

**DISCIPLINE COMMITTEE OF THE  
COLLEGE OF NATUROPATHS OF ONTARIO**

**IN THE MATTER OF** a hearing directed  
by the Inquiries, Complaints and Reports Committee of  
the College of Naturopaths of Ontario  
pursuant to Section 26(1) of the Health Professions Procedural Code  
being Schedule 2 of the *Regulated Health Professions Act, 1991*,  
S.O. 1991, c. 18, as amended.

**B E T W E E N:**

**COLLEGE OF NATUROPATHS OF ONTARIO**

- and -

**ALLAN BORTNICK**

**DECISION AND REASONS**

A panel of the Discipline Committee of the College of Naturopaths of Ontario (the “Panel”) held a hearing on May 16, 2022. The hearing proceeded electronically pursuant to the *Regulated Health Professions Act, 1991*, Schedule 2, the Health Professions Procedural Code (the “Code”), the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the Discipline Committee Rules.

Rebecca Durcan was counsel to the College of Naturopaths of Ontario (the “College”). Andrew Parr attended on behalf of the College. Allan Bortnick (the “Registrant”) was represented by Gary Srebrolow. Lonny Rosen acted as independent legal counsel (“ILC”) to the Panel.

**ALLEGATIONS**

The Notices of Hearing, both dated December 10, 2020, were filed as Exhibit 1A and 1B and set out the following:

Exhibit 1A

1. The Registrant initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the “Board”) on or about June 14, 1978. The Registrant became a

registrant of the College in the General class of registration on or about July 1, 2015 as a result of the proclamation of the *Naturopathy Act, 2007*.

#### **Patient 1**

2. On or about December 9, 2014 Patient 1 visited the Registrant for allergy testing.
3. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a diaphragm examination on Patient 1.
4. It is alleged that a diaphragm examination was not warranted for Patient 1.
5. It is alleged that the Registrant assessed and/or recommended orthotics that were not warranted for Patient 1.
6. It is alleged that the Registrant failed to do the following:
  - a. Disclose all relevant information prior to assessments, treatments, examinations and/or recommendations;
  - b. Obtain informed consent for the assessment and/or recommendations of orthotics;
  - c. Obtain informed consent for the bladder lift and/or diaphragm examination, including but not limited to the following:
    - i. The Registrant failed to alert Patient 1 about the nature of the assessment, treatment, and/or examination, including but not limited to the following:
      1. She would or may feel sensations in her clitoral area and/or the Registrant would or may apply pressure to her clitoral area;
      2. The Registrant would or may graze and/or touch her breasts; and/or
      3. The Registrant would or may graze and/or touch her buttocks;
  - d. Document the informed consent of Patient 1 and/or
  - e. Document the appointment in accordance with Board requirements.
7. It is alleged that the Registrant did the following during the bladder lift and/or diaphragm examination without clinical rationale:
  - a. Grazed, cupped and/or held the breasts of Patient 1; and/or
  - b. Grazed, and/or cupped the buttocks of Patient 1.
8. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

#### **Allegations of professional misconduct as a Registrant of the Board**

9. It is alleged that the above noted conduct constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
  - a. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
  - b. **Paragraph 2(h)** - Sexual impropriety with a patient;

- c. **Paragraph 2(r)** - Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
- d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
- e. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
  - i. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information
  - ii. 4.6 – Implement the plan of treatment with informed consent.
  - iii. Consent to Treatment Standard;
  - iv. Ethical Conduct Standard; and/or
  - v. Record Keeping Standard.

## Patient 2

- 10. On or about June 29, 2015, Patient 2 visited the Registrant for orthotics, spine curvature and/or clenching of the jaw.
- 11. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a spinal examination on Patient 2.
- 12. It is alleged that the Registrant assessed and/or proposed and/or recommended new orthotics to Patient 2.
- 13. It is alleged that the Registrant failed to do the following:
  - a. Disclose all relevant information prior to assessments, treatments, examinations and/or recommendations;
  - b. Assess Patient 2 for orthotics in accordance with standards of the profession;
  - c. Obtain informed consent for assessing and/or recommending orthotics;
  - d. Obtain informed consent for the bladder lift including but not limited to the following:
    - i. The Registrant failed to alert Patient 2 about the nature of the treatment, including but not limited to the following:
      - 1. The Registrant would or may graze and/or touch her breasts;
  - e. Obtain informed consent for the spinal examination including but not limited to the following:
    - i. The Registrant failed to alert Patient 2 about the nature of the examination, including but not limited to the following:
      - 1. The Registrant would or may stand behind her and/or move his hands over her shoulders and/or down her chest and/or under her shirt;
      - 2. The Registrant would or may graze and/or touch her breasts;
      - 3. The Registrant would or may graze and/or touch her buttocks; and/or
      - 4. The Registrant would or may touch her lips;

- f. Document the informed consent of Patient 2; and/or
  - g. Document the appointment in accordance with Board requirements.
14. It is alleged that the Registrant did the following during the bladder lift and/or spinal examination without clinical rationale:
- a. Grazed, cupped and/or held the breasts of Patient 2.
15. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

### **Allegations of professional misconduct as a Registrant of the Board**

16. It is alleged that the above noted conduct constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
- a. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
  - b. **Paragraph 2(h)** - Sexual impropriety with a patient;
  - c. **Paragraph 2(r)** - Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
  - e. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
    - i. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
    - ii. 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
    - iii. 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
    - iv. 4.6 – Implement the plan of treatment with informed consent;
    - v. Consent to Treatment Standard;
    - vi. Ethical Conduct Standard; and/or
    - vii. Record Keeping Standard.

### **Patient 3**

17. In or about March 2011, Patient 3 visited the Registrant for low back pain.
18. It is alleged that the Registrant provided treatment to Patient 3 including an abdominal examination and/or abdominal lift.
19. It is alleged that the Registrant failed to do the following:

- a. Disclose all relevant information prior to assessments, treatments, and/or examinations;
  - b. Obtain informed consent for an examination and/or treatment including but not limited to the following:
    - i. The Registrant failed to alert Patient 3 about the nature of the examination and/or treatment, including but not limited to the following:
      - 1. The Registrant would or may touch her in the pubic region and/or may apply pressure.
    - b. Document the informed consent of Patient 3.
    - c. Document the appointment in accordance with Board requirements.
20. It is alleged that the Registrant did the following during the abdominal examination and/or bladder lift without clinical rationale:
- a. Touch Patient 3 in the pubic region and/or apply pressure to the pubic region.
21. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

#### **Allegations of professional misconduct as a Registrant of the Board**

22. It is alleged that the above noted conduct constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
- a. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
  - b. **Paragraph 2(h)** - Sexual impropriety with a patient;
  - c. **Paragraph 2(r)** - Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
  - e. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
    - i. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
    - ii. 4.6 – Implement the plan of treatment with informed consent;
    - iii. Consent to Treatment Standard;
    - iv. Ethical Conduct Standard; and/or
    - v. Record Keeping Standard.

#### **Patient 4**

23. In or about 2007, Patient 4 visited the Registrant for lower back pain. It is alleged that Patient 4 had 2-3 appointments with the Registrant.

24. It is alleged that during the appointments, the Registrant would treat, assess and/or examine Patient 4 by massaging her breasts, touching her breasts, squeezing her buttocks and/or massaging her buttocks.
25. It is alleged that the Registrant failed to do the following:
  - a. Disclose all relevant information prior to assessments, treatments, and/or examinations;
  - b. Obtain informed consent for the treatments, assessments and/or examinations including but not limited to the following:
    - i. The Registrant failed to alert Patient 4 about the nature of the treatment, including but not limited to the following:
      1. The Registrant would or may graze and/or touch her breasts; and/or
      2. The Registrant would or may graze and/or touch her buttocks.
26. It is alleged that the Registrant did the following during the treatment without clinical rationale:
  - a. Massage the breasts, touch the breasts, squeeze the buttocks and/or massage the buttocks of Patient 4.
27. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

#### **Allegations of professional misconduct as a Registrant of the Board**

28. It is alleged that the above noted conduct constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
  - a. **Paragraph 2(h)** - Sexual impropriety with a patient;
  - b. **Paragraph 2(r)** - Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - c. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment; and/or
  - d. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
    - i. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
    - ii. 4.6 – Implement the plan of treatment with informed consent; and/or
    - iii. Ethical Conduct Standard.

#### **Patient 5**

29. In or about 2003, Patient 5 visited the Registrant for lower back pain.
30. It is alleged that during the appointment, the Registrant performed a diaphragm/xiphoid examination on Patient 5 and grazed and/or touched her breasts.

31. It is alleged that the Registrant assessed and/or proposed and/or recommended orthotics to Patient 5.
32. It is alleged that the Registrant failed to do the following:
  - a. Disclose all relevant information prior to assessments, treatments, examinations and/or recommendations;
  - b. Assess and/or propose and/or recommend orthotics for Patient 5 in accordance with standards of the profession;
  - c. Obtain informed consent for proposing, and/or recommending orthotics;
  - d. Obtain informed consent for the examination including but not limited to the following:
    - i. The Registrant failed to alert Patient 5 about the nature of the examination and/or treatment, including but not limited to the following:
      1. The Registrant would or may graze and/or touch her breasts.
33. It is alleged that the Registrant did the following during the examination and/or treatment without clinical rationale:
  - a. Grazed and/or touched the breasts of Patient 5.
34. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

#### **Allegations of professional misconduct as a Registrant of the Board**

35. It is alleged that the above noted conduct constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
  - a. **Paragraph 2(h)** - Sexual impropriety with a patient;
  - b. **Paragraph 2(r)** - Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - c. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
  - d. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
    - i. 2.6 - Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
    - ii. 2.9 - Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
    - iii. 2.10 - Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
    - iv. 4.6 - Implement the plan of treatment with informed consent; and/or
    - v. Ethical Conduct Standard.

## Patient 6

36. On or about April 7, 2013 the Registrant attended the home of Patient 6 to provide treatment and/or recommendations related to her falling.
37. It is alleged that the Registrant provided a naturopathic diagnosis and/or offered to provide treatment and/or provided treatment for an alleged fallen bladder and/or backed up kidneys.
38. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a diaphragm examination.
39. It is alleged that the Registrant failed to do the following:
  - a. Disclose all relevant information prior to treatments;
  - b. Obtain informed consent for a bladder lift and/or diaphragm examination, including but not limited to the following:
    - i. The Registrant failed to alert Patient 6 about the nature of the examination and/or treatment, including but not limited to the following:
      1. The Registrant would or may graze and/or touch her breasts; and/or
      2. The Registrant would or may graze and/or touch her buttocks;
  - c. Document the informed consent of Patient 6; and/or
  - e. Document the appointment in accordance with Board requirements.
40. It is alleged that the Registrant did the following during the bladder lift and/or diaphragm examination, without any clinical rationale:
  - a. Grazed, cupped and/or held the breasts of Patient 6.
41. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

## Allegations of professional misconduct as a Registrant of the Board

42. It is alleged that the conduct which occurred in 2013 constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
  - a. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
  - b. **Paragraph 2(h)** - Sexual impropriety with a patient;
  - c. **Paragraph 2(r)** - Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
  - e. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:

- i. 2.6 - Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
- ii. 4.6 - Implement the plan of treatment with informed consent;
- iii. Consent to Treatment Standard;
- iv. Ethical Conduct Standard; and/or
- v. Record Keeping Standard.

### Exhibit 1B

1. The Registrant initially registered with the Board on or about June 14, 1978. The Registrant became a registrant of the College in the General class of registration on or about July 1, 2015 as a result of the proclamation of the *Naturopathy Act, 2007*.
2. On or about April 7, 2013 the Registrant attended the home of Patient 6 to provide treatment and/or recommendations related to her falling.
3. It is alleged that the Registrant provided a naturopathic diagnosis and/or offered to provide treatment and/or provided treatment for an alleged fallen bladder and/or backed up kidneys.
4. It is alleged that the Registrant assessed and/or recommended orthotics that were not warranted for Patient 6.
5. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a diaphragm examination.
6. It is alleged that the Registrant failed to do the following:
  - a. Disclose all relevant information prior to treatments;
  - b. Obtain informed consent for a bladder lift and/or diaphragm examination, including but not limited to the following:
    - i. The Registrant failed to alert Patient 6 about the nature of the examination and/or treatment, including but not limited to the following:
      1. The Registrant would or may graze and/or touch her breasts; and/or
      2. The Registrant would or may graze and/or touch her buttocks;
  - c. Obtain informed consent for assessing and/or recommending orthotics;
  - d. Document the informed consent of Patient 6; and/or
  - e. Document the appointment in accordance with Board requirements.
7. It is alleged that the Registrant did the following during the bladder lift and/or diaphragm examination, without any clinical rationale:
  - a. Grazed, cupped and/or held the breasts of Patient 6.

8. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

### **Allegations of professional misconduct as a Registrant of the Board**

9. It is alleged that the conduct which occurred in 2013 constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
  - a. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
  - b. **Paragraph 2(h)** – Sexual impropriety with a patient;
  - c. **Paragraph 2(r)** – Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment; and/or
  - e. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
    - i. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
    - ii. 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
    - iii. 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
    - iv. 4.6 – Implement the plan of treatment with informed consent;
    - v. Consent to Treatment Standard;
    - vi. Ethical Conduct Standard; and/or
    - vii. Record Keeping Standard.

### **ADMISSION AND PLEA INQUIRY**

The two Notices of Hearing (Exhibits 1A and 1B) collectively related to allegations of professional misconduct with respect to six patients, Patients 1, 2, 3, 4, 5, and 6. The Registrant admitted to the allegations of professional misconduct set out in the two Notices of Hearing with respect to Patient 1, Patient 2 and Patient 3 and the particulars thereof. The following allegations of professional misconduct and particulars pertaining to Patient 3, Patient 4, and Patient 5 were withdrawn at the request of the parties and with the permission of the Panel:

- Patient 3 – Paragraphs 17 – 22;

- Patient 4 – Paragraphs 23-28; and
- Patient 5 – Paragraphs 29-35.

The Panel conducted an oral plea inquiry and was satisfied that the Registrant's admissions were voluntary, informed and unequivocal.

### **AGREED AND UNCONTESTED STATEMENT OF FACTS**

The College advised the Panel that the evidence would be provided by way of an Agreed and Uncontested Statement of Facts, which was filed as Exhibit 2 and set out the following:

- 1) The Registrant initially registered with the Board on or about June 14, 1978. The Registrant became a registrant of the College in the General class of registration on or about July 1, 2015 as a result of the proclamation of the *Naturopathy Act, 2007*.
- 2) The Registrant was also a chiropractor registered with the College of Chiropractors of Ontario (CCO). He was registered as a chiropractor from approximately 1977 to 2022.

### **Notices of Hearing**

- 3) The College and the Registrant consent to the two Notices of Hearing dated December 10, 2020 to be heard together pursuant to s 9.1(1)(a) of the *Statutory Powers Procedure Act*.
- 4) The College and the Registrant agree that the following allegations and particulars should be withdrawn:
  - a) Patient 3 – Paragraphs 17 – 22;
  - b) Patient 4 – Paragraphs 23-28; and
  - c) Patient 5 – Paragraphs 29-35.

### **Patient 1**

- 5) On or about December 9, 2014 Patient 1 visited the Registrant for allergy testing.
- 6) However, during the appointment, the Registrant told Patient 1 that something was wrong with her back. He asked Patient 1 to stand up in front of him.
- 7) When Patient 1 stood up to allow the Registrant to check out her back (as the Registrant expressed concern) the Registrant grazed her breasts. If the Registrant were to testify, he would deny grazing her breasts but would state that if it did occur, it was inadvertent. The Registrant agrees that during this procedure inadvertent touching can occur. The Registrant also admits that he never disclosed this to Patient 1 when seeking consent.

- 8) The Registrant then told Patient 1 that she required a bladder or abdominal lift and a diaphragm examination.
- 9) It is agreed that during the appointment, the Registrant performed a bladder lift and a diaphragm examination on Patient 1. He also assessed Patient 1 for orthotics.

#### *Bladder/Abdominal Lift*

- 10) The bladder lift required Patient 1 to lie face down on the treatment table. Patient 1 was fully dressed. The Registrant placed his right hand on her abdomen below her belly button. During the bladder lift, Patient 1 felt a sensation in her clitoral area. If he were to testify, the Registrant would advise the Panel that any touching of this area was of a clinical and not a sexual nature and he did not touch the pubis or the clitoris during the bladder lift. However, he concedes that a patient may feel a tug at the pubic symphysis as this is where the rectus abdominus muscle attaches. If he were to testify, the Registrant would state that he advised Patient 1 that she may feel a “tug” sensation at the pubic symphysis. If Patient 1 were to testify, she would state that he never disclosed this to her when seeking consent.
- 11) If he were to testify, the Registrant would advise the Panel that he believed that he had obtained informed consent from Patient 1. He now concedes that he did not as he did not provide the necessary information to Patient 1 to obtain informed consent. He also admits that he did not document any aspect of the consent in the patient record.

#### *Diaphragm Examination*

- 12) The Registrant concedes that this procedure may not have been required. However, if he were to testify, he would state he believed that it was warranted in light of his assessment of the patient’s symptoms.
- 13) The Registrant asked Patient 1 to sit down. He was behind her and reached around Patient 1 to examine her xiphoid area located where the lower ribs attach to the breastbone.
- 14) While doing so, Patient 1 states that the Registrant again grazed her breasts.
- 15) If he were to testify, the Registrant would advise the Panel that he does not recall grazing her breasts. However, he concedes that grazing may occur in light of the fact that he was behind Patient 1 and placed his hands in the xiphoid area to determine if the joint was fixated or mobile. The Registrant admits that during the consent process, he did not disclose to Patient 1 that her breasts may be touched.
- 16) If he were to testify, the Registrant would advise the Panel that he believed that he had obtained informed consent from Patient 1. He now concedes that he did not as he did not provide the necessary information to Patient 1 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

### *Orthotics*

- 17) The Registrant was concerned about possible pelvis misalignment and asked Patient 1 to stand. Patient 1 stated that the Registrant then took both of his hands and rubbed them down her legs, cupping the underside of her buttocks as he passed that area. She stated that he repeated this movement and again cupped the underside of her buttocks. The Registrant denies cupping the underside of her buttocks.
- 18) The Registrant concedes that some touching may occur during the assessment and if it did, any touching of this area was not sexual in nature. The Registrant admits that he never disclosed to Patient 1 that he may touch the buttocks when assessing for orthotics.
- 19) Patient 1 was concerned that the Registrant recommended and ordered orthotics for her. If he were to testify, the Registrant would advise the Panel that he did so as he believed it was warranted. However, he concedes that he did not conduct a proper foot/gait examination, did not palpate the region and did not obtain a proper medical history and that this should have occurred before any recommendation or ordering.
- 20) If he were to testify, the Registrant would advise the Panel that he believed he had obtained informed consent from Patient 1. He now concedes that he did not as he did not provide the necessary information to Patient 1 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

### **Patient 2**

- 21) On or about June 29, 2015, Patient 2 visited the Registrant for orthotics, spine curvature and clenching of the jaw.
- 22) It is agreed that the Registrant proposed and performed a bladder/abdominal lift and a spinal examination on Patient 2.

### *Spinal Examination/Jaw Assessment*

- 23) It is agreed that during the spinal examination, the Registrant asked Patient 2 to stand. He tapped her body, including her buttocks. It is the position of the Registrant that this touching was of a clinical and not sexual nature. The Registrant admits that he never disclosed that he would palpate (or tap) her buttocks to Patient 2 when seeking informed consent.
- 24) It is also agreed that that in assessing her jaw, he palpated and touched the mouth and lips of Patient 2. If she were to testify, Patient 2 would state that he placed his hands in her mouth and on the wet part of her lips. If he were to testify he would deny touching any wet part of her lips. The Registrant admits that he never disclosed that he would palpate and touch her mouth and lips to Patient 2 when seeking informed consent.
- 25) The Registrant asked Patient 2 to sit down. He admits that he reached across Patient 2 to assess her diaphragm area. During this assessment, Patient 2 states that the Registrant

moved both hands over her shoulders, down her chest, under her shirt and bra and cupped her breasts.

26) If he were to testify, the Registrant would advise the Panel that he has no recollection of touching her breasts. He concedes that grazing of the breasts may occur in light of the fact that he was behind Patient 2 and placed his hands in the xiphoid area. The Registrant admits that he never disclosed this possibility to Patient 2 when seeking consent. The Registrant also admits that he did not alert Patient 2 that he would stand behind her and move his hands over her shoulders and down her chest when seeking informed consent.

27) If he were to testify, the Registrant would advise the Panel that he believed he had obtained informed consent from Patient 2 to perform the spinal assessment. He now concedes that he did not as he did not provide the necessary information to Patient 2 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

#### *Orthotics*

28) It is agreed that the Registrant assessed and proposed and recommended new orthotics to Patient 2. If he were to testify, the Registrant would advise the Panel he did so as he believed it was warranted. However, he concedes that he did not conduct a proper foot/gait examination, did not palpate the region and did not obtain a proper medical history and that this should have occurred before any recommendation or ordering.

29) If he were to testify, the Registrant would advise the Panel that he believed he had obtained informed consent from Patient 2 to perform the orthotics assessment and the ordering thereof. However, he admits that he did not document any aspect of the consent in the patient record.

#### **Patient 6**

30) On or about April 7, 2013 the Registrant attended the home of Patient 6 as she wished to obtain naturopathic treatment and recommendations related to her falling.

31) It is agreed that the Registrant provided a naturopathic diagnosis and offered to provide treatment and provided treatment for an alleged fallen bladder and backed up kidneys.

32) It is agreed that the Registrant proposed and performed a bladder lift and a diaphragm examination.

#### *Bladder Lift*

33) At the outset of the bladder lift, the Registrant asked Patient 6 to lie down on the treatment table. Patient 6 was on her back and was fully clothed.

34) If she were to testify, Patient 6 would state the following:

- a) The Registrant started massaging her head and then moved to her neck. He advised Patient 6 that he would use a laser to relax the muscles.
- b) The Registrant then moved down to her breasts and massaged them. Patient 6 thought he was checking for lumps.
- c) The Registrant then moved down her body but then moved up to her breasts again. He felt (cupped or held) them again.
- d) The Registrant then went back up to her neck and massaged it.
- e) The Registrant then returned to her breasts. He touched (cupped or held) them. At this point in time, Patient 6 asked the Registrant what he was doing.

35) If he were to testify, the Registrant would advise the Panel that he has no recollection of touching her breasts. He concedes that grazing of the breasts may occur during this procedure. The Registrant admits that he never disclosed this possibility to Patient 6 when seeking informed consent.

36) If he were to testify, the Registrant would advise the Panel that he believed he had obtained informed consent from Patient 6 to perform the bladder lift and any touching of this area was of a clinical and not sexual nature. He now concedes that he did not as he did not provide the necessary information to Patient 6 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

#### *Orthotics*

37) It is also agreed that during this appointment, the Registrant recommended orthotics to Patient 6. Patient 6 had not requested orthotics. Despite this, the Registrant proceeded to assess, recommend and order orthotics for Patient 6. It is agreed that orthotics were not warranted for Patient 6.

#### **Touching of Sensitive Body Parts and Sexual Impropriety**

38) If he were to testify, the Registrant would acknowledge that any touching of the breasts or buttocks, inadvertent or not, can be stressful for patients. The Registrant would agree that registrants need to reassure patients that they will always be mindful of boundary concerns and that this includes avoiding any unnecessary touching of sensitive body parts. Further, the Registrant admits that if any inadvertent touching of any sensitive body parts (including but not limited to the breasts, buttocks, vulva or vagina) may occur, it is important to alert the patient in advance and ensure that this is acceptable to the patient before any treatment occurs. This ensures that the care is patient centred and does not cause any unnecessary stress or discomfort to the patient. It also ensures that patients have all relevant information before deciding to consent to a treatment.

39) The Registrant admits that if the recollections of Patient 1, 2 and/or 6 are correct with regard to touching of their breasts, it would constitute misconduct and pleads no contest to the allegations of sexual impropriety.

## Standards and Guidelines of the Board

- 40) During the relevant periods of time, it is agreed that the following written standards and guidelines applied to the Registrant:
- a) General Standards of Practice
  - b) Consent to Treatment Standard;
  - c) Ethical Conduct Standard; and
  - d) Record Keeping Standard.

## Admissions of misconduct

- 41) The College and the Registrant agree that the above conduct constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
- a) **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
  - b) **Paragraph 2(r)** – Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent;
  - c) **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment; and
  - d) **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
    - i) 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
    - ii) 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
    - iii) 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
    - iv) 4.6 – Implement the plan of treatment with informed consent;
    - iv) Consent to Treatment Standard;
    - v) Ethical Conduct Standard; and
    - vi) Record Keeping Standard.

## No Contest

- 42) The Registrant pleads no contest (i.e., he neither admits nor denies) to the particulars and allegations of sexual impropriety. The Discipline Committee has sufficient evidence to make this finding of misconduct to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, paragraph 2(h) as defined in Professional Misconduct/Incompetence established by the Board.

## **Acknowledgement**

43) By this document, the Registrant states that:

- a) He understands fully the nature of the allegations made against him;
- b) He has no questions with respect to the allegations against him;
- c) He admits to the truth of the facts contained in this document and that the facts constitute professional misconduct;
- d) He understands that by signing this document he is consenting to the evidence as set out in this document being presented to the Discipline Committee;
- e) He understands that by admitting to certain allegations and not contesting the allegations of sexual impropriety, he is waiving his right to require the College to prove the allegations against him at a contested hearing;
- f) He understands that the decision of the Committee and a summary of its reasons, including reference to his name, will be published in the College's annual report and any other publication or website of the College;
- g) He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
- h) He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, and free of bribe and that he has been advised of his right to seek legal advice.

## **DECISION AND REASONS ON LIABILITY**

The Panel accepted as correct all of the facts set out in the Agreed and Uncontested Statement of Facts. The Panel found that the evidence contained in that document proved, on a balance of probabilities, the allegations alleged in the Notice of Hearing and admitted to in the Agreed and Uncontested Statement of Facts.

### Reasons for Decision

The Panel considered the Agreed and Uncontested Statement of Facts and the Registrant's plea and finds that the facts in this case support findings of professional misconduct as alleged in the Notice of Hearing pursuant to paragraphs 2(a), 2(h), 2(r), 2(u), and 2(w)(i-vii) of subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board.

In arriving at its decisions, the Panel considered the Registrant's admission of professional misconduct, the Agreed and Uncontested Statement of Facts, and the parties' submissions.

Following deliberations, the Panel was satisfied that the conduct described in the Agreed and Uncontested Statement of Facts constitutes professional misconduct as alleged in the Notice of Hearing and as admitted by the Registrant for the following reasons:

**Paragraph 2(a) - Failure to maintain adequate records in accordance with Board policy**

The Registrant admitted that he did not maintain adequate records in accordance with Board policy with respect to Patients 1, 2 and 6. With respect to Patient 1, the Registrant concedes that he did not document in the patient record any aspect of the consent respecting the diaphragm examination, orthotics assessment or the bladder/abdominal lift he performed. With respect to Patient 2, the Registrant did not document any aspect of the consent to the orthotics assessment or the spinal assessment/jaw examination he performed. With respect to Patient 6, the Registrant did not document the consent he believed he obtained for a bladder lift. The Panel therefore found that the College had established that the Registrant engaged in professional misconduct pursuant to paragraph 2(r) of subsection 30(1) of *Ontario Regulation 278*, R.R.O 1990.

**Paragraph 2(h) – Sexual Impropriety**

With respect to Patient 1, the Registrant admitted that when she stood up to allow the Registrant to check out her back (as the Registrant expressed concern), the Registrant grazed her breasts, though this was inadvertent.

With respect to Patient 2, the Registrant admits that he reached across her to assess her diaphragm area. During this assessment, Patient 2 states that the Registrant moved both hands over her shoulders, down her chest, under her shirt and bra and cupped her breasts. If he were to testify, the Registrant would have advised the Panel that he has no recollection of touching Patient 2's breasts, but concedes that grazing of the breasts may have occurred in light of the fact that he was behind Patient 2 and placed his hands in the xiphoid area.

Patient 6, if she were to testify, would state that the Registrant started massaging her head and then moved to her neck, advised that he would use a laser to relax the muscles, and then moved down to her breasts and massaged them. Patient 6 thought he was checking for lumps. The Registrant then moved down her body but then moved up to her breasts again and felt (cupped or held) them again. After massaging her neck again, the Registrant then returned to her breasts and touched (cupped or held) them. If he were to testify, the Registrant would advise the Panel that he has no recollection of touching her breasts, but he concedes that grazing of the breasts may occur during this procedure.

The Registrant agreed that if the recollections of Patients 1, 2, and 6 were correct regarding his touching of their breasts, it would constitute professional misconduct and he pleaded no contest to the allegation of sexual impropriety with respect to this conduct. The Registrant did not admit and the Panel does not find that the Registrant engaged in sexual impropriety with regard to touching of other body parts of these patients, although the Registrant admitted and

the Panel found that his conduct with respect to these patients constituted professional misconduct in other respects.

The Panel therefore finds that the Registrant engaged in professional misconduct, contrary to paragraph 2(h) as set out in subsection 30(1) of *Ontario Regulation 278, R.R.O 1990*.

**Paragraph 2(u) - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment**

The Panel found that the Registrant engaged in professional misconduct by failing to obtain informed consent for a diagnostic procedure or treatment or plan of treatment with respect to Patients 1, 2 and 6. Specifically,

With respect to Patient 1, the Registrant would acknowledge that any touching of the breasts or buttocks, inadvertent or not, can be stressful for patients, and would agree that registrants need to reassure patients that they will always be mindful of boundary concerns and that this includes avoiding any unnecessary touching of sensitive body parts. Further, the Registrant admits that if any inadvertent touching of any sensitive body parts (including but not limited to the breasts, buttocks, vulva or vagina) may occur, it is important to alert the patient in advance and ensure that this is acceptable to the patient before any treatment occurs. This ensures that the care is patient-centred and does not cause any unnecessary stress or discomfort to the patient. It also ensures that patients have all relevant information before deciding to consent to a treatment.

The Registrant concedes that some touching may occur during the assessment but contends that if it did, any touching of this area was not sexual in nature. The Registrant admits that he never disclosed to Patient 1 that he may touch the buttocks when assessing for orthotics. If he were to testify, the Registrant would advise the Panel that he believed he had obtained informed consent from Patient 1. He now concedes that he did not, as he did not provide the necessary information to Patient 1 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

With respect to Patient 2, the Registrant palpated and touched her mouth and lips, in assessing her jaw. If she were to testify, Patient 2 would state that he placed his hands in her mouth and on the wet part of her lips. The Registrant admits that he never disclosed to Patient 2 that he would palpate and touch her mouth and lips when seeking informed consent. The Registrant also admitted to standing behind her and moving his hands over her shoulders and down her chest. However, he never disclosed this possibility, nor did he alert her that he would stand behind her when seeking consent.

The Registrant also agreed that during his spinal examination of Patient 2, he asked Patient 2 to stand and he tapped her body, including her buttocks. The Registrant admits that he never disclosed to Patient 2 when seeking informed consent that he would palpate (or tap) her buttocks. While the Registrant believed he had obtained informed consent from Patient 2 to

perform the orthotics assessment and the ordering thereof, he admits that he did not document any aspect of the consent in the patient record, which is a requirement for obtaining informed consent.

With respect to Patient 6, the Registrant believed he had obtained informed consent from her to perform the bladder lift. He now concedes, however, that he did not as he did not provide the necessary information to Patient 6 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record. Additionally, if he were to testify, the Registrant would advise the Panel that he has no recollection of touching this patient's breasts. He concedes that grazing of the breasts may occur during this procedure. The Registrant admits that he never disclosed this possibility to Patient 6 when seeking informed consent. He admits that he did not document any aspect of the consent in the patient record.

**Paragraph 2(r) – Conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent**

The conduct outlined above relating to sexual impropriety with a patient is conduct that also constitutes conduct that members of the profession would reasonably regard as unprofessional or incompetent. In addition, the Registrant engaged in such conduct as follows:

The Registrant was concerned about possible pelvis misalignment and asked Patient 1 to stand. Patient 1 stated that the Registrant then took both of his hands and rubbed them down her legs, cupping the underside of her buttocks as he passed that area. She stated that he repeated this movement and again cupped the underside of her buttocks. The Registrant denies cupping the underside of her buttocks, but admits to unprofessional conduct with respect to this patient. Specifically, Patient 1 was concerned that the Registrant recommended and ordered orthotics for her. If he were to testify, the Registrant would advise the Panel that he did so as he believed it was warranted. However, he concedes that he did not conduct a proper foot/gait examination, did not palpate the region and did not obtain a proper medical history and that this should have occurred before any recommendation or ordering.

The Registrant also engaged in unprofessional conduct with respect to Patient 2. In addition to the conduct relating to sexual impropriety with a patient and failure to obtain informed consent, as outlined above, the Registrant engaged in misconduct by assessing and recommending new orthotics to Patient 2 without having conducted a proper foot/gait examination, palpating the region or obtaining a proper medical history.

With respect to Patient 6, the Registrant recommended orthotics when Patient 6 had not requested orthotics. Despite this, the Registrant proceeded to assess, recommend and order orthotics for Patient 6. It is agreed that orthotics were not warranted for Patient 6.

The Panel therefore finds that the Registrant engaged in professional misconduct, contrary to paragraph 2(r) as set out in subsection 30(1) of *Ontario Regulation 278*, R.R.O 1990.

**Paragraph 2(w) - Contravening standards of practice or guidelines of practice set by the Board.**

The Registrant admitted to contravening the standard of practice or guidelines of practice set by the Board with respect to Patients 1, 2 and 6, as outlined below:

With respect to Patient 1, the Panel found that the Registrant contravened the following standards:

- i) 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
- ii) 4.6 – Implement the plan of treatment with informed consent;
- iii) Consent to Treatment Standard;
- iv) Ethical Conduct Standard; and
- v) Record Keeping Standard.

With respect to Patient 2, the Panel found that the Registrant contravened the following standards:

- i) 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
- ii) 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
- iii) 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
- iv) 4.6 – Implement the plan of treatment with informed consent;
- v) Consent to Treatment Standard;
- vi) Ethical Conduct Standard;
- vii) Record Keeping Standard.

With respect to Patient 6, the Panel found that the Registrant contravened the following standards:

- i) 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
- ii) 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the profession;

- iii) 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
- iv) 4.6 – Implement the plan of treatment with informed consent;
- v) Consent to Treatment Standard;
- vi) Ethical Conduct Standard; and
- vii) Record Keeping Standard.

The Panel's reasons for making the foregoing findings in many respects can be found in the sections above. Further explanation relating to specific standards of practice is provided below.

With respect to paragraph 2.6 of the General Standard, which requires registrants to deal honestly with all patients, and not to give incomplete or misleading information, the Registrant breached this standard with all three Patients by failing to make them aware in advance of the assessments or treatments he would be providing. This included failing to advise Patient 1 of the possibility that inadvertent touching of her breasts may occur, and that during the bladder lift he would be touching the Patient's abdomen below her belly button and that she may feel a tug at the pubic symphysis as this is where the rectus abdominus muscle attaches. With respect to patient 2, the Registrant did not provide the necessary information to Patient 2 to obtain informed consent to perform an orthotics assessment or that he would palpate and touch her mouth and lips when performing a jaw assessment. With respect to Patient 6, the Registrant breached this standard when he did not obtain informed consent to perform a bladder lift and when he moved his hands up and down the patient's breasts when she believed that he was checking for lumps. This indicates that the patient did not have a clear picture of the treatment that was provided and that the Registrant did not provide a complete plan of treatment before providing same, including obtaining consent, particularly for touching of sensitive body parts.

The Registrant acknowledged that any touching of the breasts or buttocks, inadvertent or not, can be stressful for patients and that it is important to alert the patient in advance and ensure that this is acceptable to the patient before any treatment occurs if any inadvertent touching of any sensitive body parts (including but not limited to the breasts, buttocks, vulva or vagina) may occur. The Registrant's failure to provide this information constituted a breach of paragraph 26 of the General Standard.

The foregoing conduct was also in breach of the Consent to Treatment Standard and the Ethical Conduct Standard. Paragraph 4.6 of the General Standard requires registrants to implement the plan of treatment with informed consent. The Registrant breached this standard with respect to Patient 2 for the reasons outlined above.

Paragraph 2.9 of the General Standard requires registrants to formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions. Paragraph 2.10 of the General Standard requires registrants to communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined

using the training and tools available to the naturopathic profession. The Registrant admitted to breaching these standards with respect to Patient 2, in that he assessed her and proposed and recommended new orthotics without having conducted a proper foot/gait examination, palpating the region or obtaining a proper medical history, all of which should have occurred before any recommendation or ordering of orthotics. The Registrant also contravened these standards with respect to Patient 6, when he assessed the patient for orthotics and recommended orthotics that were not warranted.

The Registrant breached the Record Keeping Standard when he failed to document the informed consent he obtained from each of Patients 1, 2 and 6, and when he failed to document the information required to assess, recommend and order orthotics for Patient 6.

By way of summary, the Panel found that with respect to Patient 1, the Registrant failed to deal honestly with patients by making inappropriate recommendations and performing procedures that were not necessary such as recommending orthotics that were not warranted and performing a bladder lift or diaphragm examination that was not indicated. He also failed to implement the plan of treatment with informed consent, and contravened the Consent to Treatment, Ethical Conduct, and Record Keeping Standards.

With respect to Patient 2, the Panel found that the Registrant failed to deal honestly with this patient and failed to refrain from giving any false, incomplete or misleading information. He failed to formulate an assessment/diagnosis to the requisite level, and failed to communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession. He failed to implement the plan of treatment with informed consent, and contravened the Consent to Treatment, Ethical Conduct, and Record Keeping Standards.

With respect to Patient 6, the Panel found that the Registrant failed to deal honestly with this patient and failed to refrain from giving any false, incomplete or misleading information, failed to formulate an assessment/diagnosis to the requisite level, failed to communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession, failed to implement the plan of treatment with informed consent, and contravened the Consent to Treatment, Ethical Conduct, and Record Keeping Standards.

All of the foregoing constituted professional misconduct pursuant to paragraph 2(w) of subsection 30(1) of *Ontario Regulation 278*, R.R.O 1990.

## **POSITION OF THE PARTIES ON PENALTY AND COSTS**

The parties made a joint submission as to an appropriate order for penalty and costs (the "Proposed Order"), which was filed as Exhibit 3 and included the following:

- The College of Naturopaths of Ontario and Allan Bortnick (the “Registrant”) agree and jointly submit that the Discipline Committee make an order:
  1. Directing the CEO to suspend the Registrant’s certificate of registration for a period of twelve months.
- The Registrant acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
- The Registrant acknowledges and understands that he is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.

The parties advised that the joint submission outlined above was signed by the Registrant on April 13, 2022.

#### **ACKNOWLEDGEMENTS AND UNDERTAKINGS**

On the same date that the Registrant signed the joint submission outlined above, the Registrant entered into two additional undertakings: an Undertaking to Resign and Never Reapply (the “Undertaking to Resign”), filed as Exhibit 4; and an Acknowledgment and Undertaking regarding an oral caution (the “Oral Caution Undertaking”), filed as Exhibit 5.

The Undertaking to Resign provided as follows:

I, **ALLAN BORTNICK**, hereby acknowledge and undertake as follows:

1. I acknowledge that I am currently a Registrant of the College. Although I am subject to an interim order that suspended my certificate of registration, I remain within the jurisdiction of the College.

#### ***Allegations of Professional Misconduct***

2. I acknowledge that allegations related to six patients for failing to maintain adequate records, sexual impropriety, unprofessional behaviour, failing to obtain consent and contravening standards of practice were referred to the Discipline Committee of the College on December 3, 2020 in regards to matters 15-006, 16-013, 16-014, 16-015 and 18-011. The two Notices of Hearing are attached [to the Acknowledgment and Undertaking] as **Appendix “A”**. I have consented to the College seeking a withdrawal of the allegations that speak to Patients 3, 4, and 5. I have signed an Agreed and Uncontested Statement of Facts and admitted to all of the remaining allegations but for the allegation of sexual impropriety where I plead no contest.
3. I acknowledge that I am currently subject to an undertaking that came into effect on August 1, 2018 in which I undertook the following.

- a. Notify in writing the College of the identity of any and all of employers, and shall notify the College if there is any change in personal or employment circumstances that may affect the terms of this Undertaking and shall do so within 48 hours of any such change.
- b. Provide any and all of his employers with a copy of this Undertaking within 48 hours of signing this undertaking and within 48 hours of entering into any new employment.
- c. Abstain from conducting any naturopathic examinations or procedures except with another adult (who is over 18 years of age hereinafter known as the Third party) present during the examinations and procedures.
- d. Ensure that the Third-Party signs the patient's chart to confirm his/her presence during the examination or procedure.
- e. Not treat or see any patients who do not consent to being seen with the Third Party being present.

#### ***Discipline Matter with the College of Chiropractors of Ontario***

4. I acknowledge that I previously held a Certificate of Registration with the CCO. I further acknowledge that on March 2, 2022, a panel of the Discipline Committee of the CCO accepted an Agreed Statement of Facts wherein I admitted to or did not contest allegations of professional misconduct, namely, that I sexually abused Patients 1, 3 and 5; that I contravened the standards of practice of the CCO; that I failed to obtain informed consent from all six Patients; that I provided therapeutic services that were not necessary to all six Patients; that I failed to keep records as required for Patients 1, 2, 3 and 4; and that I engaged in conduct and performed an act that would reasonably be regarded by members as disgraceful, dishonourable and unprofessional.
5. I further acknowledge that as part of my matter with the CCO I entered into a Joint Submission on Penalty and Costs. The Panel accepted the agreement and ordered that I appear before a panel to be reprimanded; directing the Registrar to suspend my Certificate of Registration for 15 months beginning February 28, 2022; reimburse the CCO for funding provided to Patients 1, 2, 3, 4, 5, and 6 under section 85.7 of the Health Professions Procedural Code; requiring the results of the decision to be published; and pay \$20,000 in costs to the CCO to be made in installments.
6. I further acknowledge that as part of my agreement with the CCO I signed an Undertaking to resign my membership with the CCO as of February 28, 2022.

#### ***Current Investigation***

7. I acknowledge that because of the above noted finding of the Discipline Committee of the CCO, the CEO commenced an investigation, on or about March 3, 2022, to ascertain if I had committed professional misconduct pursuant to s. 51(1)(b) of the *Health Professions Procedural Code*.
8. I also acknowledge that the ICRC, on or about March 24, 2022, suspended my certificate of registration in accordance with s. 25.4 of the *Health Professions Procedural Code*.

***Undertaking to Resign and Never Reapply to the College of Naturopaths of Ontario***

9. In consideration of (a) the College not seeking revocation or a lengthy suspension in the Discipline matter and a series of terms, conditions and limitations imposed on my certificate of registration and (b) the ICRC agreeing to take no action on the current investigation, I hereby undertake to resign my membership in and certificate of registration with the College effective once all of the settlement documents have been executed by the Registrant and the CEO. This undertaking constitutes instructions to the College to process my resignation.
10. I acknowledge that pursuant to s. 19.03 of the College bylaws, I am required to maintain tail insurance for five years after ceasing to practice the profession.
11. I acknowledge that there I am required to comply with the College standards that speak to closing my practice and ensuring access to and safety of patient records and that I will comply with all standards.
12. I hereby undertake never to reapply for membership, registration, licensure or similar status with this College.
13. I acknowledge that if I ever apply for membership, registration, licensure or similar status with the College in the future, the College will be entitled to rely upon this undertaking in any registration or other similar proceeding as reason to deny my application.
14. I acknowledge that if I ever apply for membership, registration, licensure or similar status with the College in the future, the College will be entitled to prosecute me for the breach of this undertaking, and the College will be entitled to rely upon this undertaking for that purpose.
15. I acknowledge that once my resignation is effective, I will not be entitled to use the title “Naturopath”, “Naturopathic Doctor” or any other derivation or abbreviation thereof or equivalent in another language, I will not be entitled to hold myself out as a person who is qualified to practise in Ontario as a Naturopath or in a specialty of naturopathic medicine, perform any of the authorized controlled acts as set out in the *Naturopathy Act*, and I will not be entitled to imply that I am a Naturopath in Ontario.
16. I agree that the College will include on the public register the fact that I resigned and undertook never to reapply. I further acknowledge that the College will be including the full text of this undertaking on the public portion of the College’s public register on the College’s website.
17. I acknowledge that this undertaking will be provided to the Discipline Committee to explain why the College did not seek a revocation, or lengthy suspension, or extensive terms, conditions, and limitations on my certificate of registration.
18. I agree that I will not appeal or request a judicial review of the decision of the Discipline Committee regarding allegations set out in paragraph 2 or of the ICRC regarding the investigation as described in paragraphs 7 and 8.
19. I acknowledge that I have had the opportunity to obtain legal advice prior to entering into this undertaking and I have either done so or I have chosen not to do so.
20. I acknowledge that I am entering into this undertaking freely, voluntarily and without duress.

The Oral Caution Undertaking provided as follows:

I, **ALLAN BORTNICK**, hereby acknowledge and undertake as follows:

1. I acknowledge that for the relevant periods of time, I was a Registrant of the College.
2. I acknowledge that I have entered into an agreement with the College and admitted to, or pled no contest to, allegations of misconduct as outlined in an Agreed and Uncontested Statement of Facts signed on April 13, 2022. A copy which is attached as Appendix "A".
3. In light of my admissions in the Agreed and Uncontested Statement of Facts, and pending the acceptance of the Agreed and Uncontested Statement of Facts by a panel of the Discipline Committee and a finding of misconduct, I undertake to attend virtually before a panel of the Discipline Committee to receive an oral caution, immediately following the Discipline Hearing, or on a date and time that is set by the panel.
4. I acknowledge that I have had the opportunity to obtain legal advice prior to entering into this undertaking and I have either done so or I have chosen not to do so.
5. I acknowledge that I am entering into this undertaking freely, voluntarily and without duress.

## **DECISION AND REASONS ON PENALTY AND COSTS**

The Panel accepted the Proposed Order, finding it to be in the public interest, proportionate to the misconduct and consistent with previous orders of this Discipline Committee and discipline committees of other health professional regulators in cases involving similar misconduct. These included *Ontario (College of Massage Therapists of Ontario) v Robert Guertin*<sup>1</sup>, *Ontario (College of Physicians and Surgeons of Ontario) v. Clotthey*<sup>2</sup>, and *Ontario (College of Massage Therapists of Ontario) v Al-Jundi*<sup>3</sup>.

In accepting the Proposed Order, the Panel was mindful that a penalty should, first and foremost, achieve the goal of public protection, while also accounting for other generally established sanctioning principles, which this joint submission would achieve. The Panel considered the Proposed Order in light of the Registrant's entry into the Undertaking to Resign and the Oral Caution Undertaking. As is noted in the Undertaking to Resign, in proceedings before the Discipline Committee of the CCO, the Registrant admitted to professional misconduct including sexual abuse. Pursuant to a joint submission as to penalty, the CCO Discipline Committee

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<sup>1</sup> 2016 ONCMTO 13 (CanLII).

<sup>2</sup> 2020 ONCPSD 6.

<sup>3</sup> 2021 ONCMTO 13 (CanLII).

ordered: that the Registrant appear before a panel to be reprimanded; that the CCO Registrar suspend the Registrant's Certificate of Registration for 15 months; that the Registrant reimburse the CCO for funding provided to Patients 1, 2, 3, 4, 5, and 6 under section 85.7 of the Health Professions Procedural Code; and that he pay \$20,000 in costs to the CCO. As is outlined in the Undertaking to Resign, because of this finding of the Discipline Committee of the CCO, the CEO of the College commenced an investigation to ascertain if the Registrant had committed professional misconduct pursuant to s. 51(1)(b) of the Health Professions Procedural Code. No action was taken as a result of this investigation due to the Registrant's entry into the Undertaking to Resign.

In light of the findings made, had the Registrant not agreed to resign from and never reapply for registration with the College, the Panel would not have been satisfied with the Proposed Order. In these circumstances, however, the Panel found that the goals of sentencing would be achieved by the Proposed Order, and as such, the Panel found no reason to depart from the Proposed Order, accepting the College's argument that joint submissions should not be interfered with lightly and may be rejected only if it is truly unreasonable or unconscionable.

The proposed penalty achieved public protection by directing the CEO to suspend the Registrant's certificate of registration for a period of twelve months. However, pursuant to the Undertaking to Resign, the Registrant undertook to resign his membership in and certificate of registration with the College effective once all of the documents had been executed by the Registrant and the CEO. The Undertaking to Resign constituted instructions to the College to process Dr. Bortnick's resignation, and thereby also satisfies the goal of public protection.

In circumstances where the Discipline Committee of the College orders a penalty as a result of making findings of professional misconduct, it typically includes an oral reprimand as part of the penalty order. In the circumstances of the Registrant's case, the Panel had no authority to order the delivery of a reprimand. This is because the acts of professional misconduct in which the Registrant engaged occurred prior to the proclamation of the *Naturopathy Act, 2007* on July 1, 2015. As such, the Registrant was alleged by the College to have engaged in acts of professional misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990 (the "DPA Regulation"), under the *Drugless Practitioners Act*, as defined in Professional Misconduct/Incompetence established by the Board. The DPA Regulation permits the suspension or cancellation of the certificate of registration of any drugless practitioner for incompetence, misconduct or breach of the DPA Regulation; however, it does not provide authority for the administration of a reprimand (which is among the powers of the Discipline Committee where a registrant is prosecuted under the Code).

Despite that the Panel did not have jurisdiction to order a reprimand, the College and the Registrant agreed that it would be appropriate for the Panel to communicate its concerns to the Registrant through the administration of an oral caution, which the Registrant agreed and undertook to receive. The Panel did indeed deliver an oral caution at the conclusion of the hearing, in order to support public confidence in the College's ability to regulate the profession and to ensure that registrants adhere to established standards of practice.

The Panel accepted the Proposed Order as being proportionate to the severity of the misconduct, while also reflecting aggravating and mitigating factors present in this case.

The following mitigating factors were considered:

- a) the Registrant's cooperation with the College throughout the investigation and prosecution of the allegations, which saved the College the time and expense of a contested hearing;
- b) the Registrant's acceptance of responsibility, signaled by their admitting to the conduct and entering into a joint submission with respect to penalty.

Among the aggravating factors considered were the nature of the conduct itself, which was prolonged, protracted and involved three different patients, the fact that Patients 1, 2 and 6 were/could have been harmed by the Registrant's conduct, and that the Registrant, as an experienced member of the profession, should have known better.

## **ORDER**

The Panel stated its findings in its written order of May 16, 2022 (the "Order"), in which the Panel directed the CEO to suspend the Registrant's certificate of registration for a period of twelve months.

Dated in Ontario on August 3, 2022

## **DISCIPLINE PANEL**

Dr. Shelley Burns, ND – Chair, professional member  
Dr. Vaishna Sathiamoorthy, ND – non-council professional member  
Dean Catherwood – public member  
Lisa Fenton - public member  
Samuel Laldin – public representative

Signed: Dr. S. Burns, ND  
Dr. Shelley Burns, ND, Chair

**IN THE MATTER OF** a hearing directed  
by the Inquiries, Complaints and Reports Committee of  
the College of Naturopaths of Ontario  
pursuant to Section 26(1) of the Health Professions Procedural Code  
being Schedule 2 of the *Regulated Health Professions Act, 1991*,  
S.O. 1991, c. 18, as amended.

**B E T W E E N:**  
**COLLEGE OF NATUROPATHS OF ONTARIO**  
- and -  
**ALLAN BORTNICK**

**CAUTION**

Although a Discipline Committee typically has the power to order a reprimand, that authority did not exist under the previous legislation and therefore, the Panel has no jurisdiction to order a reprimand. However, the College felt that it was important for the Panel to communicate its concerns to the Registrant by delivering an oral caution, and the Registrant agreed to attend virtually before the Panel to receive an oral caution. The Panel agreed that it was appropriate in this case to communicate with the Registrant directly, and therefore agreed to deliver an oral caution to the Registrant, as follows:

As you know, Dr. Bortnick, as part of your penalty, you have agreed to attend before this panel to receive an oral caution. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

The discipline panel appreciates that you have come before us with an Agreed and Uncontested Statement of Facts. We are well aware that as a contested hearing, this case would have consumed considerable resources both yours and the College's including the personal and professional time of College members, staff and legal counsel. We understand that by coming before us you have saved all of us that trouble. More importantly you avoided having the patients come to testify and share their experiences.

The fact that you have received this caution will be part of the public portion of the Register and, as such, part of your record with the College.

The panel has found that you have engaged in professional misconduct as alleged in the notice of Hearings including sexual impropriety with a patient, failure to maintain adequate records in accordance with Board policy, failure to obtain informed consent for diagnostic or treatment procedures, and contravening standards of practice or guidelines set out by the Board.

It is a matter of profound concern to this panel that you have engaged in these forms of professional misconduct. By doing so, you have brought discredit for the profession and to

yourself. Public confidence in this profession has been put in jeopardy. Moreover, the result of your misconduct is that you have let down the public, the profession, and yourself.

We need to make it clear to you that your conduct is unacceptable. Of special concern to us is the fact that the professional misconduct in which you have engaged has involved putting patients at risk and threatening the integrity of the naturopathic profession. Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

We caution you and any other registrant of this College that putting patients in a vulnerable position by touching them in inappropriate places will not be tolerated and informed consent must be understood and obtained prior to performing any physical assessment.