

**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 -

**HELEN COHEN**

**DECISION AND REASONS**

A panel of the Discipline Committee of the College of Naturopaths of Ontario (the “**Panel**”) held a hearing on November 4, 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. Helen Cohen (the “**Former Registrant**”) did not attend the hearing and was not represented. Elyse Sunshine acted as independent legal counsel (“**ILC**”) to the Panel.

**ALLEGATIONS**

The Notice of Hearing, dated August 22, 2022, was filed as Exhibit 2 and set out the following:

The Former Registrant

1. The Former Registrant was registered with the Board of Directors of Drugless Therapy – Naturopathy on January 1, 1991. The Former Registrant then became registered with the College on July 1, 2015.

2. The Former Registrant's Certificate of Registration was suspended on September 28, 2020, as per the order of the Discipline Committee for a period of four (4) months or until the Former Registrant completes the requirements as set out in the Order made by the Inquiries, Complaints and Reports Committee on September 7, 2017, whichever is longer. Her certificate of registration remains suspended.

### Discipline Matters

3. On July 12, 2020, the Former Registrant entered into an agreement with the College when she signed an Agreed Statement of Facts admitting to certain facts and professional misconduct in relation to matter DC19-03 ("**First Matter**"). The Former Registrant acknowledged the following statements in the Agreed Statement of Facts:
  - a. She understands fully the nature of the allegations made against her;
  - b. She has no questions with respect to the allegations against her;
  - c. She admits to the truth of the facts contained in the Agreed Statement of Facts and that the admitted facts constitute professional misconduct;
  - d. She understands that by signing this document she is consenting to the evidence as set out in the Agreed Statement of Facts being presented to the Discipline Committee;
  - e. She understands that by admitting the allegations, she is waiving her right to require the College to prove the allegations against her at a contested hearing;
  - f. She understands that the decision of the Committee and a summary of its reasons, including reference to her name, will be published in the College's annual report and any other publication or website of the College;
  - g. She understands that any agreement between her and the College with respect to the penalty proposed does not bind the Discipline Committee; and
  - h. She understands and acknowledges that she is executing this document voluntarily, unequivocally, free of duress, and free of bribe and that she has been advised of her right to seek legal advice.
4. On July 24, 2020, the Former Registrant entered into an agreement with the College when she signed a Joint Submission on Penalty and Costs agreeing to a reprimand, suspension, terms, conditions and limitations as well as a payment of a fine and costs in the First Matter.
5. On July 12, 2020, the Former Registrant entered into an agreement with the College when she signed an Agreed Statement of Facts admitting to certain facts and professional misconduct in relation to matter DC19-04 ("**Second Matter**"). The Former Registrant acknowledged the following statements in the Agreed Statement of Facts:
  - a. She understands fully the nature of the allegations made against her;
  - b. She has no questions with respect to the allegations against her;
  - c. She admits to the truth of the facts contained in the Agreed Statement of Facts and that the admitted facts constitute professional misconduct;

- d. She understands that by signing this document she is consenting to the evidence as set out in the Agreed Statement of Facts being presented to the Discipline Committee;
  - e. She understands that by admitting the allegations, she is waiving her right to require the College to prove the allegations against her at a contested hearing;
  - f. She understands that the decision of the Committee and a summary of its reasons, including reference to her name, will be published in the College's annual report and any other publication or website of the College;
  - g. She understands that any agreement between her and the College with respect to the penalty proposed does not bind the Discipline Committee; and
  - h. She understands and acknowledges that she is executing this document voluntarily, unequivocally, free of duress, and free of bribe and that she has been advised of her right to seek legal advice.
6. On July 24, 2020, the Former Registrant entered into an agreement with the College when she signed a Joint Submission on Penalty and Costs agreeing to a reprimand, suspension, terms, conditions and limitations as well as a payment of a fine and costs in the Second Matter.

#### Failure to comply with orders of the Discipline Committee

7. In September 2020, a panel of the Discipline Committee held hearings related to the First and Second Matters involving the Former Registrant. The Panel accepted the Agreed Statement of Facts and Joint Submission on Penalty and Costs in both matters.
8. In September 2020, the Panel made two orders in accordance with the Agreed Statement of Facts and Joint Submission on Penalty and Costs. The Panel made the following order in the First Matter:
- a. Requiring the Member to appear before the panel to be reprimanded immediately following the hearing of this matter.
  - b. Directing the Registrar to suspend the Member's certificate of registration for a period of four (4) months, on a schedule to be set by the Registrar.
  - c. Directing the Registrar to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
    - i. Requiring that the Member unconditionally pass the PROBE ethics course, which is to be taken at her own expense, by a date selected by the Registrar;
    - ii. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, the College's Medical Records course by a date selected by the Registrar;
    - iii. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar, no later than a date selected by the Registrar;
    - iv. that shall be published by the College at a time and in a format determined by the Registrar, on the following issues:

1. The lessons she learned in completing the PROBE course and medical records course; and
    2. The methods she will incorporate into her practice to ensure proper record-keeping practices and her obligations as a member of the College.
  - v. Requiring the Member to submit to, and at her own expense, a practice inspection to be completed within six (6) months following her return to practice.
  - vi. Requiring the Member to pay of fine of not more than \$350 to the Minister of Finance within two (2) months of the date of the hearing of this matter.
  - vii. The Member shall pay the College's costs fixed in the amount of \$3,500, payable on a schedule to be set by the Registrar.
9. The Panel made the following order in the Second Matter:
- a. Requiring the Member to appear before the panel to be reprimanded immediately following the hearing of this matter.
  - b. Directing the Registrar to suspend the Member's certificate of registration for a period of at least four (4) months, to commence on the date of the hearing of this matter and continuing for four (4) months or until the Member completes the requirements as set out in the Order made by the Inquiries, Complaints and Reports Committee on September 7, 2017, whichever is longer.
  - c. Directing the Registrar to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
    - i. Requiring that the Member unconditionally pass the PROBE ethics course, which is to be taken at her own expense, by a date selected by the Registrar;
    - ii. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, the College's Jurisprudence by a date selected by the Registrar; and
    - iii. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar, no later than a date selected by the Registrar; that shall be published by the College at a time and in a format determined by the Registrar, on the lessons she learned in completing the PROBE course and jurisprudence course.
  - d. Requiring the Member to pay of fine of not more than \$350 to the Minister of Finance within two (2) months of the date of the hearing of this matter.
  - e. The Member shall pay the College's costs fixed in the amount of \$3,500, payable on a schedule to be set by the Registrar.
10. The Former Registrant was provided with the orders and the reasons of the Discipline Committee.
11. It is alleged that despite repeated reminders from the College, the Former Registrant failed to comply with the orders of the Discipline Committee (collectively, the "**September Orders**").

## Acts of Professional Misconduct

12. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007* (the “Act”):

- a. Paragraph 41 (failing to comply with an order of a panel of the College); and/or
- b. Paragraph 43 (Failing to carry out or abide by an undertaking given to the College or breaching an agreement with the College); and/or
- c. Paragraph 46 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

### **REGISTRANT’S NON-ATTENDANCE AT THE HEARING DESPITE NOTICE**

The Former Registrant did not appear at the hearing despite having received notice. The College submitted an affidavit, filed as Exhibit 1, which contained copies of communications and attempted communications with the Former Registrant advising them of the date and time of the hearing and of the penalty order that the College would be seeking in this case. The Former Registrant did not respond to repeated communications advising them of potential hearing dates.

The Panel was satisfied that the Former Registrant received sufficient notice and directed that the hearing proceed in their absence. As the Former Registrant did not appear and was not represented by counsel, made no submissions, she was deemed to contest the allegations of misconduct.

### **EVIDENCE**

The College filed the following documents as evidence at the hearing:

<b>Exhibit No.</b>	<b>Exhibit Title</b>
1	Affidavit of JE
2	Notice of Hearing
3	Brief of Documents
4	College’s correspondence with the Former Registrant dated January 11-12, 2021

The Panel also heard oral evidence from one witness: RM, the College’s Coordinator of Professional Conduct.

RM testified that the Discipline Committee had made findings of professional misconduct against the Former Registrant resulting in the September 2020 Orders.

On November 17, 2020, the Former Registrant was sent a letter signed by the CEO of the College, summarizing the terms of the September 2020 Orders and reminding the Former Registrant of her obligation to comply with the September 2020 Orders.

On December 18, 2020, the Former Registrant was advised by email that she had not yet submitted the cheque for the fines she was required to pay to the Minister of Finance as ordered by the Discipline Committee. RM sent a further reminder email on January 11, 2021. In response, the Former Registrant advised that she was finished with the College and did not have money to pay the fines.

In mid-February 2021, RM had an email exchange with the Former Registrant about the payment schedule for the September 2020 Orders.

By email dated April 22, 2021, RM reminded the Former Registrant that in accordance with the September 2020 Orders, she was required to successfully complete the College's Jurisprudence course by April 30, 2021. The Former Registrant responded by stating that she would not be taking any of the College's exams.

On July 16, 2021, RM emailed the Former Registrant and advised that in accordance with the September 2020 Orders, she was required to unconditionally pass the PROBE ethics course and complete the College's Medical Records course by July 31, 2021.

To date, the Former Registrant had not paid the fines or completed the required courses.

The College also provided documentary evidence to demonstrate that the Former Registrant was aware of the agreements she was entering into with respect to the September 2020 Orders and evidence to establish that she had received the September 2020 Orders.

## **SUBMISSIONS OF THE COLLEGE ON LIABILITY**

The College submitted that it had proven all of the allegations on a balance of probabilities. Although the evidence established that the Former Registrant was registered, and suspended and remains suspended, the Discipline Committee retains jurisdiction.

The College submitted that the evidence further established that the Former Registrant had voluntarily agreed to sign an Agreed Statement of Facts and Joint Submission on Penalty in respect of two disciplinary proceedings. In September 2020, a panel of the Discipline Committee held hearings related to the two matters involving the Former Registrant and accepted the facts set out in the Agreed Statement of Facts and issued a penalty in accordance with the Joint

Submission on Penalty and Costs. The College argued that the documentary evidence established that the Former Registrant was provided with the September 2020 Orders and the reasons of the Discipline Committee. Despite repeated reminders from the College, the Former Registrant failed to comply with the September 2020 Orders. The College submitted that such conduct constituted the acts of professional misconduct alleged in paragraph 12 of the Notice of Hearing.

## **DECISIONS AND REASONS ON LIABILITY**

The College was required to prove the acts of professional misconduct alleged in the Notice of hearing on the balance of probabilities, based on evidence that was clear, cogent, and convincing. The Panel accepted the uncontroverted and reliable testimony of RM, the affidavit of JE and the documents filed as exhibits and concluded that the College established the following acts of misconduct as set out in the Notice of Hearing. Specifically, that the Former Registrant,

- a. failed to comply with an order of a panel of the College;
- b. failed to carry out or abide by an undertaking given to the College and breached an agreement with the College;
- c. Engaged in conduct or performed an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, or unprofessional.

The Panel finds that the Former Registrant was facing allegations of professional misconduct in relation to two matters. Through discussions with College Counsel, the Former Registrant agreed to resolve both matters by admitting to the acts of professional misconduct alleged. On July 12, 2020, the Former Registrant entered into an agreement with the College when she signed an Agreed Statement of Facts dealing with both matters.

The Panel finds that on July 24, 2020, the Former Registrant entered into another agreement with the College when she signed a Joint Submission on Penalty and Costs with respect to both matters.

On September 28, 2020, based on the agreement and representations made by the Former Registrant, the Discipline Committee issued the September 2020 Orders. The Former Registrant was present at the hearing and received the verbal reprimand as required by the September 2020 Orders.

During the period of September 28, 2020, to April 26, 2021, the College made efforts to communicate with the Former Registrant about the requirements of the September 2020 Orders. The College reminded the Former Registrant of her requirement to complete the courses and pay the fines outlined in the September 2020 Orders. The Panel finds that the Former Registrant informed the College that she had no intention of complying with the terms of the September 2020 Orders and no interest in being involved with the College.

The Panel concluded that the College had informed the Former Registrant, and the Former Registrant was aware of her obligations to comply with the agreement she had made with the College and the September 2020 Orders. The Former Registrant did not complete the required courses or pay the required fine and the College's costs. The Former Registrant's responses to the College indicate that she had no intention of fulfilling her agreement. The Panel therefore concluded that the Former Registrant failed to comply with an order of the Panel (Paragraph 41) and breached an agreement with the College (Paragraph 43).

It is well established that to ensure effective governance, a member of a regulated profession must respond to their regulator. The Former Registrant's failure to respond to communications from her regulator demonstrated a lack of respect for her professional obligations, which undermines the College's ability to regulate the profession and protect the public. The Panel therefore found that the Former Registrant's conduct would reasonably be regarded by other registrants as disgraceful, dishonourable or unprofessional (Paragraph 46).

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

The College submitted that, in view of the Panel of the Discipline Committee's findings of professional misconduct against the Registrant, the Panel should make an Order:

1. Requiring the Registrant to be reprimanded by the panel following the hearing.
2. Directing the Chief Executive Officer to revoke the Registrant's Certificate of Registration immediately following the hearing.

The College submitted that revocation was the only appropriate order in this matter given the Former Registrant's total unwillingness to be governed by the College. The findings made demonstrate that there was a pattern of unresponsiveness on the part of the Former Registrant. The proposed order was important to accomplish the sentencing principles and ensure that this Former Registrant learned that such conduct will not be tolerated but also send a message to other registrants that a failure to engage with one's regulator and comply with the authority of that regulator will result in the most serious of sanctions. The proposed penalty would achieve the requirement for public protection as the public will have confidence in the ability of the College to regulate its members.

The College further submitted that in this case, there were no mitigating factors for the Panel to consider and there were a number of aggravating factors including the fact that this was the Former Registrant's third time before the Discipline Committee, and she was also the subject of several orders of the ICRC as well. Further, the Former Registrant did not participate in the hearing process and did not co-operate with the College. She continued to show she has no interest in being regulated. The College had informed the Former Registrant that it would be seeking revocation in this matter.



The College also provided the Panel with a number of cases where discipline panels had considered similar conduct and where panels had considered the ungovernability of their members.<sup>1</sup>

The College further submitted an Affidavit of JE on Costs, filed as Exhibit 6. The College submitted that the order for reimbursement of the College's costs fixed in the amount of \$8,000.00 payable within 30 days of the hearing, was appropriate in the circumstances, and consistent with previous penalty orders made by the Discipline Committee.

## **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 in cases involving similar conduct.

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.

There were no mitigating factors to consider in this matter.

Among the aggravating factors were the Former Registrant's repeated misconduct and the lack of interest in fulfilling the terms of the September 2020 Orders. The interactions between the College and the Former Registrant unnecessarily spanned 2 years.

Relying on factors articulated in the College's submissions, the Panel found that the Former Registrant's failure to comply with the September 2020 Orders, meaningfully respond to College communications, or engage in any aspect of the discipline process, demonstrated an outright disregard for her professional obligations to the College, which made her ungovernable.

Due to the Former Registrant's ungovernability, the Panel found that revocation was the only penalty that protected the public and achieved both general and specific deterrence. Removal of the Former Registrant, who refused to uphold an agreement with the College and refused to comply with an order of the College, from the profession ensures that public safety is maintained as the College cannot otherwise ensure that the Former Registrant meets the requirements to practise safely.

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<sup>1</sup> *College of Massage Therapists of Ontario (CMTO) v Demore*, 2022 ONCMTO 7, *College of Opticians v Truong*, 2021; *CMTO v Miller*, 2020 ONCMTO 3 (CanLII); *CMTO v Schneider*, 2020 ONCMTO 28 (CanLII); *Ontario (College of Physicians and Surgeons of Ontario) v. Mitchell*, 2018 ONCPSD 63 (CanLII); *College of Nurses of Ontario v Szabo*, 2015 CanLII 65597 (ON CNO)

With respect to general deterrence, revocation sends a clear message to the profession that disregarding orders of a College committee and breaching an agreement with the College will result in serious consequences. Revocation is the only effective means of ensuring specific deterrence given that the Former Registrant's ungovernability would render any remedial measures ineffective.

The Panel also found that revocation was proportionate to the severity of the misconduct and consistent with decisions in cases involving similar findings.

With respect to costs, the Panel accepted that it has the authority to award costs under section 53.1 of the Code to ensure that the entire financial burden of investigating and prosecuting registrants who engage in professional misconduct does not rest on the general membership of this profession. The proposed amount of \$8000 appropriately reflected the costs incurred by the College and the prosecution of this matter. It also fell within the range of costs awarded by previous panels in similar matters.

## **ORDER**

The Panel stated its findings in its written order of November 4, 2022 (the "Order"), in which the Panel directed as follows on the matter of penalty and costs:

1. The Registrant to appear before the panel to be reprimanded at a date to be set by the Chief Executive Officer.
2. The Chief Executive Officer to revoke the Registrant's Certificate of Registration immediately following the hearing.
3. The Registrant shall pay the College's costs fixed in the amount of \$8,000.00 payable within 30 days of the hearing.

Dated in Ontario on December 14, 2022

## **DISCIPLINE PANEL**

Dean Catherwood, public member, Chair  
Dr. Jacob Scheer, ND (prof member on Council)  
Dr. Vaishna Sathananthan, ND (non-Council prof. member)  
Tiffany Lloyd, public member  
Samuel Laldin, public representative



Signed: \_\_\_\_\_  
Dean Catherwood, Chair