Tynes not produced any documentation, he has stated unequivocally that the he wishes to have no further engagement with this process.

On behalf of the College, Mr. Sterns offered the following history of this matter since the production order was issued:

- 23 November 16, 2018 the Hearing Committee order production of documents. Counsel for the Hearing Committee forwarded the order to Mr. Tynes. **Request #12.**
- 24 November 26, 2018 Mr. Tynes is personally served with the Production Order. **Request #13.**
- 25 March 12, 2019 Counsel for the Hearing Committee wrote to the College and Mr. Tynes requesting information on production. **Request #14.** Mr. Tynes did not respond to the requests for updates on the status of production. Failure to disclose and cooperate is a breach.
- 26 June 21, 2019 I wrote to the Hearing Committee and Mr. Tynes outlining the continuing failure to disclose and cooperate and breach of the production order. **Request #15.**
- 27 June 27, 2019 Mr. Tynes raises the issue of conflict of interest. The Hearing Committee subsequently directs how the allegation of conflict shall be addressed. Mr. Tynes does not comply with the directions of the Hearing Committee. The Hearing Committee determines there is no conflict by decision October 16, 2019.
- 28 October 30, 2019 the matter is held in abeyance at the request of Mr. Tynes due to medical reasons.
- 29 February 14, 2020, at the direction of the Hearing Committee, the College set out its detailed submission regarding Mr. Tynes failure to cooperate, disclose or comply with the order of the Hearing Committee. **Request #16.**
- 30 The matter was adjourned because of COVID-19.

- 31 There are significant difficulties in the matter proceeding. On June 9, 2020 Mr. Tynes asks that the matter be referred to the Human Rights Commission. By decision September 8, 2020 the Hearing Committee determined it had no jurisdiction to refer the matter to the Human Rights Commission.
- 32 June 17, 2020, Mr. Tynes states "Hello, It is apparent that the Hearing Committee is nothing more than a puppet for the College and their attorney. As such, I see no reason for me to continue to waste my time attending these meetings. Stephen Tynes"
- 33 June 18, 2020, the Hearing Committee encourages Mr. Tynes to participate.
- 34 July 14, 2020, the matter proceeds via virtual hearing.
- 35 September 8, 2020, the Hearing Committee orders Mr. Tynes to do 6 things by specific dates. **Request #17.** Mr. Tynes has not complied with any part of the order of the Hearing Committee.
- 36 October 15, 2020 the College notifies the Hearing Committee and Mr. Tynes of his failure to cooperate or produce. **Request #18.**
- 37 October 21, 2020, the Hearing Committee alerts Mr. Tynes of the allegations of the College. **Request #19.** The Hearing Committee invites further submissions from the College and Mr. Tynes.
- 38 October 26, 2020 Mr. Tynes advised that he did not want any further communication and again calls the Hearing Committee a puppet.
- 39 October 28, 2020 the College provides its submission addressing issues identified by the Hearing Committee.

- 41 Two years since the Hearing Committee ordered production. There has been no production.
- 42 Almost 90 days since the Hearing Committee again ordered production. There has been no production.

Mr. Stern's Submission of October 28, 2020 requested that this Hearing Committee make a finding of conduct unbecoming and professional misconduct against Mr. Tynes because of his refusal to comply with both the production order and the subsequent direction from this Hearing Committee. Mr. Sterns submitted:

In straightforward terms:

- The Hearing Committee has made an order and rendered a decision requiring action.
- The registrant has breached that order and breached that decision.
- In the exercise of its authority, the Hearing Committee would be completely ineffective if it could not make a determination arising out of the unlawful conduct of a party before it.

The determination sought by the College is as follows:

1. A finding that Mr. Tynes has engaged in conduct unbecoming;
2. A finding that Mr. Tynes has engaged in professional misconduct;
3. An order that this proceeding be placed into abeyance pending Mr. Tynes' compliance with the production order and the subsequent direction from this hearing Committee;
4. An order suspending Mr. Tynes ability to practice as a pharmacist until this proceeding is concluded.

(d) Protection of the public and the duty to cooperate

Mr. Tynes has sought the right to practice pharmacy in this province. A necessary aspect of being licensed to practice pharmacy in Nova Scotia is submission to the regulatory mandate of the College. The College's purpose and mandate in the regulation of the practice of pharmacy is set out in Sections 3 (2) and (3) of the Act

(2) The purpose of the College is to maintain standards of practice and professional accountability in the practice of pharmacy leading to optimal patient care.

(3) The College shall at all times, in the regulation of the practice of pharmacy, act to protect the public interest; exercise its powers and fulfil its responsibilities in the public interest; and govern the practice of pharmacy in the interest of optimal health outcomes.

One of the many responsibilities of the College is the direction set out in Section 51 of the Act regarding the referral to a Hearing Committee whenever a Registrant has been charged with, pleaded guilty to, been convicted or been found to be guilty of any offence in or out of Canada that is inconsistent with the proper professional behaviour of a registrant. The College acting in accordance with its statutory mandate set out in Section 51 of the Act referred this matter involving the charges laid against Mr. Tynes to this Hearing Committee. This Hearing Committee is charged under the Act with the obligation to determine whether disciplinary action should be taken.

Mr. Tynes' duties as a registrant who is the subject of a Section 51 referral are also set out in the Act. Section 38 of the Act imposes the following obligations on Mr. Tynes:

Duty to co-operate

38 It is the duty of a registrant to co-operate with any professional accountability investigation, whether or not the registrant is the respondent, to provide any information requested by the Registrar, an investigator, the Investigation Committee, the Hearing Committee or the Reinstatement Committee, and to appear before the Investigation Committee, the Hearing Committee or the Reinstatement Committee when required to do so by the Registrar or any member of the committee. 2011, c. 11, s. 38.

This Hearing Committee finds that Mr. Tynes has failed to provide information as requested by this Hearing Committee and has refused to attend before this Hearing Committee as required. Mr. Tynes' failure to produce the requested information and his refusal to attend before this Hearing Committee preclude this Hearing Committee from discharging its statutory mandate of determining whether disciplinary action should be taken. Mr. Tynes' failure to produce documents and attend before us not only precludes us from discharging our duty but also precludes the College from discharging its mandate of protecting the public interest and governing the practice of pharmacy.

(e) Conduct Unbecoming and Professional Misconduct

The College has asked this Hearing Committee to make a finding that Mr. Tynes has engaged in conduct unbecoming and professional misconduct.

The Act defines the terms Conduct Unbecoming and Professional Misconduct as follows:

2 (l) "conduct unbecoming" includes any conduct that is

- (i) contrary to the best interests of the public or the profession, or
- (ii) likely to harm the standing of the practice of pharmacy as a profession or to impair public confidence in the profession of pharmacy;

2 (at) "professional misconduct" includes such conduct or acts relevant to the profession that, having regard to all the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional including, without limiting the generality of the foregoing.....

On behalf of the College, Mr. Sterns submitted the following authority in support of its position that this Hearing Committee can and should make a finding of conduct unbecoming or professional misconduct against Mr. Tynes:

In similar instances, other self-regulating professions have found a registrant to have been engaged in professional misconduct as a result of their failure to co-operate with the regulatory body:

- In *Kaburda v. College of Dental Surgeons*, 2014 CanLii 96656 (BC CDS), a Panel of the Discipline Committee of the College of Dental Surgeons of British Columbia (CDSBC) found the registrant to have been engaged in professional misconduct as a result of the registrant's failure to provide CDSBC with patient records; failure to provide dates to the Inquiry Committee for a meeting; refusal to cooperate with the CDSBC in its investigation (by providing records and other information); mistreatment of CDSBC employees ; and failure to meet with the Inquiry Committee. The Panel found that the registrant's acts/omissions prevented the CDSBC from carrying out their statutory mandate to protect the public generally and the patient in question particularly, which conduct amounted to professional misconduct.
- In *Law Society of British Columbia v. Dobbin*, [2000] L.S.D.D. No. 12, the Benchers [Discipline Committee] found that a failure to cooperate in an investigation by a regulatory body is professional misconduct. In that matter, a complaint was made against a lawyer who failed to respond to communications from the Law Society on numerous occasions over a 10-month period. The Benchers highlighted the importance of the duty to reply stating that prompt, candid and complete responses to the Law Society are cornerstones of the right to self-govern:

[20]... The duty to reply to communications from the Law Society is at the heart of the Law Society's regulation of the practice of law and it is essential to the Law Society's mandate to uphold and protect the interest of its members. If members could ignore communications from the Law Society, the profession would not be governed but would be in a state of anarchy.

[...]

[23] ...the Benchers wish to ensure that members are under no illusions as to their duty to respond nor as to how the Benchers will deal with a failure to discharge that duty: we repeat, responding promptly, candidly and completely to Law Society communications is the cornerstone of our right to self-govern.

In their decision, finding that Mr. Dobbin's conduct was "both disgraceful and dishonourable", the Benchers found it was "a clear, inexcusable case of professional misconduct by Mr. Dobbin in failing to respond to communications from the Law Society."

- In *Ontario (College of Physicians and Surgeons of Ontario) v. Botros, ONCPSD 13*, the Discipline Committee of the College of Physicians and Surgeons of Ontario found that Dr. Botros' failure to respond to Committee inquiries constituted a failure to co-operate fully with the investigation and therefore constituted "disgraceful, dishonourable or unprofessional conduct."
- In *Law Society of British Columbia v. Tak, 2011 LSBC 01*, the Disciplinary Hearing Panel of the Law Society of British Columbia found that the failure by a lawyer under investigation to provide certain records and available dates to meet with the Law Society amounted to professional misconduct.

At the virtual hearing conducted on July 14, 2020, the College asked this Hearing Committee to make a finding of Conduct Unbecoming against Mr. Tynes and to place this matter into abeyance pending compliance with our production order. At that time this Hearing Committee declined to make the requested finding preferring to address that issue later in the proceeding. Rather than place this matter into abeyance, this Hearing Committee in its September 8, 2020 decision specified the steps it would require of Mr. Tynes to advance this matter.

Unfortunately, as noted, Mr. Tynes has not taken any of the action specified in our September 8, 2020 decision nor produced any of the requested documentation. Further Mr. Tynes has refused to engage further in this process. Mr. Tynes failure to cooperate and participate in this proceeding has brought this process to an unacceptable impasse. This Hearing Committee is firmly of the view that registrants must not be permitted to opt out of regulatory proceedings and elect to not comply with orders and directions given by Hearing Committees. If registrants are permitted to ignore regulatory proceedings and refuse to cooperate and produce required documents with impunity the College will be unable to govern the profession and most importantly will be unable to protect the public interest.

This Hearing Committee finds that Mr. Tynes' failure to produce any documents pursuant to our production order, take the action specified in our September 8, 2020 decision and his refusal to participate in this process is in fact contrary to the best interests of the public and the profession and is likely to impair public confidence in the profession of pharmacy. For these reasons this Hearing Committee finds that Mr. Tynes has engaged in conduct unbecoming of a registrant. We also find that Mr. Tynes' failure to produce documents and engage with this process is disgraceful, dishonourable and unprofessional and as a result constitutes professional misconduct.

- (f) Suspension of Mr. Tynes' application to resume the practice of pharmacy.

The Act confers considerable authority on a Hearing Committee following a finding of professional misconduct, conduct unbecoming, professional incompetence or incapacity on the part of a registrant. Having found that Mr. Tynes has engaged in professional misconduct and conduct unbecoming this Hearing Committee must now consider the College's request flowing from those findings. The College has requested that we suspend Mr. Tynes' application to resume the practice of pharmacy and suspend this matter pending Mr. Tyne's compliance with the Production Order.

The College cites sections 56 (2) and 57 (1) (e) of the Act as our authority for such an order.

Section 56 (2) of the Act states as follows:

56 (2) The Hearing Committee may

- (a) determine its own procedure;
- (b) issue subpoenas and enforce the attendance of witnesses and compel them to give oral or written evidence on oath and to produce such documents and things as the Committee considers necessary for the full consideration of the matter;
- (c) order pre-hearing procedures, including pre-hearing conferences that are held in private, and direct the times, dates and places of the hearing for those procedures;
- (d) order that a hearing, parts of a hearing or pre-hearing conference be conducted using a means of telecommunication that permits the parties and the Committee to communicate simultaneously;
- (e) administer oaths and solemn affirmations;
- (f) receive and accept such evidence and information on oath, affidavit or otherwise as the Committee in its discretion sees fit, whether admissible in a court of law or not;
- (g) prescribe the disclosure obligations of the parties before a hearing;
- (h) compel, at any stage of a proceeding, any person to provide information or to produce documents or things that may be relevant to the matter before it;
- (i) adjourn or postpone a proceeding from time to time;

(j) amend or permit the amendment of any document filed in connection with the proceeding, including the notice of hearing and particulars of any matter contained therein;

(k) make interim orders to affirm, amend or rescind any outstanding order of the Investigation Committee;

(l) approve or reject a settlement proposal.

Section 57 (1) (e) of the Act states as follows:

Section 57(1)

Where the Hearing Committee finds professional misconduct, conduct unbecoming, professional incompetence or incapacity on the part of a respondent, the Committee may do any one or more of the following in the Committee's disposition of the matter:

.....

(e) suspend the respondent's ability to apply for a licence for a specified period of time.

As noted Section 57 (1) (e) provides authority for the suspension of a respondent's ability to apply for a license for a specified period of time. This Hearing Committee has considered whether action taken pursuant to Section 57 (1) (e) of the Act must stipulate an actual date on which the application suspension will end. The Hearing Committee directed legal counsel Dan Ingersoll to seek the College's position regarding the interpretation of Section 57 (1) (e). Mr. Ingersoll requested the College's position by email dated January 13, 2021. The College responded by email dated January 15, 2021 and stated, in part, that:

It is the College's position that a specified period of time is not limited to a calendar date and could include the time period up to and including Mr. Tynes' compliance with the Hearing Committee's orders.

The Hearing Committee finds that a suspension of Mr. Tynes' ability to apply for a license is an appropriate consequence to his failure to produce documents, respond to our direction of September 8, 2020 and for his refusal to engage with this process. This Hearing Committee suspends Mr. Tynes' ability to apply for a license until such time as Mr. Tynes produces documents as required in the Production Order and responds to our direction of September 8, 2020.

(g) Suspension of this hearing process

As noted above, Section 56 (2) of the Act empowers Hearing Committees to determine their own procedures (Section 56 (2) (a)) and to adjourn or post pone the proceeding from time to time (Section 56 (2) (i)). As noted, Mr. Tynes' failure to produce documents and attend before this Hearing Committee has caused this matter to enter into an unacceptable impasse. For this reason this Hearing Committee adjourns this hearing process without day until such time as Mr. Tynes produces documents as required in the Production Order, responds to our direction of September 8, 2020 and engages with this process or until the College seeks to have the matter scheduled for hearing.

(h) Costs

The College has requested that the matter of costs to be awarded be reserved pending the resumption of this matter. This Hearing Committee grants this request and reserves the issue of costs pending the resumption of this matter.

Dated at Halifax, Nova Scotia, this 25th day of January, 2021.

A handwritten signature in cursive script, reading "Susan Halliday Mahar".

Susan Halliday Mahar, Chair
Hearing Committee, Nova Scotia College of
Pharmacists

**NOVA SCOTIA COLLEGE OF PHARMACISTS
HEARING COMMITTEE**

IN THE MATTER OF: The *Pharmacy Act*, R.S.N.S. 2001, c.36 and Regulations made thereunder and s.51(1)

-and-

IN THE MATTER OF: Stephen Gregory Tynes, Registrant

DECISION REGARDING JULY 14, 2020 VIRTUAL HEARING

This is the decision of the Hearing Committee in respect of a request by the Nova Scotia College of Pharmacists (the College) for:

- A finding of conduct unbecoming [against Mr. Tynes] for failure to cooperate and breach of an Order for Production issued by the Hearing Committee, and the suspension of Mr. Tynes' ability to practice until he cooperates and complies with the Order; and/or
- An Order suspending Mr. Tynes's application for resumption of practice until he has complied with the Order for Production and has provided the information.

This decision also addresses Mr. Tynes' request that this matter be referred to the Nova Scotia Human Rights Commission.

Background

By letter dated July 3, 2018 the Registrar of the Nova Scotia College of Pharmacists referred the above noted matter to this Hearing Committee pursuant to section 51(1) (a) of the *Pharmacy Act*, 2011, c.11, s.1 (the *Pharmacy Act*). That section provides as follows:

51 (1) Where a registrant

(a) has been charged with, pleaded guilty to, been convicted or been found to be guilty of any offence in or out of Canada that is inconsistent with the proper professional behaviour of a registrant, including a conviction under the Criminal Code (Canada), the Food and Drug Act (Canada), the Controlled Drug and Substances Act (Canada) or such other legislation as is set out in the regulations, unless a pardon has been issued;

....

or it is otherwise required pursuant to this Act or the regulations, the Registrar shall immediately refer the matter to the Hearing Committee with a summary of the matter to be addressed, and shall provide the person with a copy of the summary.

The means by which this matter came to the attention of the Nova Scotia College of Pharmacists and the College's interaction with Mr. Tynes has been addressed in prior decisions of this Hearing Committee. For completeness of the record and to place this decision in context the Hearing Committee will reproduce much of that history in this decision.

Mr. Tynes had been a licensed pharmacist with the College until December 31, 2016 and as such falls within the definition of "registrant" set out in section 2 (ax) the *Pharmacy Act*. Section 2 (ax) of the *Pharmacy Act* states as follows:

(ax) "registrant" means a person registered with the College pursuant to this Act or the former Act, and includes a member of the College pursuant to the former Act, and also includes a licensed pharmacist or person who was a licensed pharmacist, a licensed pharmacy technician or person who was formerly a licensed pharmacy technician, a certified dispenser or person who was formerly a certified dispenser, a registered student or a person who was formerly a registered student, an intern or person who was formerly an intern and any pharmacist, pharmacy technician, certified dispenser, registered student or intern whose registration or licence is suspended;

By Application dated June 14, 2017, Mr. Tynes applied to the College for a license to resume practice as a pharmacist in Nova Scotia. As part of his application process, he answered yes to the following question set out in the College's Statement of Disclosure document:

Have you plead guilty to, been convicted or found guilty of or, if the charge is still outstanding, been charged with any offence in or out of Canada that is inconsistent with the proper professional behaviour of a registrant, including an offence under any of the following, and a pardon has not been issued:

- (i) the Criminal Code (Canada);
- (ii) the Food and Drug Act (Canada) or its regulations;
- (iii) the Controlled Drugs and Substances Act (Canada) or its regulations

Beverly Zwicker, the Nova Scotia College of Pharmacists Registrar (the Registrar), wrote to Mr. Tynes on July 13, 2017 and stated in part:

To allow the proper consideration of your application for resumption of practice as a pharmacist in Nova Scotia, please provide the following:

Full details of any past, or existing, charge, conviction, plea of guilty, or finding of guilt, in or out of Canada, since the time of your first licensure as a pharmacist in Nova Scotia until the date of your application to resume practice.

Full details of any disposition of any proceeding, or determination of any court, arising out of a matter that did not result in a conviction, since the time of your first licensure as a pharmacist in Nova Scotia until the date of your application to resume practice.

Please include any and all relevant documents regarding items 1 and 2.

It appears the College received a response to Ms. Zwicker's letter from Mr. Tynes on April 3, 2018 in which he said:

Here is the letter from my attorney which confirms that I was found not guilty of the charges. If you require additional information, you can contact my attorney Stan MacDonald. His contact information is in the email I have forwarded. Thank you.

Although Mr. Tynes referred to a letter from his attorney, he appears to have actually forwarded an email from lawyer Stanley MacDonald in which Mr. MacDonald referred to "charges of attempted theft and two counts of breach of probation" and noted that "Judge Richard MacKinnon found you not guilty on all charges."

Melissa Rhodes, the College's Registrations Manager, made the following request of Mr. Tynes by email dated April 6, 2018:

Thanks Stephen. As per the letter issued to you, dated July 13, 2017, can you please provide confirmation that you have submitted the following documentation to the NSCP:

- full details of any past, or existing, charge, conviction, plea of guilty, or finding of guilt, in or out of Canada, since the time of your first licensure as a pharmacist in Nova Scotia until the date of your application to resume practice
- full details of any disposition of any proceeding, or determination of any court, arising out of a matter that did not result in a conviction, since the time of your first licensure as a pharmacist in Nova Scotia until the date of your application to resume practice

Let me know if you have any questions or concerns.

By email dated April 16, 2018, Mr. Tynes offered the following reply:

Hello,
Why would I need to provide details about something that did not result in a conviction? That is a violation of my charter rights. I can provide you with a criminal record check that confirms that I do not have a criminal record.
Stephen

By correspondence dated April 27, 2018, the Registrar re-issued her correspondence of July 13, 2017 to Mr. Tynes and made the following document request of Mr. Tynes:

To allow the proper consideration of your application for resumption of practice as a pharmacist in Nova Scotia, please provide the following:

Full details of any past, or existing, charge, conviction, plea of guilty, or finding of guilt, in or out of Canada, since the time of your first licensure as a pharmacist in Nova Scotia until the date of your application to resume practice.

Full details of any disposition of any proceeding, or determination of any court, arising out of a matter that did not result in a conviction, since the time of your first licensure as a pharmacist in Nova Scotia until the date of your application to resume practice.

Please include any and all relevant documents regarding items 1 and 2.

By email dated May 7, 2018, Mr. Tynes sent the following email to Melissa Rhodes, Registrations Manager disclosing the following charges:

Here is a list of the charges, and their outcomes. If you have any questions, please do not hesitate to contact my attorney Stan MacDonald at Patterson Law – Halifax branch.

Stephen

2014

1 count animal cruelty – charges dropped by crown attorney (October 2015)

2015

2 counts of uttering threat, 1 count of threatening conduct – charges dropped by crown attorney (June 2016)

Possession of a prohibited device (over capacity magazine) – plea bargain – conditional discharge, 5-year firearms prohibition (October 2016)

2016

1 count assault – plea bargain – conditional discharge (February 2017)

2017

1 count attempted theft, 2 counts breach of probation – found not guilty on all charges (February 2018)

Pursuant to Mr. Tynes' invitation to contact his attorney, Mr. Sterns, by letter dated July 6, 2018, advised Mr. MacDonald that the College was seeking the "full non-privileged content of any files relating to the four incidents set out in Mr. Tynes' attachment 2014, 2015, 2016 and 2017". By emails dated July 9 and 26, 2018, Mr. MacDonald advised Mr. Sterns that he had not been retained by Mr. Tynes in respect of the matter involving the Nova Scotia College of Pharmacists. In his July 26, 2018 email, Mr. MacDonald advised Mr. Sterns that he should follow up directly with Mr. Tynes in the future.

By email dated July 30, 2018 sent from the same email address as noted above, Mr. Tynes sent the following email to Carol Wood at Mr. Sterns' office:

Hello,

I am unable to provide you with disclosure materials for the cases. What I can do is order court transcripts and provide you with those. Thank you.

Stephe [sic] Tynes

Mr. Sterns emailed Mr. Tynes on August 20, 2018 and asked him if he would consent to his previous lawyer(s) providing the College with the crown disclosure provided to them when they were assisting him.

Mr. Tynes responded to Mr. Sterns on August 20, 2018 at 6:20 pm and said:

No, I will not consent. The information that college is requesting is irrelevant to the practice of pharmacy. Furthermore, disclosure information from charges where I have been found not guilty or where the charges have been dismissed should not even be considered for my licensure. I have disclosed the details as required and they are simply giving me the run around. If they will

not license me, then I will be forced to hire a lawyer and sue them for damages.

By email dated September 20, 2018, the Hearing Committee received an application and draft Order for Production on behalf of the College directing Mr. Tynes to produce certain documentation identified in the draft order. By order dated October 2, 2018, the Hearing Committee indicated that it would convene a preliminary hearing to consider the College's application for production on October 17, 2018 at 10:00 am at the College's offices at Suite 200, 1559 Brunswick Street, Halifax, Nova Scotia.

This Hearing Committee convened a hearing to consider the College's production order request on October 17, 2018.

By written decision dated November 16, 2018, this Hearing Committee allowed the College's application for production and issued the following order:

In respect of the following charges disclosed by Mr. Tynes:

2014

1 count animal cruelty

2015

2 counts of uttering threat, 1 count of threatening conduct

2016

1 count assault

2017

1 count attempted theft, 2 counts breach of probation

The Hearing Committee issued the following order:

Stephen Gregory Tynes shall produce any and all documents in his possession or control that are relevant to the forgoing criminal charges and without limiting the generality of the forgoing shall produce any and all documents in his possession or control relevant to the circumstances giving rise to or relating in any way to the forgoing criminal charges.

The Hearing Committee directed Mr. Tynes to produce the required documents to Mr. Sterns within 60 days of this order by delivering those documents to the College's offices at Suite 200, 1559 Brunswick Street, Halifax, Nova Scotia.

This Hearing Committee scheduled a conference call for all parties to occur on June 24, 2019 to discuss the status of the matter and determine next steps. By correspondence dated June 21, 2019 Mr. Sterns on behalf of the College advised this Hearing Committee that:

“It is the position of the Nova Scotia College of Pharmacists that:

- Mr. Tynes had notice of the document production hearing held on October 17, 2018.
- He did not attend.
- Mr. Tynes has been served with the Order for Production.
- He has not complied.

It is the position of the Nova Scotia College of Pharmacists that Mr. Tynes’ conduct amounts to professional misconduct. He has failed to comply with an Order of the Hearing Committee of the Nova Scotia College of Pharmacists.”

At the conclusion of his June 21, 2019 letter Mr. Sterns took the following position with respect to the relief which the College of Pharmacists is seeking:

“Mr. Tynes has failed to comply with the Order of this Committee. That is professional misconduct. Mr. Tynes has failed to pursue his application for license. No further process is necessary.

The Nova Scotia College of Pharmacists respectfully requests:

- A finding of professional misconduct for failure to comply with the Order for Production.
- An Order suspending Mr. Tynes ability to apply for a licence until he complies with the Order for Production, and, provides a new complete application in compliance with the Act and Regulations.”

Mr. Tynes did not attend the June 24, 2019 telephone conference. The Hearing Committee directed that the parties reconvene by telephone conference on September 12, 2019. Prior to that telephone conference Mr. Tynes raised a conflict of interest allegation against this Hearing Committee. This Hearing Committee directed the parties to address the alleged conflict of interest in writing and orally at the September 12, 2019 telephone conference. Following that telephone conference by decision dated October 16, 2019 this Hearing Committee determined that:

Based upon the foregoing this Hearing Panel is of the view that a person viewing this matter realistically and practically and being informed of all the facts would not conclude that this Hearing Panel is biased and would not fairly decide the issue before this Hearing Panel.

For the foregoing reasons, this Hearing Panel will not recuse itself but rather will proceed with this matter. Hearing Panel will seek dates for the parties to continue with this matter.

This Hearing Committee convened a telephone conference with all parties on January 22, 2020 to determine next steps in this matter. During that submission dates were set by which the College would advance its position as to how the matter should proceed given Mr. Tynes alleged lack of compliance with the production order. The College was also asked to address the question of whether the crown disclosure provided to Mr. Tynes was subject to privilege and thereby immune from production. Submission deadlines were set for the College and for Mr. Tynes response with a hearing date set for April 3, 2020.

The College had addressed both of these issues in its submission of February 14, 2020. Mr. Tynes had offered his written submission on March 15, 2020.

By letter dated March 24, 2020 the Hearing Committee directed that the April 3, 2020 hearing would not proceed due to the COVID crises. The Hearing was put over to June 12, 2020. Shortly before that date Mr. Tynes advised that he was not free on that date. In that communication Mr. Tynes stated in part:

“It is apparent that the Hearing Committee is nothing more than a puppet for the College and their attorney. As such, I see no reason for me to continue to waste my time attending these meetings.”

Because Mr. Tynes advised he was not available to attend the June 12, 2020 hearing this Hearing Committee set a new hearing date for July 14, 2020.

By correspondence to the Hearing Committee submitted on June 9, 2020 Mr. Tynes made the following request regarding this proceeding:

Mr. Tynes has no criminal record, yet he is being treated like a criminal. Furthermore, he believes that the College’s actions are in violation of his charter rights. At this time he is asking that the Hearing Committee refer this matter to the Nova Scotia Human Rights Commission.

The Hearing Committee requested that the College address Mr. Tynes request that this matter be referred to the Human Rights Commission. The College addressed that issue by correspondence dated June 12, 2020

Written Submissions

As noted, the College provided its written submission on February 14, 2020.

With respect to the alleged lack of compliance with the production order the College submitted in part as follows:

2. Mr. Tynes has a duty to cooperate, and a duty to produce the requested documents. He has refused. That is a breach of the Pharmacy Act.

3. Mr. Tynes says “get a court order”. The College got an order. Pursuant to the Pharmacy Act, and the Public Inquiries Act, the Production Order of the Hearing Committee has the same force and effect as an order of the Supreme Court of Nova Scotia. Mr. Tynes is in breach of that Order.

4. Mr. Tynes has produced no documents in his possession or control and there is no evidence he has done anything to comply with the Act or Order.

.....

28. Mr. Tynes has failed to produce any documents or information relating to the criminal charges. For clarity, Mr. Tynes has provided no documents or further information. To date, Mr. Tynes remains in breach of the Order for Production.

29. During a January 21, 2020 conference call, Mr. Tynes confirmed he will not produce further information and took the position that the College would require “a Court order” compelling him to do so.

.....

The College submitted that the following should result from Mr. Tynes’ failure to respond to the production order:

56. Mr. Tynes’ failure to comply with the Production Order and failure to produce the requested documents is a breach of the Order and his duty to cooperate under s. 38 of the Act. It is the College’s position that Mr. Tynes’ failure to comply with the Hearing Committee’s requests and breach of the Order is conduct unbecoming, which is defined as follows:

2(l) “conduct unbecoming” includes any conduct that is

- (i) contrary to the best interests of the public or the profession, or
- (ii) likely to harm the standing of the practice of pharmacy as a profession or to impair public confidence in the profession of pharmacy

62. For clarity, Mr. Tynes has breached the Committee’s Order, has breached the Pharmacy Act and refused to cooperate. Insofar as s. 51 is concerned, the College requests an Order suspending Mr. Tynes’ ability to practice pharmacy until he complies with his duties under the Pharmacy Act and the Production Order of the Honourable Hearing Committee.

.....

The College sought the following relief from this Hearing Committee:

RELIEF

65. The Nova Scotia College of Pharmacists respectfully requests:

- A finding of conduct unbecoming for failure to cooperate and breach of an Order for Production issued by the Hearing Committee, and the suspension of Mr. Tynes' ability to practice until he cooperates and complies with the Order; and/or
- An Order suspending Mr. Tynes's application for resumption of practice until he has complied with the Order for Production and has provided the information.

With respect to the production of Crown Disclosure the College made the following submission:

68. It is the position of the College that Crown disclosure may be the subject of a production order and the Honourable Hearing Committee has the power to order the production of Crown disclosure. For absolute clarity, it is the position of the College that there is no privilege or shield which prevents Mr. Tynes from providing the Crown disclosure.

69. Please note, it is correct to state that in many instances, material or documents provided by the Crown to an accused person shall not be disclosed. However, the prohibition on producing "Crown disclosure" is not applicable in our case.

70. By way of background, there is a general rule prohibiting Crown disclosure. The general rule prohibiting the use of Crown disclosure is an implied undertaking on the accused not to distribute, share or circulate Crown disclosure material and to only use the Crown disclosure material to allow the accused to make full answer and defence to charges. That is, Mr. Tynes is fully entitled to use the Crown disclosure to make full answer and defence to any criminal charge. However, Mr. Tynes has an implied undertaking not to distribute, share or circulate the Crown disclosure for any collateral purpose.

.....

78. In cases which limited the use of Crown disclosure, the accused was not an applicant, seeking licence, with an express legislative requirement to disclose. In any matters involving an implied undertaking not to produce Crown disclosure, there is no governing legislation such as the Pharmacy Act which expressly provides for disclosure.

79. Equally, as Mr. Tynes correctly notes, "get a court order". The College has done so. The Order of the Hearing Committee has the same force and effect as the order of a Supreme Court of Nova Scotia and is enforceable to overcome any implied undertaking that Crown disclosure should not be produced. Even if there is an enforceable implied undertaking in our case (and the College says there is not), the

Hearing Committee has the power to issue the Production Order. That Production Order is of the same force as a Supreme Court order and trumps any implied undertaking.

80. In summary, the implied undertaking that exists in criminal proceedings is not applicable to this matter

Mr. Tynes' March 15, 2020 written submission focused on the production of crown disclosure issue. In his submission Mr. Tynes stated:

Mr. Stearns states that the prohibition on producing Crown disclosure is not applicable to this case, yet fails to provide any case law supporting his claim.

.....

Mr. Stearns gives reason as to why Mr. Tynes should not distribute Crown disclosure material to the Hearing Committee. Mr. Stearns admits that Mr. Tynes has a right to use the disclosure materials in defense of criminal charges. A production order is not a criminal charge. Furthermore, Mr. Tynes asserts that this would in fact be a collateral purpose for using the disclosure materials. As such he would be violating his agreement not to distribute, share, or circulate Crown disclosure for a collateral purpose.

.....

This statement from the BC Court of Appeal supports Mr. Tynes assertion, for the reasons given in response to section 70.

July 14, 2020 Virtual Hearing

This Hearing Committee, chaired by Susan Halliday Mahar convened the WebEx virtual hearing on July 14, 2020 at 10:15 am by WebEx Link, which link had been provided to the parties. (The hearing was to begin at 10:00 am but due to technical difficulties at Cox & Palmer, the start was delayed by 15 minutes.) All parties were in attendance, including Stephen Tynes, Scott Sterns and Tiffany Savary, on behalf of the College, Hearing Committee members Susan Halliday Mahar (Chair), Krista Trider and Tom Mahaffey, as well as counsel to the Hearing Committee, Dan Ingersoll.

Oral Submissions

At the outset of the hearing Mr. Tynes took the position that the College is discriminating against him on the basis that "you cannot discriminate against someone in respect of a criminal record". Mr. Tynes advised that he does not have a conviction but that the College is treating him as if he does. Mr. Tynes stated that the only document for him to provide is a criminal record check.

On behalf of the College and in response to the suggestion that the College is discriminating against Mr. Tynes, Mr. Sterns submitted that the College is not in fact discriminating against Mr. Tynes. Mr. Sterns stated that this proceeding is not about whether Mr. Tynes has been convicted but rather this proceeding has arisen because Mr. Tynes was charged. Mr. Sterns noted that Section 51 of the *Pharmacy Act* speaks of charges and as a result because charges have been disclosed to the College in this case the College has the right to seek particulars.

Mr. Sterns also noted that this is a licensing process. Mr. Sterns noted that the *Pharmacy Act* governs this process and includes the duty to cooperate. Mr. Sterns noted that it is of fundamental importance that this Hearing Committee has issued an order and that Mr. Tynes says that he will not comply with the order. Mr. Sterns noted that if documents are not produced the College believes that Mr. Tynes cannot proceed with his application.

Mr. Sterns stated that the College would receive a criminal record check from Mr. Tynes but noted that the Production Order is broader in scope than just requiring production of a Criminal Record Check. Mr. Sterns noted that the College is mandated to assess Mr. Tynes ability to practice pharmacy and to make that assessment the College requires information from other sources. Mr. Sterns noted that if the Criminal Record Check only shows convictions or conditional discharges a significant component of issue before this Committee will not be addressed.

In response to a question from the Chair, Mr. Tynes advised that he would attend before the Hearing Committee to answer questions about the charges but would need to have a lawyer and would need to see the questions in advance.

Mr. Tynes submitted that the College needs to obtain a court order to compel production of his crown disclosure received in respect of any of the charges. In response to this suggestion Mr. Sterns stated that this Hearing Committee has issued a production order which order has the full force and effect of an order of the Supreme Court of Nova Scotia. Mr. Sterns noted that the *Pharmacy Act* confers on this Hearing Committee all the power of a public inquiry which power includes the authority to issue production orders which orders have the same force and effect of orders of the Supreme Court of Nova Scotia.

Mr. Sterns responded to a question from the Chair with respect to the separation between this Section 51 process and Mr. Tynes application for a license by noting that this Hearing Committee's powers are broad and that as a result this Hearing Committee can address Mr. Tynes application process. Mr. Sterns noted that Mr. Tynes' application is on hold pending the outcome of this process.

Mr. Sterns also noted that this Hearing Committee has the authority to find that Mr. Tynes' failure to comply with the production order constitutes conduct unbecoming and that such a finding need not be proceeded by the laying of a charge of conduct unbecoming against Mr. Tynes.

The Chair asked Mr. Tynes why he has not produced any documents in response to the production order. Mr. Tynes responded by stating that he has rights under the Constitution that need to be respected. He submitted that the crown Disclosure is simply conjecture and

has not been admitted in court and that he has not been convicted. Mr. Tynes noted that the College seeks to use the crown disclosure as proof. Mr. Tynes stated that the College is attempting to use the crown disclosure to circumvent his charter rights to discriminate against his application.

The Chair reminded Mr. Tynes that there had been prior discussions regarding court transcripts. Mr. Tynes responded by saying that he had been told that the transcripts were not good enough. Mr. Tynes said that if the Committee asks he will obtain a criminal record check and will apply to have the court transcripts sent as well.

Decision

Request that this matter be referred to the Human Rights Commission

As noted, Mr. Tynes has requested that this matter be referred to the Human Rights Commission.

The College, by submission dated June 12, 2020 expressed the view that the Hearing Committee lacks the jurisdiction to refer this matter to the Human Rights Commission.

The Hearing Committee finds that it lacks the jurisdiction to refer this matter to the Human Rights Commission. The Registrar referred this matter to the Hearing Committee pursuant to the direction imposed by Section 51(1) of the *Pharmacy Act*. Upon receipt of the referral from the Registrar this Hearing Committee must comply with the statutory mandate imposed by Section 51 (3) of the *Pharmacy Act* which states:

- (3) The Hearing Committee shall determine whether disciplinary action should be taken.

This Hearing Committee must determine if disciplinary action should be taken. The Hearing Committee lacks the statutory authority to not accept this mandate or to refer or delegate that mandate to another statutory body including but not limited to the Human Rights Commission. For this reason this Hearing Committee will not refer this matter to the Human Rights Commission.

Document production

On November 16, 2018 this Hearing Committee issued a production order directing that:

Stephen Gregory Tynes shall within 60 days of this Order produce any and all documents in his possession or control that are relevant to the foregoing criminal charges and without limiting the generality of the foregoing shall produce any and all documents in his possession or control relevant to the circumstances giving rise to or relating in any way to the foregoing criminal charges.

The College asserts that Mr. Tynes has not produced any documents in compliance with the November 18, 2020 production order. Mr. Tynes does not dispute that fact.

This Hearing Committee accepts that Mr. Tynes has not produced any information or documentation in response to the College's request for particulars or the production order other than the information which he provided to the College on May 7, 2018. That lack of production has delayed this matter and has delayed the College's consideration of Mr. Tynes' application to resume the practice of pharmacy.

Mr. Tynes asserts that the only document he need provide is a criminal record check. Mr. Tynes is free to tender such a document before this Hearing Committee. Indeed this Hearing Committee is directed by Section 51 (2) of the *Pharmacy Act* to hear such evidence as is offered by the registrant as to why the registrant should not be subject to disciplinary action. Mr. Tynes may be of the view that a criminal record check is the only evidence that he needs to tender to establish that he should not be subject to disciplinary action.

Mr. Tynes was charged with eight separate offences over a three year span. Section 51 of the *Pharmacy Act* directs the Registrar to refer a matter immediately to a Hearing Committee if a registrant, among other things, has been charged with, pleaded guilty to, been convicted or been found to be guilty of any offence in or out of Canada that is inconsistent with the proper professional behaviour of a registrant. The *Pharmacy Act* contemplates that the charges alone can result in a matter being referred to a Hearing Committee if the charges are inconsistent with the proper professional behaviour of a registrant. In this matter, this Hearing Committee must determine if discipline should be imposed because Mr. Tynes was charged these offences. The Hearing Committee will ultimately have to consider if the determination of whether discipline is warranted requires a more nuanced analysis than simply considering whether the charges resulted in convictions.

The Hearing Committee accepts the undisputed fact highlighted by the College that Mr. Tynes appears to have been granted two conditional discharges. These two conditional discharges were highlighted by the College in its submission for the following reasons:

17. The College was particularly concerned with the conditional discharges in 2015 and in 2016. Though not a conviction, a conditional discharge requires that the accused "pleads guilty to or is found guilty of an offence." The College understands that a conditional discharge would appear on Mr. Tynes' criminal record for 3 years and, if he failed to meet the conditions prescribed, the discharge could be revoked. The Criminal Code of Canada, s. 730 provides:

Conditional and absolute discharge

730 (1) Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

Based on the forgoing submission, it appears that Mr. Tynes appears to have pleaded guilty to or been found guilty of two of the offences with which he was charged (possession of a prohibited device and assault). This Hearing Committee must determine if these two charges in particular and the associated guilty pleas or guilty findings merit some form of disciplinary action.

Quite apart from the evidence that Mr. Tynes wishes to tender to establish that disciplinary action is not required the Hearing Committee reiterates its position that Mr. Tynes is obliged to produce all documents in his possession or control that are relevant to the disclosed criminal charges. Those documents may include a criminal record check but are not limited to that document. Any relevant non-privileged documents in Mr. Tynes possession or control must be produced. Notwithstanding the passage of twenty months since the issuance of the production order the Hearing Committee accepts that Mr. Tynes has not produced any documents.

Mr. Tynes' primary defence of his lack of response to the production order is his argument that that he cannot be required to produce the crown disclosure documents in his possession. Mr. Tynes asserts that all of these documents are privileged and therefor exempt from production.

The Hearing Committee notes that Mr. Tynes' reply to the production issue has focused on the crown disclosure documents and his position that those documents are not compellable in this proceeding. Mr. Tynes has not taken the position that there are no other relevant documents in his possession or control. Mr. Tynes has previously advised this Hearing Committee that all of his documents are in the possession of his lawyer. The Production Order obliges Mr. Tynes to produce relevant non-privileged documents in his possession or control. Leaving aside for the moment the issue regarding the production of crown disclosure, Mr. Tynes is obliged by the production order to produce all relevant non-privileged documents in his possession or control that did not come into his possession by way of crown disclosure. (The production of the crown disclosure will be addressed shortly in this decision.)

As the history of this proceeding establishes, Mr. Tynes has offered to secure the transcripts of his court appearances. To avoid further delay in this proceeding Mr. Tynes should secure these transcripts at his earliest opportunity.

Turning to the issue regarding production of crown disclosure it is the College's position that while privilege may attach to crown disclosure in certain circumstances no such privilege arises in this particular situation:

68. It is the position of the College that Crown disclosure may be the subject of a production order and the Honourable Hearing Committee has the power to order the production of Crown disclosure. For absolute clarity, it is the position of the College that there is no privilege or shield which prevents Mr. Tynes from providing the Crown disclosure.

The College further submits that Mr. Tynes is obliged to produce the crown disclosure provided to him because of the production order issued by this Hearing Committee which obliged Mr. Tynes to produce all relevant documents in his possession. The Hearing Committee notes that the production order does in fact have the same force and effect as if it were issued by the Supreme Court of Nova Scotia. Section 61 (a) of the *Pharmacy Act* stipulates that this Hearing Committee has the powers of a commissioner appointed pursuant to the *Public Inquiries Act* which Act confers the following powers on a Commissioner:

4 The commissioner or commissioners shall have the power of summoning before him or them any persons as witnesses and of requiring them to give evidence on oath orally or in writing, or on solemn affirmation if they are entitled to affirm in civil matters, and to produce such documents and things as the commissioner or commissioners deem requisite to the full investigation of the matters into which he or they are appointed to inquire. R.S., c. 372, s. 4.

5 The commissioner or commissioners shall have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and produce documents and things as is vested in the Supreme Court or a judge thereof in civil cases, and the same privileges and immunities as a judge of the Supreme Court. R.S., c. 372, s. 5.

The Hearing Committee accepts that the mere fact that a document was included in the disclosure received from the crown does not necessarily mean it is immune from production in this proceeding. For example, a record of a police interview with Mr. Tynes contained within the disclosure would be highly relevant to this proceeding and possibly not immune from disclosure in this proceeding. The Hearing Committee finds that the allegation of privilege associated with crown disclosure documents must be considered with respect to each individual document in respect of which privilege is claimed.

The Hearing Committee is not prepared to accept that all of the crown disclosure in Mr. Tynes' possession is exempt from disclosure without focused submissions regarding the actual documents contained within the disclosure. Unless Mr. Tynes satisfies this Hearing Committee that any particular document disclosed to him as part of crown disclosure is in fact immune from production he is required, pursuant to the production order, to produce the crown disclosure provided to him. Mr. Tynes must disclose all the documents provided to him as crown disclosure unless he obtains a ruling from this Hearing Committee that any particular document is immune from production.

The Hearing Committee directs that Mr. Tynes identify all documents in his possession or control which are relevant to the charges disclosed by Mr. Tynes on May 7, 2018 and not subject to production on the basis of privilege. In producing this list of documents, Mr. Tynes must also indicate the basis on which the claim of privilege is asserted. Upon production of that list of privileged documents this Hearing Committee will consult with the parties to determine the process by which each individual assertion of privilege in respect of each document can, if necessary, be assessed.

College's request for finding of Conduct Unbecoming

The College cites Mr. Tynes' lack of cooperation in the production of documents and has requested from this Hearing Committee:

- A finding of conduct unbecoming for failure to cooperate and breach of an Order for Production issued by the Hearing Committee, and the suspension of Mr. Tynes' ability to practice until he cooperates and complies with the Order; and/or
- An Order suspending Mr. Tynes's application for resumption of practice until he has complied with the Order for Production and has provided the information.

This Hearing Committee's preference is to proceed with this matter rather than place it in abeyance for an indeterminate period of time. The Hearing Committee is mindful of the reality that placing this matter in abeyance until such a time as Mr. Tynes complies with the Production Order may very well mean that Mr. Tynes' application to resume the practice of pharmacy will be placed in abeyance on a permanent basis.

The Hearing Committee is also of the view that the question of whether Mr. Tynes has engaged in conduct unbecoming due to his failure to produce any relevant documents should be deferred to a later stage in this proceeding.

Action required of Mr. Tynes

During oral submissions the Hearing Committee asked Mr. Tynes if he would appear before this Hearing Committee and answer questions about these charges. During oral submissions Mr. Tynes said that he would obtain the criminal record check and request the transcripts of his court appearances. The Hearing Committee considers these three sources of information to be practical next steps in this proceeding and preferable to placing the matter in abeyance indefinitely. That said, unless some action is taken by Mr. Tynes to produce evidence before this Hearing Committee there may be little option but to place the matter in abeyance.

This Hearing Committee determines that Mr. Tynes must take the following steps in this proceeding:

1. Production of all relevant non-privileged documents in Mr. Tynes' possession or control including documents which may be in the possession of third parties. These documents must be produced within thirty (30) days of this decision.
2. Identification of each individual document in Mr. Tynes' possession or control which he asserts is not subject to the Production Order on the basis of privilege together with the basis on which the privilege is claimed. This list of privileged documents (but not the documents) must be produced within thirty (30) days of this decision. This Hearing Committee will convene a call with the parties to address the process by which this Hearing Committee will assess the claim of privilege in respect of each document.

3. Production of a certified copy of his current criminal record check. Mr. Tynes must produce this document within sixty (60) days of this decision.
4. Production of the transcripts of all Mr. Tynes' appearances in court in relation to the following charges:

2014

1 count animal cruelty – charges dropped by crown attorney (October 2015)

2015

2 counts of uttering threat, 1 count of threatening conduct – charges dropped by crown attorney (June 2016)

Possession of a prohibited device (over capacity magazine) – plea bargain – conditional discharge, 5-year firearms prohibition (October 2016)

2016

1 count assault – plea bargain – conditional discharge (February 2017)

2017

1 count attempted theft, 2 counts breach of probation – found not guilty on all charges (February 2018)

5. Mr. Tynes must submit proof to this Hearing Committee via Mr. Ingersoll that all of the required transcripts have been requested within thirty (30) days of this decision. Mr. Tynes must produce the transcripts immediately upon his receipt of the transcripts. The Hearing Committee directs Mr. Tynes to provide notice to the Hearing Committee via Mr. Ingersoll if for any reason all of the transcripts cannot be obtained in which case the Hearing Committee will convene the parties to discuss next steps.
6. Mr. Tynes must produce the relevant non-privileged documents, the list of privileged documents, the criminal record check and the transcripts by delivering them to the Nova Scotia College of Pharmacists c/o Scott Sterns, Merrick Jamieson Sterns Washington & Mahody, 5475 Spring Garden Road, Suite 503, Halifax, NS, B3J 3T2.
7. Following Mr. Tynes' production of the relevant non-privileged documents, the criminal record check and the transcripts with respect to the above noted charges, this Hearing Committee will convene a hearing at which Mr. Tynes will make himself available for questioning regarding the charges.

This Hearing Committee will convene the parties by conference call after November 1, 2020 to determine the status of this matter and determine next steps.

Dated at Halifax, Nova Scotia, this 8th day of September, 2020.

A handwritten signature in cursive script, reading "Halliday Mahar".

Susan Halliday Mahar, Chair
Hearing Committee, Nova Scotia College
of Pharmacists