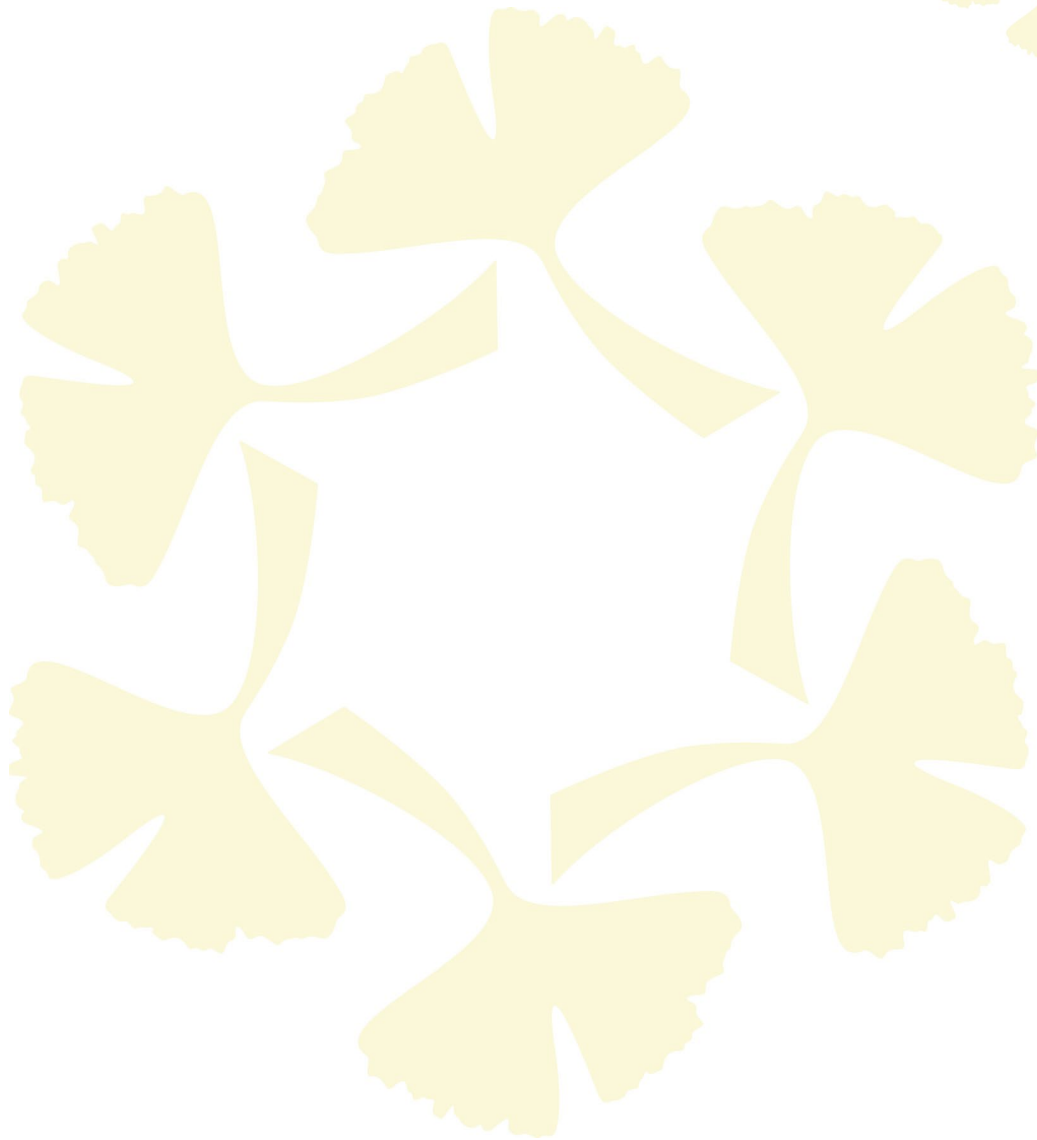




The College of Naturopaths of Ontario

# HANDBOOK

## ONTARIO JURISPRUDENCE



## Important Legal Principles Naturopathic Doctors Need to Know

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## OVERVIEW

The purpose of this handbook is to provide information on the ethical and legal framework within which naturopathic doctors practise in Ontario, including:

- the concepts of professionalism and self-regulation,
- the fundamentals of professional practice, and
- (in a general way) review the various laws that naturopathic doctors are most likely to encounter to assist in developing an understanding of the basic principles of these laws.

This handbook does not cover all of the exceptions and special circumstances that may arise in real life.

Naturopathic doctors who have specific legal questions about issues concerning their own practice should seek appropriate legal counsel.

Individuals are recommended to review this handbook in its entirety prior to attempting the Ontario Jurisprudence Examination.

A number of Acts are referred to throughout this handbook by their abbreviations, including the following:

- AODA – *Accessibility for Ontarians with Disabilities Act*.
- Code – *Health Professions Procedural Code* which is Schedule 2 to the *RHPA*.
- CYFSA – *Child, Youth and Family Services Act*.
- HCCA – *Health Care Consent Act*.
- PHIPA – *Personal Health Information Protection Act*.
- PIPEDA – *Personal Information Protection and Electronic Documents Act*.
- RHPA – *Regulated Health Professions Act, 1991*.

A number of Acts may not be referred to in this handbook but may have an impact on the practise of the profession, including the following:

- HARP – *Healing Arts Radiation Protection Act*; and
- LSCCLA – *Laboratory and Specimen Collection Centre Licensing Act*.

Other abbreviations include:

- CAS – Children's Aid Society
- CCB – Consent and Capacity Board
- HPARB – Health Professions Appeal and Review Board
- ICRC – Inquiries, Complaints and Reports Committee
- IVIT – Intravenous Infusion Therapy
- MOH – The Ministry of Health
- OFC – Office of the Fairness Commissioner
- QA – Quality Assurance
- SDM – substitute decision maker

## 1. Professionalism and Self-Regulation

### 1.1 Professionalism

A health profession is different from a business. The primary intent of a health profession is to improve patient welfare, whereas the primary goal of a business is to generate revenue.

In being a registrant of a health profession, naturopathic doctors have a number of duties:

**i) A duty to the patients they serve**

Naturopathic doctors have a duty to provide honest, safe and ethical care to their patients, as well as a duty to properly inform their patients and obtain informed consent.

**ii) A duty to other registrants of their profession, and to other healthcare practitioners**

Naturopathic doctors have a duty to work co-operatively with one another and with other healthcare providers to best serve the welfare of their patients, for example, coordinating the care of a patient whenever possible (and when the patient consents).

**iii) A duty to their regulatory College**

Naturopathic doctors also have a duty to work with their regulatory College to protect the public from dishonest or incompetent NDs. For example, naturopathic doctors are required to cooperate in any investigation of a complaint made against them or a fellow ND.

**iv) A duty to obey the laws that govern the profession and the health care system**

Professionals must also obey the laws that apply to their profession as well as those that establish and maintain the health care system of which naturopathic doctors form a part. Naturopathic doctors have an obligation to be aware of and abide by all of the legislation that impacts on the scope of practice of the profession. Some of those are referred to elsewhere in this handbook.

### 1.2 The self-regulation model

The “regulation” of an activity means the law imposes restrictions on it to ensure public safety. There are many ways in which an activity can be regulated. For example, the government could create offences for improperly performing the activity or could have one of its Ministries overseeing the activity.

In many parts of the world, professions are regulated directly by the government or through general consumer protection laws. In Ontario, most professions are self-regulated. **A self-regulation model operates under the notion that those who best understand the profession are involved in its regulation.**

In a self-regulation model, the Ontario government makes a statute (often called an Act) giving the duty to regulate the profession to a separate body (a “College”; not to be confused with an educational institution). The College is governed by a profession-elected Council responsible for establishing the policies of the College (e.g., creating a professional misconduct regulation) and overseeing the administration of the regulatory activities of the College (e.g., establishing the budget for a quality assurance program).

The College operates through Committees (e.g., the Registration Committee or the Discipline Committee), comprised primarily of registrants of the profession.

**The mandate of the College is to serve the public interest.** Under its statute, the College “*has a duty to serve and protect the public interest*”. The College cannot serve the self-interest of the profession (e.g., the College cannot set fees to be charged to patients, nor can it advocate to the government on behalf of the interests of the profession);

such duties fall to a professional association, not a regulatory College. Self-regulation means that the profession regulates itself in the public interest to ensure the profession acts honestly and competently.

There are a number of safeguards that ensure the College serves the public interest in a fair and open manner:

- i. **The Council of the College contains public members (i.e., non-naturopathic doctors) appointed by the government.** College Committees may contain both public members and public representatives (i.e., non-naturopathic doctors appointed by the Council in accordance with the by-laws of the College).
- ii. **Council meetings and discipline hearings are open to the public.** The date, time, agenda and supporting materials for all upcoming Council meetings must be posted on the College's website in advance. The date, time and statement of allegations for upcoming discipline hearings must also be posted on the College's website in advance. The public can attend to observe what happens to see for themselves whether decisions are being made in the public interest, and they can see if justice is being served in the disciplinary process.
- iii. **The College must consult with members of the profession and the public before making a regulation or by-law affecting them.** The College must circulate the proposed wording of the regulation and certain by-laws for comment for a period of at least 60 days, so that people can comment on them.
- iv. **Decisions of the Committees of the College can be reviewed by other bodies.** For example, decisions of the Registration Committee or the Inquiries, Complaints and Reports Committee can be reviewed by the Health Professions Appeal and Review Board (HPARB). Decisions of the Discipline Committee or the Fitness to Practise Committee can be appealed to the Divisional Court.
- v. **The government has appointed two bodies who ensure the College acts in the public interest.** The Office of the Fairness Commissioner (OFC) ensures that the College's registration practices are transparent, objective, impartial and fair. In addition, the Minister of Health can refer concerns about the College's regulations or programs to the Health Professions Regulatory Advisory Council (HPRAC) for review.
- vi. **The College has to report to the Minister.** The College is required to submit an annual report and any other reports as requested by the Minister of Health. The Minister has the ability to make recommendations or even issue directions to the Council of the College. If there are serious concerns, the Minister can audit the operations of the College and can appoint a supervisor to take over its administration. The Minister can also require the College to explain how it handled a matter involving an individual applicant for registration or naturopathic doctor. Thus, while the College is separate from the government, it is still accountable to the Minister.

These safeguards help ensure the College serves the public interest in a fair and open manner.

Given the public interest mandate of the College and the safeguards that are in place, professional members elected to the Council need to be careful about their role. Council members are like directors of a corporation who have a duty of loyalty and good faith to the mandate of their organization. Council members are not like politicians who represent and serve those who elected them. The only "constituents" of a Council member are the public as a whole.

### Sample Exam Question #1

What sentence best describes the respective roles of the College and professional associations?

- (i) The College serves the public interest, and the professional associations serve the interests of the profession.
- (ii) The College and the professional associations both serve the public interest.
- (iii) The College and the professional associations both serve the interests of the profession.
- (iv) The professional associations direct the operations of the College.

*The correct answer is (i). The College's mandate is to regulate the profession in order to serve and protect the public interest.*

#### Sample Exam Question #1 Explanations:

- *Answer (ii) is incorrect because professional associations are designed to serve the interests of their members. While professional associations care about the public interest and often take actions that assist the public interest, they are under no statutory duty to do so and are accountable only to their members.*
- *Answer (iii) is incorrect because the College is not permitted to serve the interests of its registrants under its statute. While it tries to ensure it regulates its registrants sensitively and fairly, and consults with its registrants, the College's mandate is the public interest.*
- *Answer (iv) is incorrect. While the College consults with the professional associations and considers seriously their views and respects their expertise, the College is not under the control of any professional association.*

## 1.3 Ethics, professional standards, professional misconduct, incompetence & incapacity

A major part of the College's role is to develop and, in some cases, enforce a Code of Ethics and professional standards. The College will take action in cases of professional misconduct, incompetence, and incapacity. Each of these concepts is slightly different in its role and purpose.

### Code of ethics

Professions have ethical principles to guide their members. Some of the more common ethical principles are to be honest at all times, to respect the confidentiality of a patient, to treat patients with sensitivity, to maintain one's competence and to enable patients to make informed choices as to their health care.

The College is authorized under its statute to develop a Code of Ethics for its registrants. Such a Code of Ethics takes precedence over the Codes of Ethics of their professional associations.

The College's Code of Ethics:

i) **Sets out the goals or ideals naturopathic doctors aspire to exemplify in practice.** These principles are often set out as positive statements (e.g., a naturopathic doctor will be honest), and encourage naturopathic doctors to continually improve their practice.

ii) **Is different from a professional misconduct regulation** which sets out the minimum a naturopathic doctor must do to avoid discipline (e.g., a naturopathic doctor will not issue a false or misleading document).

iii) **Is not enforced through the discipline process.** Its role is to guide and encourage naturopathic doctors. If an ND follows the principles of the Code of Ethics (e.g., being honest) they will avoid engaging in professional misconduct (e.g., they will not issue a false or misleading document).

#### **Ethics Scenario**

*David, a naturopathic doctor, is always polite to his patients, in a formal way, and takes pride in his professionalism. However, he often says “God” to express his surprise. One of his patients, Paul, has shared that they are very religious, and has been observed Paul flinching whenever he uses this word around them. David notices this and asks Paul if use of the word “God” bothers them. Paul confirms that it does. After discussing the incident with a colleague, David decides that the ethical thing to do is to stop using the word “God” as an expression of surprise when treating a patient as it is impossible to tell in advance who may be offended.*

#### **Professional standards**

Professional standards describe the way naturopathic doctors practise their profession. For example, it is a professional standard to assess a patient before treating them.

Professional Standards:

- i) Are not always formally outlined by the College. For example, the College may not have a document describing exactly how a naturopathic doctor assesses a patient.
- ii) May be applied differently depending on the circumstances. For example, an assessment may be done differently depending on the answers a patient provides in response to an ND’s questions.
- iii) Are learned through education, professional reading and learning, experience in practice, and in discussions with other naturopathic doctors.
- iv) Are always changing.

To assist registrants, the College develops and makes available (usually on its website) written publications discussing professional standards. These publications can have different names (e.g., Standards of Practice, Guidelines, Policies, or Position Statements) depending on their context and purpose. The purpose of these publications is to remind naturopathic doctors about the requirements around safe, ethical, and competent practise. While professional standards are not “law” in the same way a statute or regulation is, failing to comply with a published standard will often lead to a violation of the law or will result in professional misconduct.

#### **Discontinuing Professional Naturopathic Doctor Services Scenario**

*Donna, a naturopathic doctor, wants to stop treating a patient because they have stopped paying for their visits. Donna reads an article in the College’s newsletter suggesting that NDs should provide their patients with at least two weeks’ notice in advance of stopping treatment, to allow them to find a new naturopathic doctor. Donna cannot see a reason to continue seeing a patient who is not paying. Donna decides not to follow the newsletter suggestion and discontinues treatment of her patient without notice. Once the treatment stops, the patient experiences pain and misses ten days of work before finding another naturopathic doctor to treat them. The patient makes a complaint to the College. After investigating the complaint, the College requires Donna to appear before a panel to receive an oral*

*caution for abandoning a patient who was in pain without giving the patient adequate time to find another naturopathic doctor.*

Question: *Was the patient's lack of payment just cause for Donna to stop treatment without notice?*

*The answer is no. The fact that Donna was not paid for her services did not end her duty to her patient.*

### **Professional Misconduct**

Professional misconduct:

- i) Is conduct that falls below the minimum expectations for safe and ethical practice.
- ii) Is written in either the statute or the regulations applying to naturopathic doctors. The provisions in the statute and regulations are described in more detail below on professional misconduct regulations. As noted above, many College publications will assist naturopathic doctors in recognizing how to avoid engaging in professional misconduct.
- iii) Can lead to disciplinary proceedings that could result in serious orders (e.g., a fine, suspension or even revocation of one's certificate of registration).

For a naturopathic doctor, to engage in professional misconduct is very serious.

### **Permitting Illegal Conduct Scenario**

*Samantha has been educated as a naturopathic doctor as was her father. Samantha is registered with the College to practise as a naturopathic doctor. Samantha's father is no longer registered with the College. Occasionally Samantha's father drops into the clinic to treat former long-term patients and is referred to as "doctor" by the clinic receptionist when scheduling appointments. A patient complains to the College when their extended health insurance refuses to pay for Samantha's father's services because he is unregistered.*

Question: *Is Samantha at risk for her father's conduct?*

*The answer is yes. It is professional misconduct to permit a person to hold themselves out as practising the profession when they are not registered. Samantha condoned the conduct occurring in her clinic. By being registered, Samantha gave credibility and status to her father's illegal conduct and could face a discipline hearing.*

### **Incompetence**

Incompetence occurs where a naturopathic doctor demonstrates a serious lack of knowledge, skill or judgment when assessing or treating a patient, as defined in the Act. Concern that a naturopathic doctor is incompetent can be investigated by the College and can result in a discipline hearing. If the Discipline Committee finds a naturopathic doctor to be incompetent, it can impose restrictions on the naturopathic doctor's registration (e.g., prohibiting the naturopathic doctor from doing certain things, such as practising with children), or it can suspend or revoke the naturopathic doctor's registration.

The College will investigate any allegation of incompetence of an ND. The investigation will usually look at the ND's records, interview the patient, the ND, immediate colleagues of the ND and others that might be involved in the care of patients by the ND. Other NDs not directly involved with the ND may be asked as experts to provide an opinion as to whether in their view the conduct of the ND is indicative of incompetence. Both the Committee investigating the concerns and the Discipline Committee will be comprised of members of the profession who are in good standing and are well versed in the College's professional standards of practice.



### **Incompetence Scenario**

*Francine Smith, ND, does not perform assessments of their patients. During patient visits they ask the patient to describe their complaint or concern and then provides them with the exact same treatment that all of their patients receive. A new patient, Paula, comes into Francine's clinic with a serious condition, which Francine fails to recognize. Paula's condition continues to get worse and continues to go undiagnosed by Francine. After three months Paula checks into the emergency department of her local hospital and is immediately diagnosed and provided appropriate treatment. Paula makes a complaint to the College about Francine's incompetence.*

*The Inquiries, Complaints and Reports Committee reviews Francine's records and hears Francine's explanation for what they had done. The Committee has concerns about Francine's competency and refers the case to discipline for a hearing.*

*The Discipline Committee holds a hearing and concludes that Francine's professional conduct demonstrated a serious lack of knowledge, skill and judgment. The Committee suspends Francine's registration and orders Francine to undergo further education and training to ensure their competency before they can return to practice.*

### **Incapacity**

A naturopathic doctor is considered incapacitated when they have a condition or dysfunction, which adversely affects their ability to practise the profession safely and competently. Even a severely disabled naturopathic doctor can practise safely, so long as the naturopathic doctor understands their limits and has the necessary support systems in place.

In an Inquiry, incapacitated naturopathic doctors are not treated as if they have engaged in professional misconduct or are incompetent. Instead, the inquiry looks at the ND's health condition and the treatment they are receiving. The College can require the ND to undergo an examination by a specialist. If the concern is justified, the ND is referred to the Fitness to Practise Committee for a hearing. The Fitness to Practise Committee can order the ND to undergo medical treatment, have medical monitoring and/or to restrict their practice. In an extreme case (e.g., where the ND continues to see patients while impaired) the Fitness to Practise Committee can suspend or revoke the ND's registration in order to protect the public.

### **Incapacity Scenario**

*Benjamin, a naturopathic doctor, was diagnosed with Relapsing-Remitting Multiple Sclerosis (MS) 3 years earlier. While relatively symptom-free previously, over the last few months Benjamin has had bouts of memory loss, which have caused him to miss several of his patient's appointments. More recently, has exhibited a tremor when performing routine tasks. At an acupuncture treatment session Derek, a patient, notices that Benjamin's right hand is shaking while unwrapping and preparing to insert acupuncture needles, requiring him to frequently use his left hand to help steady the shaking. Derek informs the College. At first Benjamin denies any issues as a result of his MS. However, during the inquiry, the College learns that some of Benjamin's colleagues have noticed a significant change in Benjamin's health in recent months. The College also learns that Benjamin has had his driver's license suspended following a report made by his physician to the Ministry of Transportation. The College requests a copy of this report from his medical specialist, which notes a recent frequency of symptom relapses during which Benjamin's functional and memory skills are impaired enough to affect his ability to drive. The report also notes that Benjamin has declined any prescription medications to help reduce the frequency of symptom relapse.*

*A Panel of the ICRC is convened to review Benjamin's capacity and refers the matter to the Fitness to Practice Committee, which holds a hearing and reviews all of the reports available.*

### **Conclusion**

Each of the above provisions looks at different aspects of professional practice and serves a different purpose. The Code of Ethics deals with the professional ideals naturopathic doctors aim to achieve in practice. Professional standards deal with ways to practise safely, effectively, and professionally. Professional misconduct deals with conduct that falls below the minimum expectations for safe and ethical practise. Incompetence deals with having an inadequate level of knowledge, skill and judgment in the assessment and treatment of a patient and incapacity deals with conditions or dysfunctions that prevent a naturopathic doctor from practising the profession safely and competently.

### **Sample Exam Question #2**

In which of the following provisions would the sentence "naturopathic doctors are sensitive to the wishes of their patients" be found?

- (i) The definition of incapacity.
- (ii) The definition of incompetence.
- (iii) The definition of professional misconduct.
- (iv) Professional standards published by the College.
- (v) The Code of Ethics.

*The correct answer is (v). Striving to be sensitive is an ideal that naturopathic doctors strive towards.*

### **Sample Exam Question #2 Explanations:**

- *Answer (i) is incorrect because incapacity deals with the naturopathic doctor's health condition. Seriously insensitive behaviour may accompany some illnesses (e.g., addictions), but it is the illness that must be treated first.*
- *Answer (ii) is incorrect because incompetence deals with naturopathic doctors having an inadequate level of knowledge, skill and judgment.*
- *Answer (iii) is incorrect because professional misconduct deals with the minimum conduct necessary to avoid discipline. The corresponding professional misconduct provision would likely be that naturopathic doctors shall not abuse their patients.*
- *Answer (iv) is incorrect because professional standards deal with ways to practise safely, effectively and professionally. A professional standard would likely provide practical suggestions about how to practise sensitively (e.g., advice on how to listen to the patient before doing anything else).*

## **2. Communication**

### **2.1 Introduction**

Many complaints against naturopathic doctors can be avoided by good communication with patients, staff and colleagues.

Good communication begins with listening to others. Understanding the person's wishes, expectations, and values before doing anything, is important. Asking clarifying questions to expand on what the patient is saying also helps.

Repeating back to a patient what they have said, in the naturopathic doctor's own words, can help ensure understanding and reassures the patient that the naturopathic doctor has been listening. Good communication also involves making sure that the other person understands what you are going to do, why you are going to do it and what is likely going to happen. When the other person is confused by what you are doing or why you are doing it, there is miscommunication. People do not like to be surprised (e.g., by pain, or an unexpected side effect); telling the person what will or may happen removes the surprise. The following section deals with some of the areas in which good communication is particularly important for legal reasons.

## 2.2 Informed consent

Patients have the right to control their bodies and their health care. Naturopathic doctors do not have the right to assess or treat a patient unless the patient agrees to it (i.e., consents). A naturopathic doctor who assesses or treats a patient without the patient's consent can face criminal (e.g., a charge of assault), civil (e.g., a lawsuit for damages) or professional (e.g., a discipline hearing) consequences.

### **General principles**

To be valid, a patient's consent must:

- **Relate to the treatment.** The naturopathic doctor cannot receive consent for one procedure (e.g., taking a history of the patient's health) and then use it to do a different procedure (e.g., physically examine the patient). The patient's consent must be for what exactly is going to be done.
- **Be specific.** The naturopathic doctor cannot ask for a vague consent. For example, one cannot ask for the patient to consent to "any treatment the naturopathic doctor believes is appropriate." NDs are required to explain the actual assessment or treatment procedure that is being proposed. This means the naturopathic doctor often must obtain the patient's consent many times as changes in treatment become advisable. This also means a naturopathic doctor cannot obtain "blanket consent" to cover every procedure, when the patient first comes in.
- **Be informed.** It is necessary for the patient to understand what they are agreeing to. The naturopathic doctor must explain to the patient everything they need to know before asking the patient to give consent. For example, if someone asks for your consent to drive your car without telling you that they intend to use it to race over rocky fields, your consent was not informed. To be informed consent, it must include the following:
  - **Nature of the assessment or treatment.** The patient must understand exactly what the naturopathic doctor is proposing to do. For example, does the ND intend to just ask questions or will the ND also be touching the patient? If the ND is going to be touching the patient (which is a routine part of most assessments), they should tell the patient about it first.
  - **Who will be doing the procedure?** Will the ND be doing the procedure personally or will an assistant or colleague be doing it? If it is an assistant or colleague, are they registered with the College, another College, or unregistered?
  - **Reasons for the procedure.** The ND must explain why they are proposing that procedure. What are the expected benefits? How does the procedure fit in with the overall plan of the ND? How likely is it that the hoped-for benefits will happen?
  - **Material risks and side-effects.** The ND must explain any "material" risks and side-effects. A risk or side-effect is material if a reasonable person would want to know about it. For example, if there is a high risk of a modest side-effect (e.g., discomfort), the patient should be told. Similarly, if there is low risk of a serious side effect (e.g., death), the patient must be informed.

- *Alternatives to the procedure.* If there are reasonable alternatives to the procedure, the patient must be told. Even if the ND does not recommend or cannot provide the option (e.g., it is too aggressive and has a higher risk), the ND should describe the option and tell the patient why the ND is not recommending it. Also, even if the ND does not offer the alternative procedure (e.g., it is provided by a member of a different profession, such as a physician), the ND must tell the patient if it is a reasonable option.
  - *Consequences of not having the procedure.* One option for a patient is to do nothing. The ND should explain to the patient what is likely to happen if the patient does nothing. If it is not clear what will happen, the ND should say so and provide some likely scenarios.
  - *Particular patient concerns.* If the individual patient has a special interest in some aspect of the procedure (e.g., its nature, a side-effect), the patient needs to be told (e.g., the procedure would violate the patient's religious beliefs). This implies that the naturopathic doctor will provide an opportunity for the patient to ask questions.
  - *Cost.* College standards reiterate that the patient should be aware of the costs of their choice as a part of their decision-making process.
- ***Be voluntary.*** The naturopathic doctor cannot force a patient into consenting to a procedure. This is particularly important when dealing with paediatric or senior patients who may be overly influenced by family members or friends. This is also important where the assessment or treatment will have financial consequences for the patient (e.g., the patient will lose their job or will lose financial benefits if the patient refuses to consent). The naturopathic doctor should discuss with the patient that consent is their choice and that the patient should not let anyone pressure them into doing something the patient does not want to do. Using fear to obtain consent undermines its voluntary nature.
  - ***Not contain misrepresentation or fraud.*** The naturopathic doctor must not make claims about the assessment or treatment that are not true. For example, telling the patient a treatment will “cure” them when, in fact, the results are uncertain. This situation would not result in true consent. Patients must be given accurate factual information and honest opinions.

Therefore, consent to an assessment or treatment must involve effective communication between the ND and the patient. The ND must make sure that the patient understands what they are agreeing to. Informed consent can often be obtained quickly and easily, and it is only when dealing with complex or particularly risky matters that a lot of time may be required.

#### **Consent Scenario No. 1**

*Suzanne Jacobs, ND, meets a new patient, Carla. Carla complains about feeling stressed and tired. Suzanne says: “there could be a lot of things making you feel tired and stressed. I would like to ask you a number of questions to fully understand your personal and family background, and your medical history. If you are uncomfortable with any of my questions, please let me know. OK?” Carla agrees.*

*Suzanne has just obtained informed consent for taking a full history; however, Carla can withdraw her consent at any time if she feels uncomfortable with any of the questions Suzanne might ask. In addition, Suzanne has not received informed consent for anything other than asking a series of background and medical history questions.*

### **Sample Exam Question #3**

Obtaining a broad consent (often called “blanket consent”) in writing from the patient on their arrival at the office is a bad idea because:

- (i) The patient does not know if they will need someone to drive them home afterwards.
- (ii) The patient does not have confidence in the naturopathic doctor yet.
- (iii) The patient does not know what they are agreeing to.
- (iv) The patient does not know if physical touching will be involved.

*The correct answer is (iii). Informed consent requires the patient to understand the nature, risks and side-effects of the specific procedure proposed by the naturopathic doctor. It is impossible for the patient to know these things upon their arrival at the office.*

#### **Sample Exam Question #3 Explanations:**

- *Answer (i) is incorrect because it focuses on a side-issue and does not address the main issue.*
- *Answer (ii) is incorrect because having confidence in the naturopathic doctor is not enough for there to be informed consent. A patient may trust the naturopathic doctor and that may motivate the giving of consent, but the patient still needs to know what they are agreeing to.*
- *Answer (iv) is incorrect because it focuses on only one aspect of informed consent and does not address the whole issue.*

#### **Ways of receiving consent**

There are three different ways a naturopathic doctor can receive consent. Each has its advantages and disadvantages.

**1. Written Consent.** A patient can give consent by signing a written document agreeing to the procedure. Written consent provides some evidence that the patient gave consent. One disadvantage of written consent is that naturopathic doctors often confuse a signature with consent. A patient who signs a form without fully understanding the nature, risks and side-effects of the procedure has not given true consent. Additionally, the use of written consent documents can discourage the asking of questions, resulting in the naturopathic doctor not checking with the patient to make sure the patient understands the information and is truly consenting.

**2. Verbal Consent.** A patient can give consent by a verbal statement. Verbal consent is the best way for the naturopathic doctor and the patient to discuss the information and ensure the patient really understands it. Making a brief note in the patient record of the discussion can provide useful evidence later on if there is a complaint. Relying on just a generic consent form signed by the patient to document the consent process is not prudent.

**3. Implied Consent.** A patient can give consent by their actions. For example, in Consent Scenario No. 1, the patient Carla could just nod their head, implying consent for Suzanne to begin asking her questions. The main disadvantage of implied consent is the naturopathic doctor has no opportunity to check with the patient and make sure the patient truly understands what is going to happen.

### **Consent Scenario No. 2**

*Donovan, a naturopath, proposes that their patient, Sam, take a vitamin and mineral supplement. Donovan says: “try these; they will make you think more clearly”. Sam takes one immediately and buys a bottle from the receptionist. At home, Sam reads about the supplement on the internet and learns that it contains megadoses (i.e., more than 10,000 International Units) of Vitamin A<sup>1</sup> which, if taken in the recommended dose on the label, and if taken for a long period of time, could lead to liver and other damage. Sam complains to the College. Donovan tells the College they were relying on Sam’s implied consent by swallowing the first pill and buying a bottle from the receptionist. The Inquiries, Complaints and Reports Committee issues a decision critical of Donovan for not obtaining informed consent.*

*Donovan failed to obtain informed consent for a number of reasons:*

- *They did not explain the nature of the “pill”, including the amount of Vitamin A it contained.*
- *They did not explain how the supplement would make Sam think more clearly.*
- *They misrepresented the hoped-for benefit of the supplement as there was little evidence to support their very strong statement that it would make Sam think more clearly.*
- *They did not explain the way in which the supplement was to be used (how often to take the supplement and for what period of time).*
- *They did not explain the alternatives to taking the supplement including not taking anything; and, perhaps more importantly, he did not explain the risks of taking the supplement.*

### **Consent where the patient is incapable**

A patient is not capable of giving consent if the patient either:

- does not understand the information, or
- does not appreciate the reasonably foreseeable consequences of the decision.

For example, if the naturopathic doctor recommends that a patient take a calcium supplement once a day for a month to prevent bone loss, and the patient insists on taking 30 tablets at once in order to prevent their forgetting to take them, it is pretty clear the patient does not appreciate the consequences of their decision.

A patient can be assumed to be capable unless there is evidence to the contrary, therefore an ND does not need to assess the capacity of every patient. However, if the patient shows they may not be capable (e.g., the patient simply cannot understand the explanation of the ND) the patient’s capacity should be assessed. Capacity assessments can be done by discussing the proposed procedure with the patient to see if they understand the information and appreciate its consequences.

The primary issue is whether the patient is capable to give consent for a proposed procedure. A patient can be capable to give consent for one procedure but not capable for another. For example, a fifteen-year-old patient might be capable to consent to an exercise program but not be capable of consenting to treatment for a major eating disorder. (There is no minimum age of consent for health care treatment.)

If a naturopathic doctor concludes the patient is not capable to give consent for a procedure, the ND should inform the patient of this and advise them of who the substitute decision maker (SDM) will be. The patient should still be included in the discussions as much as possible, unless there are specific circumstances where involving the

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<sup>1</sup> A megadose of Vitamin A results in the supplement being classified as a drug. Thus this scenario also raises issues about the practitioner performing one or more controlled acts. See the discussion of controlled acts below.

incapable patient in the discussions will not be possible (e.g., if it will be quite upsetting to the patient or where the patient is unconscious).

Unless it is an emergency, the naturopathic doctor must then obtain consent for the assessment or treatment from the patient's appointed SDM. The SDM must meet the following requirements:

- Be at least 16 years of age.<sup>2</sup> There is an exception where the SDM is the parent of the patient (for example, a 15-year-old mother can be the SDM for the care of her child).
- Be capable themselves. In other words, the SDM must understand the information and appreciate the consequences of the decision.
- Be able and willing to act.
- There must be no higher ranked SDM who is able and willing to make the decision. The ranking of the SDM is as follows (from highest ranked to lowest ranked):
  - A court appointed guardian of the person.
  - A person who has been appointed attorney for personal care. The patient would have signed a document appointing the SDM to act on the patient's behalf in health care matters if the patient ever became incapable.
  - A person appointed by the Consent and Capacity Board to make a health decision in a specific matter.
  - The spouse or partner of the patient. A partner can include a same-sex partner. It can also include a non-sexual partner (e.g., two elderly women who live together).
  - A child of the patient or a parent of the patient or the Children's Aid Society who has been given wardship of the patient.
  - A parent of the patient who does not have custody of the patient.
  - A brother or sister of the patient.
  - Any other relative.
  - The Public Guardian or Trustee if there is no one else.

Consent Scenario No. 3 shows how these rules work.

### **Consent Scenario No. 3**

*Cindy Connors, ND, proposes a procedure for her patient Edwina. Edwina does not understand the proposed procedure at all and is clearly incapable of providing consent. Cindy knows Edwina appointed their friend Pat to be their power of attorney for personal care. However, Pat is travelling outside of the country and cannot be reached. Therefore, Pat is not able to make the decision. Cindy contacts Edwina's elderly mother, but Edwina's mother does not feel confident in making the decision. Thus, Edwina's mother is not willing to act as a substitute decision maker. Edwina's sister is willing and able to make the decision on Edwina's behalf and appears to understand the information around the procedure and its possible consequences. Edwina's sister is able to give the consent even though she is not the highest ranked substitute.*

If there are two equally ranked substitute decision makers (e.g., two sisters of the patient), and they cannot agree, the Public Guardian and Trustee shall make the decision.

An SDM must consent to treatment decisions on the following basis:

<sup>2</sup> While there is no minimum age of consent for a capable patient, a substitute decision maker must be at least 16 years old.

- The substitute must act in accordance with the last known capable wishes of the patient. For example, if a terminally ill patient, while still thinking clearly, said: “Don’t send me to the hospital, I want to die at home” the substitute needs to obey those wishes.
- The substitute must act in the best interests of the patient if the substitute does not know the last known capable wishes of the patient. For example, if a proposed treatment is simple and painless, and would make the patient more comfortable through a difficult illness with little risk of harm, the SDM should consent to it.

If it were to become clear an SDM is not following the above rules, the naturopathic doctor should speak with the SDM about it. If the SDM is still not following the above rules, especially in a way that will harm a patient, the naturopathic doctor should call the office of the [Public Guardian and Trustee](#).

#### **Consent Scenario No. 4**

*Thomas, a naturopathic doctor, proposes a procedure for his terminally ill patient Fred. Fred does not understand the proposed procedure at all and is clearly incapable of providing consent. Thomas knows that Fred appointed his friend, Vern, to be his power of attorney for personal care. Fred has a short time left and a lot of money, which Vern will inherit. The procedure Thomas proposes is simple and painless, would make Fred more comfortable through a difficult illness and has little risk of harm. Vern refuses to provide consent. Thomas is convinced that Vern is refusing to consent to the treatment in order to inherit more money (even though treatment is not very expensive). The rest of Fred’s family is very upset because they want Fred to receive the treatment. To help rectify the issue, Thomas indicates to both Vern and the family that he will contact the office of the Public Guardian and Trustee as he believes Vern’s decision may not be in the best interests of the patient.*

The above rules on obtaining informed consent when a patient is incapable of providing consent, come from the *Health Care Consent Act*. All naturopathic doctors should be familiar with this statute. While it is a difficult statute to read, supplementary information concerning informed consent, including the requirements of the *Health Care Consent Act*, is available via a number of books, articles and websites. The College also has an [Informed Consent Guideline](#).

#### **Sample Exam Question #4**

Which of the following is the highest ranked SDM (assuming everyone was willing and able to give consent):

- (i) A power of attorney for personal care for the patient.
- (ii) The patient’s live-in boyfriend.
- (iii) The patient’s mother.
- (iv) The patient’s son.

*The correct answer is (i). Only a court appointed guardian is higher ranked than a power of attorney for personal care.*

#### **Sample Exam Question #4 Explanations:**

- *Answer (ii) is incorrect because the patient’s spouse or partner is a lower ranked substitute decision maker. In addition, it is not clear if the live-in boyfriend is a spouse (under the Health Care Consent Act, they must have been living together for at least one year, have had a child together or have a written cohabitation agreement to be spouses).*
- *Answers (iii) and (iv) are incorrect because they are lower ranked than both a power of attorney for personal care or a patient’s spouse. In addition, the patient’s mother and son are equally ranked so*



*either they would have to give the same consent, or it would need to be determined which one would give consent.*

### **Emergencies**

One exception to the need for informed consent is in cases of emergencies. There are two kinds of emergencies:

- Where the patient is incapable and a delay in treatment would cause suffering or serious bodily harm to the patient.
- Where there is a communication barrier (e.g., language or disability) despite efforts to accommodate the barrier and a delay in treatment would cause suffering or serious bodily harm to the patient.

In either case the naturopathic doctor must attempt to obtain consent as soon as possible, either by finding an SDM (in the first example) or by finding a means of communication with the patient (in the second example).

#### **Consent Scenario No. 5**

*Margot Fisher, ND is seeing her patient Tuuli at the office. Tuuli suddenly collapses in an apparent heart attack. Margot has a defibrillator in the office. Without trying to get consent from an SDM, Margot uses the defibrillator to revive Tuuli. Due to the emergency situation, Margot was able to act without consent.*

*Across the city, Ryan, a naturopath, is seeing their patient Louis at the office. Louis has terminal cancer and has filled out a wallet card saying that he does not want any measures taken to resuscitate him should he have a cardiac arrest. Louis has mentioned this to Ryan. During the appointment, Louis suddenly collapses in an apparent heart attack. While Ryan has a defibrillator in the office, they are not able to act as they have already received a refusal to consent to resuscitation from Louis that applies to this situation.*

### **2.3 Boundaries and sexual abuse**

Naturopathic doctors must be careful to act as a professional health care provider, and not as a friend, to patients. Becoming too personal or too familiar with a patient is confusing to patients and can make them feel uncomfortable. Patients will be uncertain as to whether the professional advice or services are motivated by something else other than the best interests of the patient. It is also easier for a naturopathic doctor to provide professional services when there is a “professional distance” between patient and practitioner (e.g., when having to inform a patient about their health condition).

Maintaining professional boundaries is about being reasonable in the circumstances. For example, one should be careful about accepting gifts from patients, but there are some circumstances in which it is appropriate to do so (e.g., a small New Year’s gift from a patient). In other areas, however, crossing professional boundaries is never appropriate. For example, it is always professional misconduct to engage in any form of sexual behaviour with a patient.

The following are some of the areas where naturopathic doctors need to be very cautious to maintain professional boundaries.

### **Self-disclosure**

When a naturopathic doctor shares personal details about their private life, it can confuse patients. The patient might assume the naturopathic doctor wants to have more than a professional relationship. Self-disclosure suggests the professional relationship is serving a personal need for the ND rather than serving the patient's best interests.

#### **Self-Disclosure Scenario**

*Brenda, a naturopathic doctor, is treating Jane for workplace-related stress issues. Jane is having difficulty deciding whether to marry her boyfriend and talks to Brenda about this issue a lot during treatment sessions. To help Jane make up her mind, Brenda decides to disclose details of her own doubts in accepting the proposal from her first husband, and of how those doubts gradually ruined her first marriage resulting in both Brenda and her husband having affairs. Jane is offended by Brenda's behaviour, because it implies that Jane or her boyfriend might have extra-marital affairs in the future and stops coming for treatment.*

### **Giving or receiving of gifts**

Giving and receiving gifts is potentially dangerous to the professional relationship. A small token of appreciation by the patient purchased while on a holiday, around New Year's, or given at the end of a course of treatment may be acceptable. Additionally, one must be sensitive to the patient's culture where refusing a gift is considered to be a serious insult. Anything beyond small gifts, however, can indicate the patient is developing a personal relationship with the naturopathic doctor. The patient may even expect something in return. Similarly, gift giving by a naturopathic doctor has the potential of causing confusion. Even small gifts of emotional value, such as a "friendship" card, can confuse the patient even though the financial value is small. While many patients would find a Christmas / holiday season card from their naturopathic doctor to be a kind gesture and good business sense, some patients might feel obliged to send one in return. Thought should be given to the variety of patients one sees in one's practice (e.g., some new Canadians might be unfamiliar with North American gift giving traditions).

#### **Gift Giving Scenario**

*Jason Edwards, ND, has a patient from a Mediterranean culture who brings food for him at every visit. Jason thanks him but tries not to treat it as an expectation. On one visit, Jason happens to mention his home-made pizza recipe, which the patient insists he bring over to their house for Thanksgiving. Jason politely declines, giving the patient a written recipe instead. The patient stops bringing in food, is less friendly during visits and starts missing appointments. While Jason acted appropriately in this scenario, it illustrates the confusion that can occur with a patient when the patient/practitioner boundaries start to be crossed.*

### **Dual relationships**

A dual relationship is where the patient has an additional connection to the naturopathic doctor other than just as a patient (e.g., where the patient is a relative of the naturopathic doctor). Any dual relationship has the potential for the other relationship to interfere with the professional one (e.g., being both the individual's naturopathic doctor and their employer). It is best to avoid dual relationships whenever possible. Where the other relationship predates the professional one (e.g., a relative, or a pre-existing friend), referring the patient to another naturopathic doctor is the preferred option. Where a referral is not possible (e.g., in a small town where there is only one naturopathic doctor), special safeguards are essential (e.g., discussing the dual relationship with the patient and agreeing with the patient to be formal during visits and never talk about health issues outside of the office).

### **Dual Relationships Scenario**

*Cecilia Simmons, ND, has a patient, Nala. Nala is a refugee with very little money who works part-time as a house cleaner. To offer assistance, Cecilia decides to hire Nala to clean her house, and recommends Nala to some of her friends, who also retain Nala's cleaning services. Later, Cecilia recommends a change to Nala's treatment plan that will not be covered by their insurance, causing Nala to wonder if the treatment recommendation is a way for Cecilia to get back some of the money she paid for Nala's cleaning services. However, out of fear of losing their cleaning job with Cecilia's friends, Nala feels that they cannot decline the treatment.*

*The dual relationship caused the patient, Nala, to have doubts about the reason a naturopathic treatment was being recommended. These doubts could have serious repercussions both on Nala's health status as well as the professional status of the ND.*

### **Ignoring established customs**

Established customs usually exist for a reason. Ignoring a custom confuses the nature of the professional relationship. For example, treatment sessions are usually held during regular business hours at the clinic rather than at a restaurant. By ignoring this customary practice, the patient might begin to think the meeting is a social visit, or the patient might feel that they have to pay for the meal. Treating patients as special, or different from other patients, can be easily misinterpreted.

### **Personal opinions**

Everyone has personal opinions; however, naturopathic doctors should not use their position to promote their personal opinions (e.g., religion, politics or even a vegan lifestyle) on patients. Similarly, strongly held personal reactions (e.g., that a patient is unpleasant and obnoxious) should not be shared. Disclosing personal reactions does not help the professional relationship.

### **Personal Opinions Scenario**

*Everett, a patient, discusses world events with their ND, Cameron, and pushes for Cameron's views on immigration. At first Cameron resists, but eventually says he has some concerns about the abuses of the immigration system, noting that he has often heard directly from patients, about how they have lied to the immigration authorities. Everett responds by loudly criticizing the immigration authorities for allowing too many immigrants into the country and is overheard by other patients in the clinic, including some who are new Canadians. The other patients tell clinic staff they feel uncomfortable with being at the clinic when either Cameron or Everett are around.*

### **Becoming friends**

Being a personal friend with a patient is a form of dual relationship. Patients should not be placed in a position where they feel they must become a friend of their ND in order to receive ongoing care. NDs bear the main responsibility to not allow a personal friendship to develop with patients. It is difficult for all but the most assertive of patients to communicate that they do not want to be friends.

### **Touching and disrobing**

Touching can be easily misinterpreted, particularly where disrobing is involved. A patient can view an act of encouragement by a naturopathic doctor (e.g., a hug) as an invasion of space or even a sexual gesture. Extreme

care must be taken in any touching between naturopathic doctors and their patients. The nature and purpose of any clinical touching must always be explained first, and the patient should always give consent before the touching begins. Asking a patient to disrobe should be avoided whenever possible and, when disrobing is necessary, the patient should disrobe themselves and not be disrobed by the ND. Cultural sensitivities must always be observed. The presence of a third party should be permitted and even offered where appropriate. The touching must always have a clinical relevance that is obvious to the patient.

Managing boundaries is important for both naturopathic doctors and patients.

### **Sexual abuse**

The [Regulated Health Professions Act, 1991](#) (RHPA) is designed to eliminate any form of sexual contact between naturopathic doctors and patients. Because of the status and influence of naturopathic doctors, there is potential for any sexual contact to cause serious harm to the patient. Even if the patient consents to the sexual contact, it is prohibited for the naturopathic doctor.

The term “sexual abuse” is defined broadly in the RHPA. It includes the following:

- sexual intercourse or other forms of physical sexual relations between the naturopathic doctor and the patient,
- touching, of a sexual nature, of the patient by the naturopathic doctor, or
- behaviour or remarks of a sexual nature by the naturopathic doctor towards the patient.

For example, telling a patient a sexual joke is sexual abuse. Hanging a calendar on the wall with sexually suggestive pictures (e.g., women in bikinis, a “fire fighters” calendar) is sexual abuse. Non-clinical comments about a patient’s physical appearance (e.g., “you look sexy today”) is sexual abuse. Dating a patient is sexual abuse.

This definition of sexual abuse includes treating one’s spouse. There have been a number of court decisions that have established a health care provider cannot treat their spouse (with very limited exceptions, like an emergency). Naturopathic doctors need to transfer the care of their spouse or romantic partner to other naturopathic doctors. It does not matter if the spousal relationship came first.<sup>3</sup>

The regulations under the RHPA contain a broad definition of who constitutes a patient. It includes circumstances where any one of the following has occurred:

- i. The naturopathic doctor has, in respect of a health care service provided by the ND to the individual, charged or received payment from the individual or a third party on behalf of the individual.
- ii. The naturopathic doctor has contributed to a health record or file for the individual.
- iii. The individual has consented to the health care service recommended by the naturopathic doctor.
- iv. The naturopathic doctor has prescribed a drug for which a prescription is needed to the individual.

These criteria are not exhaustive. There is a very narrow exception where there is a pre-existing sexual relationship and there is an emergency or service of a minor service is provided in circumstances where referring the person to another practitioner was not possible. It would be rare for those circumstances to arise in a naturopathic practice.

While sexual abuse only relates to patients, sexual misconduct towards other persons can constitute disgraceful, dishonourable and unprofessional conduct. For example, flirting with the relative of a patient would generally be unprofessional. So would sexual harassment of a colleague or employee.

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<sup>3</sup> The very limited exception to this rule for a small number of professions (e.g., dentists) does not apply to naturopathic doctors.

Touching, behaviour, or remarks of a clinical nature is not sexual abuse. For example, a naturopathic doctor can ask about a patient's sexual history, if it is necessary for treatment. However, asking about a patient's romantic life where this is unnecessary for assessment or treatment is sexual abuse. Similarly, touching of the chest or pelvic area of a patient must be clinically necessary and, as discussed above, must be done only after receiving informed consent.

It is always the responsibility of the naturopathic doctor to prevent sexual abuse from occurring. If a patient begins to tell a sexual joke, the naturopathic doctor must stop it. If the patient makes comments about the appearance or romantic life of the naturopathic doctor, the naturopathic doctor must stop it. If the patient asks for a date, the naturopathic doctor must say no (and explain why it would be inappropriate). If a patient initiates sexual touching (e.g., a kiss) the naturopathic doctor must stop it.

### **Sexual Abuse Scenario No. 1**

*Karen, a naturopathic doctor, tells a colleague about her romantic weekend with her husband at Niagara-on-the-Lake for their anniversary, making a joke about how wine has the opposite effect on the libido of men and women. Mary, a patient, waiting in the reception area overhears Karen's discussion. During their treatment session, Mary mentions that they overheard Karen's libido remark and is curious as to what Karen meant by this, as in their experience, wine helps the libido of both partners. Has Karen engaged in sexual abuse?*

*Karen has clearly crossed boundaries by making the comment in a place where a patient could overhear it. However, the initial comment was not directed towards Mary and was not meant to be heard by them. It would certainly be sexual abuse for Karen to continue the discussion with Mary. To rectify the issue, Karen should apologize for making the comment in a place where Mary could hear it and state that they need to focus on Mary's treatment.*

Because sexual abuse is such an important issue, Colleges must take it very seriously. Each College must take steps to prevent sexual abuse from occurring. For example, the Patient Relations Committee of the College must develop a sexual abuse prevention plan that will educate NDs, employers of NDs, and the public, about avoiding sexual abuse. The College of Naturopaths of Ontario has developed the [Prevention of Sexual Abuse – Registrant Guide](#).

In addition, NDs are required to make a report where the ND has reasonable grounds to believe another health care provider has engaged in sexual abuse. The report is made to the Registrar or Chief Executive Officer (CEO) of any health College where the other health provider is a registrant or member. For example, if a patient tells an ND her physiotherapist "fondled" her, the ND is required to make a written report to the Registrar or CEO of the College of Physiotherapists of Ontario. This reporting obligation is discussed in more detail below, under the heading "Mandatory Reports".

There are also a number of special provisions dealing with the handling of sexual abuse matters in the complaints and discipline process. Such complaints are always taken seriously. A referral to discipline is likely where a substantiated complaint of sexual touching of a patient is made. At the discipline hearing the identity of the patient is protected. The patient may even be given a role at the discipline hearing (e.g., to make a statement on the impact of the sexual abuse on the patient if a finding is made). Where the sexual abuse involved sexual intercourse, or similar sexual acts, or the sexual touching of a patient's genitals, anus, breasts or buttocks, and a finding is made, there is a mandatory minimum penalty of revocation of the ND's registration for a period of at least five years. In all cases where a finding of sexual abuse has been made, the ND will be reprimanded. Additionally, if a finding of sexual abuse has been made, the ND can be ordered to pay for the costs of any counselling and therapy of the patient.

The College is also responsible to pay for at least some of the costs of any counselling or therapy needed by the patient if an allegation of sexual abuse is made.

All naturopathic doctors should consider ways of preventing sexual abuse (or even the perception of sexual abuse) from arising. Evidence indicates most sexual abuse is not done by predators; in most cases the health professional and the patient develop romantic feelings for each other, and the health professional fails to respond appropriately.

Where any romantic feelings develop, the naturopathic doctor has two choices:

- put a stop to them immediately, or
- transfer the care of the patient to another naturopathic doctor immediately; however, this does not necessarily mean that the naturopathic doctor can initiate a romantic relationship with that patient immediately.

Other suggestions for preventing even the perception of sexual abuse include the following:

- Do not engage in any form of sexual behaviour around a patient.
- If a patient initiates sexual behaviour, put a stop to it. Be sensitive but firm when doing so.
- Do not date patients.
- Avoid self-disclosure.
- Avoid comments that might be misinterpreted (e.g., “you are looking good today”).
- Do not take a sexual history unless there is a good clinical reason for doing so. If one must take a sexual history, explain why first and be very clinical in one’s approach.
- Do not touch a patient except when necessary for assessing or treating them. If one needs to touch a patient, first explain the nature of the touching, the reason for the touching and be very clinical in one’s approach (e.g., wear gloves, use appropriate draping techniques). Consider having a third person in the room if examining or otherwise touching a disrobed patient.
- Be sensitive when offering assistance to patients who may not be mobile. Ask both whether and how best to help them before doing so.
- Avoid hugging and kissing patients.
- Be aware and mindful of cultural, religious, age, gender and other areas of differences. If in doubt, ask if one’s proposed action is acceptable to the patient.
- Do not comment on a patient’s body or romantic life.
- Ensure any clinical actions of a sexual nature or any incidents of a sexual nature are well documented.

Dating former patients is a sensitive issue. Amendments to the legislation in 2018 require a one-year cooling off period between the termination of the professional relationship and when a sexual relationship can begin. Otherwise, it will still be sexual abuse. However, it can still be unprofessional where the naturopathic doctor still has power over the patient after the one-year period has elapsed. The length of the cooling off period, beyond the one year, will depend on the circumstances (e.g., how long the person was a patient; how intimate the professional relationship was).

### **Sexual Abuse Scenario No. 2**

*Simon, a naturopathic doctor, is attracted to his patient Kurt, and notices he is looking forward to working on the days when Kurt will be at the clinic. Simon extends his sessions a few minutes in order to chat informally with Kurt and thinks Kurt might be interested as well by the way that they make eye contact. Simon notices he is touching Kurt on the back and the arm more often and decides to ask Kurt to join him for a coffee after their next visit to discuss whether his feelings are mutual. If Kurt is interested, Simon will transfer Kurt’s care to a colleague. If Kurt is not interested, then Simon will make the relationship purely professional. Simon decides to ask a colleague, Anna, for advice.*

*Anna, correctly, tells Simon he has already engaged in sexual abuse by letting the attraction develop while continuing to treat Kurt. She also notes that it is important for Simon to transfer Kurt’s care right away and certainly before they get together for coffee. Anna also reminds Simon of the one-year minimum cooling off period.*

### **Sample Exam Question #5**

Which of the following is considered sexual abuse?

- (i) Taking a sexual history when it is clinically necessary to do.
- (ii) Using glamour shots of scantily dressed Hollywood stars as your interior design theme in order to attract younger patients.
- (iii) Making repeated passes at the clinic's receptionist.
- (iv) Dating a former patient after one year has passed.

*The correct answer is (ii). These pictures sexualise the atmosphere at the clinic, which is inappropriate in a health care setting.*

#### **Sample Exam Question #5 Explanations:**

- *Answer (i) is incorrect because taking a sexual history is appropriate when it is needed to assess the patient and it is done professionally.*
- *Answer (iii) is incorrect because the sexual abuse rules only apply to patients. Sexual harassment of an employee may be both unprofessional under another definition of professional misconduct and a breach of the Human Rights Code, but it is not sexual abuse (unless the receptionist was also a patient).*
- *Answer (iv) is incorrect because the person is not a patient at the time of dating. However, it might still be unprofessional to date a former patient even more than a year after they stop being a patient (or, sometimes ever), particularly if the naturopathic doctor had an intense or intimate role in the treatment of the patient.*

## **2.4 Inter-professional collaboration**

It is in the best interest of patients if all their health care providers work with each other in collaboration. Such collaboration helps ensure treatments are coordinated and as effective as possible. Collaboration also helps to reduce the chances of conflicting or inconsistent treatment (e.g., phasing out a patient's drug prescriptions as other forms of treatment begin to work), information and advice.

The [RHPA](#) requires the College to promote inter-professional collaboration. The College tries to model this collaboration by working together with other health Colleges (e.g., sharing information on investigations, developing standards together to promote their consistency). In addition, the College attempts to help NDs collaborate with members of other health care professions when treating the same patients. For example, the portion of the *General Regulation* dealing with controlled acts requires an ND to advise a patient's other primary health care provider when prescribing a drug, unless the patient does not consent to the disclosure. Mandatory referral requirements outlined in the same Regulation also allow for the ND to continue to provide care to a patient even after a referral has been made.

Ultimately, the patient controls the extent of inter-professional collaboration. If a patient is uncomfortable with it, the patient can direct their ND not to share their personal health information with others. The ND must comply with such a direction unless one of the exceptions in the [Personal Health Information Protection Act](#) (PHIPA), which is discussed in more detail below, applies.

Naturopathic doctors should discuss any planned inter-professional collaboration with the patient whenever possible. However, there are circumstances where prior patient consent is not possible (e.g., when the patient goes to the hospital in an emergency and the hospital calls asking about what treatment the patient has received). Naturopathic doctors can disclose information needed for the treatment of the patient without consent so long as the patient has not previously prohibited the ND from doing so.

Inter-professional collaboration only succeeds if NDs respect their colleagues. Even if the ND does not agree with the approaches taken by their colleague, communications should be polite. Naturopathic doctors should share information and cooperate with their colleagues whenever possible, and reasonable attempts to coordinate treatment, or compromise (e.g., as to which treatment to try first), should be made. Inter-professional rivalries should be set aside to allow the patient's best interests to always come first. Attempts should be made to avoid forcing or trying to influence the patient to choose one health care provider over another.

Where inter-professional collaboration involves working in a multi-disciplinary setting (i.e., a place where members of different professions work together and where patients are often seen by multiple health care providers), other issues may arise, including the following:

- Will the setting have shared records, or will the ND have separate records?
- If the records are shared, will the ND keep any private notes outside of the shared record? If so, how will the ND make sure other health care providers have access to the information they need?
- How does the setting deal with the wording used in the records? For example, will everyone use the same abbreviations?
- What happens to the records if the ND leaves to practise elsewhere? Will the patient be told where the ND has gone? Will another ND from the setting take over the patient's care? Will the patient be given a choice?
- Who is the health information custodian that owns the records?
- Will there be one person who has overall responsibility for the care of the patient? If so, who? If not, how will the patient's care be coordinated?
- How will disagreements in the approach to the care of the patient be dealt with? If it is the ND who is in disagreement, when and how does the ND tell the patient?
- Is the patient aware of all of the above?

The issues above, often stipulated in clinic contracts, are those for which an ND should consider consulting with their own lawyer before entering into practice at a multi-disciplinary facility.

#### ***Inter-professional Collaboration Scenario***

*Florence Brady, ND, likes to practice alone, providing alternative treatment compared to most other NDs and certainly when compared to practitioners of traditional Western medicine. Florence's patient, Sandy, is also seeing an MD who calls Florence unexpectedly to advise that Sandy is not responding to their medication. The MD has just learned that Florence is also treating Sandy and wonders if anything Florence is doing might have interfered with their medication. In the past Florence has hinted to Sandy that they are not supportive of the medication Sandy's MD has them on. Florence wonders if Sandy has stopped taking the medication without telling their MD. What should Florence say?*

*In many respects, there has already been a failure of inter-professional collaboration in this scenario. Florence should have discussed the benefits of inter-professional collaboration with their patient rather than hint at their concerns about the medication another health care provider has put her on. Florence should have discussed these concerns openly with Sandy and requested permission to speak with their MD. At this point, however, Florence should speak to their patient first to obtain their permission before talking to the MD as it is not clear whether Sandy would consent to such a discussion taking place and it is not an emergency.*



## 2.5 Billing

The College does not set fees for naturopathic doctors to charge, as establishing fees is not part of the mandate of the College. Additionally, the College does not regulate the amount a naturopathic doctor can bill the patient unless the fee is excessive. A fee is considered excessive when it takes advantage of a vulnerable patient or is so high that the profession would conclude that the naturopathic doctor is exploiting a patient.

However, the College does regulate the way naturopathic doctors bill patients. Billing must be open and honest. Patients must be told the amount of the naturopathic doctor's fees before the service is provided. The best way to advise patients of fees is to provide a written list or description of the fees, which must include all charges including any penalties for late payments. While the patient can also be told verbally, or with a sign clearly displaying the fee schedule in the reception area of the practice, the downside of those methods of notification is that the patient might not register the information or forget receiving it.

Naturopathic doctors must provide an itemized bill for any patient, which must describe the professional and other services that were provided and the products that were given. Any document relating to fees (e.g., a bill or a receipt) must be accurate.

Fraudulent billing practises include:

- Indicating the naturopathic doctor provided the service when someone else did.
- Indicating the wrong date for the service. For example, it is unprofessional to put in a date when the patient had insurance coverage rather than the actual date of service when the patient did not have insurance coverage.
- Indicating one service was performed when, in fact, another service was provided. For example, it is unprofessional to indicate the fee is for a follow-up visit when in fact there was only a telephone conversation.
- Billing for services at more than the naturopathic doctor's usual rate because the service is being paid for by an insurance company.
- Indicating a service was performed when, in fact, no service was performed. For example, it is unprofessional to indicate a patient visit occurred when, in fact, the patient missed the appointment, and a late cancellation fee is being billed.

Fees cannot be billed when services are not provided. The only exception to this is the fee billed when a patient misses an appointment or cancels the appointment on very short notice. However, most insurance companies will not pay for a missed appointment and the fee must be charged directly to the patient.

Some naturopathic doctors offer "free" initial consultations. This is often more of an advertising issue than a billing issue. See the discussion of advertising below. The main point here is that any such offers must be completely honest. The initial consultation must be complete and not just a partial service. There must be no requirement to attend a second time (e.g., to get the results), no hidden charges, and the offer must be open to everyone.

### **Billing Scenario**

*Phillip, a naturopathic doctor, has a posted rate of \$120 per visit in the reception area of his clinic. However, if a patient is paying for the service personally, and does not have extended health insurance coverage, Phillip provides a credit, reducing the rate to \$99 per visit. Additionally, if a patient has special financial needs, Phillip will consider reducing his rate even further; example, he has three regular patients who pay only \$5 per visit.*

*The above scenario is contrary to the professional misconduct regulation. In effect, Phillip's posted fees are not honest and accurate as he is, in effect, billing patients with insurance more than their actual regular fee.*

*It is acceptable, however, for Phillip to lower his actual fee in individual cases of financial hardship. This must be done on a case-by-case basis and not through a general policy intended to hide the true fee. When lowering fees charged to a patient, the lower fee and explanation for doing so must be noted in the patient record.*

### 3. Law

#### 3.1 Types of law

There are a number of sources of law. They include:

- **Statutes.** Most often when one thinks of law, one thinks of statutes (also called Acts). In addition to regular statutes there are overriding statutes that take priority over other statutes such as the [Canadian Charter of Rights and Freedoms](#). The statutes naturopathic doctors need to be most aware of are the RHPA and the [Naturopathy Act, 2007](#). In Ontario, statutes are made by the Legislative Assembly (in Ontario, the Legislative Assembly is often called "Queen's Park").
- **Regulations.** Regulations are made by the government when permitted by a statute. Under the RHPA regulations can be proposed by the College (e.g., *Registration Regulation, Professional Misconduct Regulation, Quality Assurance Regulation*) or by the Minister of Health (e.g., portion of the *General Regulation* dealing with controlled acts, regulations dealing with professional corporations).
- **By-laws.** By-laws are made by the College and deal primarily with the internal operations of the College. Some by-laws affect registrants (e.g., fees, professional liability insurance, information that must be provided by naturopathic doctors to the College, additional information that could be put on the public register, election of naturopathic doctors to the Council of the College).
- **Case law.** Court decisions are used as a guide by lawyers and judges when similar issues arise in the future. Courts try to be consistent, so long as the result is not unfair. Court decisions are particularly important in guiding the procedure of College committees (e.g., investigations by the Inquiries, Complaints and Reports Committee, hearings by the Discipline Committee).
- **Guiding documents.** The College publishes official documents called Standards of Practice, Guidelines, Policy Statements and Position Statements. These documents are not actually "law". However, they help naturopathic doctors and College committees understand and interpret the law. As such, these documents can be very useful for naturopathic doctors to read and understand. These documents are sometimes called "soft law".

Following is a discussion of the laws that are most applicable to the daily life of naturopathic doctors.

#### 3.2 RHPA

The RHPA applies equally to all 26 health Colleges. It sets out the duties and responsibilities of the Minister of Health and Long-Term Care, the Colleges and each of its committees and of naturopathic doctors. The profession-specific statute of each College (i.e., the *Naturopathy Act, 2007*) integrates the RHPA into that statute so that they can be treated as one Act.

### 3.2.1 Controlled acts and delegation

There are certain health care procedures that are potentially dangerous and should only be done by a properly qualified person. These potentially dangerous procedures have been listed in the RHPA. They are called “controlled acts”. No one can perform controlled acts without legal authority to do so.

The fourteen controlled acts are as follows:

1. Communicating to the individual or their personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or their personal representative will rely on the diagnosis.
2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.
3. Setting or casting a fracture of a bone or a dislocation of a joint.
4. Moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust.
5. Administering a substance by injection or inhalation.
6. Putting an instrument, hand or finger:
  - i. beyond the external ear canal,
  - ii. beyond the point in the nasal passages where they normally narrow,
  - iii. beyond the larynx,
  - iv. beyond the opening of the urethra,
  - v. beyond the labia majora,
  - vi. beyond the anal verge, or
  - vii. into an artificial opening into the body.
7. Applying or ordering the application of a form of energy prescribed by the regulations under this Act.
8. Prescribing, dispensing, selling or compounding a drug as defined in the [Drug and Pharmacies Regulation Act, 1990](#) (DPRA), or supervising the part of a pharmacy where such drugs are kept.
9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eyeglasses other than simple magnifiers.
10. Prescribing a hearing aid for a hearing-impaired person.
11. Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.
12. Managing labour or conducting the delivery of a baby.
13. Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response.
14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

The seventh controlled act refers to forms of energy set out in the Minister's regulation. That regulation lists the following forms of energy that cannot be used:

1. Electricity for,
  - i. aversive conditioning,
  - ii. cardiac pacemaker therapy,
  - iii. cardioversion,
  - iv. defibrillation,
  - v. electrocoagulation,
  - vi. electroconvulsive shock therapy,
  - vii. electromyography,
  - viii. fulguration,
  - ix. nerve conduction studies, or
  - x. transcutaneous cardiac pacing.

2. Electromagnetism for magnetic resonance imaging.
3. Soundwaves for,
  - i. diagnostic ultrasound, or
  - ii. lithotripsy.

Since only diagnostic ultrasound is prohibited, that means that therapeutic ultrasound is not a controlled act.

The eighth controlled act refers to the definition of a drug in the DPRA. It reads as follows:

“drug” means any substance or preparation containing any substance,

- (a) manufactured, sold or represented for use in,
  - (i) the diagnosis, treatment, mitigation or prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or
  - (ii) restoring, correcting or modifying functions in humans, animals or fowl,
- (b) referred to in Schedule I, II or III,
- (c) listed in a publication named by the regulations, or
- (d) named in the regulations,

but does not include,

- (e) any substance or preparation referred to in clause (a), (b), (c) or (d) manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,
- (f) any “natural health product” as defined from time to time by the Natural Health Products Regulations under the *Food and Drugs Act*, unless the product is a substance that is identified in the regulations as being a drug for the purposes of this Act despite this clause, either specifically or by its registration in a class or its listing or identification in a publication,
- (g) a substance or preparation named in Schedule U,
- (h) a substance or preparation listed in a publication named by the regulations, or
- (i) a substance or preparation that the regulations provide is not a drug.

Unfortunately, this definition refers to a number of other provisions and can be quite confusing. In general terms, any pharmaceutical product which has a DIN (drug identification number) is usually considered to be a drug.<sup>4</sup> Any natural health product is generally not considered a drug, unless that product is listed in the regulations made under the DPRA or on the Prescription Drug List.

The portion of the *General Regulation* dealing with controlled acts made under the *Naturopathy Act, 2007* allows a naturopathic doctor to administer a substance by inhalation or by injection, provided the substance is listed in the tables included in the Regulation. The Regulation also allows a naturopathic doctor to prescribe, dispense, compound or sell a drug that is listed in the respective tables to the Regulation. It is of the utmost importance that a naturopathic doctor be highly aware of the portion of the *General Regulation* dealing with controlled acts, and the standards of practice and tables included within the Regulation **before** accessing any of the drugs authorized to the profession. For example, an ND must notify patients of relevant treatments available from other practitioners, including MDs, as a part of the informed consent process. Another example is that naturopathic doctors must ensure that appropriate infection control procedures are in place at all times and that the controlled act is performed in an environment that is clean, safe, private and comfortable for the patient.

It is also important for all naturopathic doctors to be familiar with the above list of controlled acts.

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<sup>4</sup> Some non-drug substances have different kinds of drug numberings, for example, a Natural Product Number (NPN) or Homeopathic Medicine Number (DIN-HM).

### **Controlled Acts Scenario No. 1**

*Mohamed, a naturopathic doctor, sees his patient Derek, who comes in complaining of a sore arm. Mohamed believes that the arm is fractured and tries to stabilize it with a splint. However, halfway through applying the splint Mohamed concludes that Derek might not go to the emergency department of the nearby hospital even though Mohamed has recommended it. Mohamed decides instead to apply a cast to the fracture and wonders later if he was permitted to apply the cast.*

*Applying a cast to a fracture is a controlled act. NDs are not authorized to perform that controlled act under the RHPA. From the facts described in the scenario above, it does not appear that any other authority exists to apply the cast. While this could be viewed as an emergency, the appropriate response to the emergency is to stabilise the fracture and arrange for the patient to go to the emergency department of a hospital. A patient's reluctance to go to the hospital does not provide legal authority to perform a controlled act.*

There are four ways in which a health care provider can receive legal permission to perform a controlled act:

- **Authorization.** Being authorized to perform the controlled act by the health care provider's enabling statute. The *Naturopathy Act, 2007*, authorizes NDs to perform the following controlled acts:
  1. Putting an instrument, hand or finger beyond the labia majora but not beyond the cervix.
  2. Putting an instrument, hand or finger beyond the anal verge but not beyond the rectal-sigmoidal junction.
  3. Administering, by injection or inhalation, a prescribed substance.
  4. Performing prescribed procedures involving moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust.
  5. Communicating a naturopathic diagnosis identifying, as the cause of an individual's symptoms, a disease, disorder or dysfunction that may be identified through an assessment that uses naturopathic techniques.
  6. Taking blood samples from veins or by skin pricking for the purpose of prescribed naturopathic examinations on the samples.
  7. Prescribing, dispensing, compounding or selling a drug designated in the regulations.
- **Exceptions.** The RHPA creates a number of exceptions permitting people to perform controlled acts in certain circumstances. These exceptions include the following:
  - Helping someone in an emergency.
  - While in formal training to become a registrant of a College authorized to perform the controlled act, as long as the act is performed under supervision or direction of a registrant of the profession (this exception does not cover activities outside of the formal training process such as part-time jobs or work after completing the course while awaiting registration with the College).
  - Treatment by prayer or spiritual means pursuant to one's religion.
  - When done for a member of one's household [this applies only to communicating a diagnosis (e.g., telling one's child that she had a cold, administering a substance by injection or inhalation or entering a body opening)].
  - Helping a person with their routine activities of living where it includes administering a substance by injection or inhalation or entering a bodily orifice (e.g., on a home visit helping a patient with their insulin injection).
  - Counselling a person provided that the counselling does not amount to communicating a diagnosis or providing psychotherapy (In many ways the counselling exception provision is simply intended to convey the point that counselling, itself, does not normally fall within any of the controlled acts; so, it is not really a true exception).
  - Providing aboriginal healing within the aboriginal community.

- **Exemptions.** In addition to the exceptions listed in the RHPA, the Minister of Health has provided a number of exemptions in a Minister's regulation. Most of those exemptions are limited in scope (e.g., dentists are permitted to apply electricity for electro-coagulation). A few of the exemptions have broader application, including the following:
  - Anyone can perform cosmetic body piercings and tattooing.
  - Anyone can perform electrolysis.
  - Registrants of seven health Colleges, including NDs, can perform acupuncture under exemption.<sup>5</sup>
  - Anyone can perform male circumcision as part of a religious tradition.
  
- **Delegation.** A health care provider who is authorized to perform a controlled act can delegate the controlled act to others. For example, in the controlled act scenario described above, if Mohamed had called Derek's physician and the physician had delegated to Mohamed the application of a temporary cast, then Mohamed would be authorized to perform the procedure. Delegation can be made to another health care provider or to an unregistered person.
  
- Delegation is subject to a number of rules, including the following:
  - **The person giving the delegation is limited by any regulations or professional standards of their College.** The College has a detailed portion of the *General Regulation* dealing with controlled acts with which NDs must be familiar. For example, it lists the drugs and substances NDs can administer, prescribe or dispense. Before delegating a controlled act, NDs must comply with a detailed set of preconditions including: a) having the authority to perform the controlled act in the first place, b) having the knowledge, skill and judgment to perform the controlled act safely and ethically, c) knowing the patient, d) determining that the delegation is in the patient's best interest, e) ensuring the person to whom the controlled act is delegated can perform it safely and ethically, f) documenting the delegation appropriately, among other things<sup>6</sup>. In addition, naturopathic doctors are not permitted to delegate the controlled act of communicating a diagnosis.
  - **The person receiving a delegation is limited by any regulations or professional standards of their College.** For example, an ND would not be complying with professional standards by performing brain surgery on a patient even if that procedure had been delegated by a physician. Similarly, the College of Nurses of Ontario have made regulations limiting when a nurse can receive a delegation of a controlled act (e.g., an existing nurse-patient relationship).
  - **The person delegating the procedure is responsible for the actions of the person receiving the delegation.** For example, if a physician delegated the controlled act of casting the fracture to another individual and the cast is put on too tightly, the physician could be sued.

### **Controlled Acts Scenario No. 2**

*Heather Parker, ND performs a spinal manipulation on their patient. Spinal manipulation is a controlled act authorized to naturopathic doctors under the Naturopathy Act, 2007; therefore, Heather is authorized to perform that controlled act. However, Heather must be sure that the standards of practice outlined in the portion of the General Regulation dealing with controlled acts have been met and that none of the contraindications for the performance of*

<sup>5</sup> They are: chiropody, chiropractic, naturopathy, massage therapy, nursing, occupational therapy, physiotherapy and dentistry. These professions cannot delegate the controlled act of acupuncture since they are only doing it under an exception. There are members of other Colleges, such as traditional Chinese medicine and physicians, who can perform acupuncture under the authorization of their profession-specific Acts.

<sup>6</sup> Section 17 of the General Regulation

*the controlled act (as outlined in the portion of the General Regulation dealing with controlled acts) exist prior to performing the spinal manipulation.*

### **Controlled Acts Scenario No. 3**

*Ava works part time as an ND. Their other job is to perform artistic body piercings. Even though such piercings go beyond the dermis, this procedure is exempted under the Minister's regulation on controlled acts. Ava would have to be careful not to leave the impression that she was performing the procedure as part of her naturopathic practice.*

### **Controlled Acts Scenario No. 4**

*Avery Evans, ND works with a physician. Because of Avery's knowledge of anatomy, the physician trusts them to perform injections on patients at precise anatomical locations and delegates the intra-muscular injections of local anaesthesia to patients, as part of their pain management treatments, to them. Avery is permitted by the delegation to perform these injections; however, both Avery and the physician will be responsible if something goes wrong.*

### **Sample Exam Question #6**

Which of the following is a controlled act?

- (i) Removing broken glass that has been deeply embedded in a child's leg.
- (ii) Cleaning a scrape on a child's elbow with soap and water.
- (iii) Applying alcohol to that scrape on a child's elbow.
- (iv) Wrapping the child's wounds.

*The correct answer is (i). Deeply embedded glass almost certainly has gone beyond the dermis and is sitting in deeper tissue. There may be an issue as to whether this is an emergency (likely not as in most cases it would be possible to take the child to a hospital or physician's clinic for treatment), but that does not change the fact that removing the glass is a controlled act. Similarly, the household exemption does not apply to these sorts of procedures.*

#### **Sample Exam Question #6 Explanations:**

- *Answer (ii) is incorrect because a scrape on the skin implies that it has not gone beneath the dermis.*
- *Answer (iii) is incorrect because applying a substance to the skin is not administering a substance by inhalation or injection.*
- *Answer (iv) is incorrect because the procedure is above the skin and does not fall within any of the other controlled acts.*

## **3.2.2 Scope of Practice**

Because the RHPA uses controlled acts to protect the public from potentially dangerous health procedures, the scope of practice statement of each profession is not as significant as it was previously. No profession has an exclusive scope of practice. Registrants of other health professions can do the same things that naturopathic doctors can do. There are two exceptions:

- As noted above, an individual cannot perform a controlled act unless they have legal authority to do so, and
- The "risk of harm" provision prevents people from performing potentially dangerous procedures even if they are not controlled acts.

### **Risk of Harm Provision**

The risk of harm provision prohibits a person from treating or advising a person “with respect to their health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them”<sup>7</sup>. This provision is designed to prevent individuals from taking advantage of vulnerable patients, in ways other than performing a controlled act. For example, encouraging a cancer patient to try diet as the only means of treatment might fall within this risk of harm provision.

However, the risk of harm provision does not apply to naturopathic doctors practising within their scope of practice. Thus, it is not an offence for a naturopathic doctor to provide treatment within the scope of practice of naturopathy even if there is an inherent risk to the treatment. If there was incompetent care, the naturopathic doctor is accountable to the College (not provincial offences court) for their conduct. However, if an ND provides treatment outside of the scope of practice of the profession, the risk of harm provision does apply. For example, if an ND treated a patient’s cancer by using procedures associated with Medical Doctors and which are not part of the scope of practice of naturopathy, then the ND could face prosecution.

It is therefore important for naturopathic doctors to know and adhere to their scope of practice.

### **Scope of Practice Statement**

A profession’s “scope of practice” is a description of what that profession does. Under the *Naturopathy Act, 2007*, the scope of practice statement reads as follows:

3. The practice of naturopathy is the assessment of diseases, disorders and dysfunctions and the naturopathic diagnosis and treatment of diseases, disorders and dysfunctions using naturopathic techniques to promote, maintain or restore health.

While worded fairly broadly, this scope of practice statement does not authorize a naturopathic doctor to provide treatments that are outside of the usual practices of naturopathic doctors. For example, surgery is not included in this scope of practice.

Naturopathic doctors are permitted to perform procedures **that are not inherently dangerous** that lie outside of their scope of practice. For example, providing mouth guards for the local children’s hockey league would be acceptable. However, the College has a policy that patients need to know whether an ND is acting as an ND, or as another health care provider. This policy applies whether the ND is registered with another College or not. The patient must be told which professional hat the ND is wearing. In fact, to ensure that a patient is not misled, separate appointments, records and billings should be made and kept.

Since vaccinations are outside of the scope of practice of naturopathy, NDs should refer patients with questions about the issue to a profession whose scope of practice includes vaccinations (e.g., physicians, nurse practitioners). This referral should be done in a professional manner, respecting a patient’s right to choose and without attempting to influence the patient’s choice. The College has a published a policy on the issue which is located on its website.

#### **Scope of Practice Scenario**

*Edna Smitty, ND, is seeing a patient who was diagnosed with Stage IV cancer. The patient is scheduled for surgery next week to be followed by a cycle of chemotherapy. The patient’s oncologist has advised that the treatment has a 50% chance of success (i.e., meaning she will be alive and cancer free in five years’ time). The oncologist has also noted that without treatment, the patient has a less than 5% chance of surviving for five years. After a careful assessment, Edna advises the patient to cancel both the surgery and the*

<sup>7</sup> Section 30 of the *Regulated Health Professions Act*.



*chemotherapy, instead recommending a combination of relaxation tapes and a fasting/cleansing program followed by an all-fruit diet. The patient forgoes the surgery and chemo and dies within two months. The patient's family go to the police asking that Edna be prosecuted under the risk of harm clause.*

*In this scenario, Edna appears to have provided treatment that is outside of the scope of practice for naturopathic doctors. While naturopathic doctors often provide supportive care for patients with cancer, they are not trained in front-line surgical and chemotherapy care of patients with advanced cancer. Advising the patient to cancel surgery and chemotherapy amounts to communicating a diagnosis that is not naturopathic in nature. Additionally, Edna's treatment plan does not appear to have evidence to support it. Therefore, there was an inherent risk of harm in advising the patient to reject the proposed medical treatment that had evidence of a reasonable chance of recovery for a treatment that had not been fully researched.*

### 3.2.3 Use of Titles

There are a number of rules about the use of professional titles and designations by naturopathic doctors, such as:

**1. Only approved persons can use any form of the title "Doctor" when providing or offering to provide health care services in Ontario.** If a person is not from one of the approved health professions, they cannot use the title in a clinical setting even if the person has an earned doctoral degree (e.g., the person holds a Ph.D.). Allowing a staff person to call the health care provider "Doctor" would constitute an offence. Under this provision, people can use the title "Doctor" in other settings, such as socially or in a purely teaching setting, where there are no patients.

Naturopathic doctors are permitted to use the title "Doctor" in a clinical setting so long as in any written representation, the words "naturopathic doctor" immediately follows the naturopathic doctor's name.

**2. Each profession-specific statute regulates the use of titles relating to their profession. Each profession has specific titles that only persons registered with their College can use as a professional title.** For example, only NDs can use the title "naturopathic doctor" or any variation of that title. In addition, even if the unregistered person does not use the protected title, they cannot hold themselves out as a naturopathic doctor. This prevents people from pretending that they are naturopathic doctors when they are not.

**Naturopathic doctors need to be careful not to use as a professional title any designation that is permitted to members of other Colleges.** For example, unless a person is registered with the College of Physiotherapists, they cannot call themselves a physiotherapist or a physical therapist.

**3. Each College sets rules around use of title for its registrants in the registration and professional misconduct regulations.** For example, while naturopathic doctors in the general class can use the ND designation, Inactive Practitioners must use "ND (Inactive)". In addition, naturopathic doctors are not permitted to use any title or designation indicating that they are specialists. It would be misleading for naturopathic doctors to portray themselves as physicians or as "experts". For example, a naturopathic doctor cannot say that they are a paediatrician (although they could say that their practice is focused on children).

**4. General professional misconduct regulations prevent the use of misleading titles or designations or engaging in false or misleading advertising.** For example, it would be professional misconduct for a naturopathic doctor to refer to an educational degree that had not been received.

#### **Use of Titles Scenario**

*Peter Jones, ND, teaches at a school that trains naturopathic doctors. The school also has a clinic where Peter supervises students who are seeing patients. The students refer to him as "Doctor Peter" at the clinic, and his appointment cards read "Dr." before his name. A colleague pulls Peter aside and tells him to ask his*

*students to stop calling him “Doctor” in the clinic where there are patients present. It is OK in the classroom, but not in the clinic. Peter reviews the RHPA and realizes that he can use the title “Doctor” verbally (the colleague is wrong on this point) but in any written form, like on their appointment card, their name must immediately be following by the words “naturopathic doctor”, or the abbreviation “ND.”.*

### 3.2.4 Mandatory Reports

Part of being a member of a regulated health profession is that one cannot remain silent when another health care provider is harming a patient. A naturopathic doctor has a professional duty to speak up in such circumstances. The RHPA carefully balances the need to protect patients, by requiring naturopathic doctors to make a report, against the need to avoid disrupting the health care system with many unnecessary reports. The statute also recognises that if naturopathic doctors unnecessarily report on their colleagues, it will harm the supportive atmosphere necessary for inter-professional collaboration. The following section of this handbook describes the mandatory reporting provisions of the RHPA. There are some mandatory reporting provisions in other statutes (e.g., the [Child, Youth and Family Services Act](#)) some of which will be dealt with in this section.

Both the RHPA and case law provide immunity to naturopathic doctors who make a mandatory report in good faith.

The mandatory reporting requirements also create an exception to the naturopathic doctor’s duty of confidentiality. In addition, PHIPA permits a report to the College to be made as an exception to the privacy duties under that statute.

#### **Sexual Abuse**

A naturopathic doctor must report sexual abuse of a patient by another health care provider. This duty arises if the ND has reasonable grounds to believe the sexual abuse occurred while practising the profession or while operating a health facility (which includes an office or clinic). Reasonable grounds means information that would cause a reasonable person who does not know the individual involved to conclude that it is more likely than not that the information is correct. Such reasonable grounds can arise even if the ND did not personally observe the sexual abuse. For example, if a patient tells the ND details of the abuse that would likely constitute reasonable grounds. An ND does not have to investigate the events first nor does the ND have to actually believe that the information is true (e.g., the ND might know the alleged abuser and have a hard time believing that they would do such a thing). If the information constitutes reasonable grounds, the report must be made.

The report must:

- Be made in writing to the CEO of the College to whom the alleged sexual abuser belongs.
- Contain the reporting ND’s name and the grounds of the report. **However, the report cannot contain the patient’s name unless the patient agrees in writing that the name can be included.** This limitation is intended to protect the privacy of patients who may be in a vulnerable position.
- Be made within 30 days of receiving the information. If it appears that patients are continuing to be harmed and there is an urgent need for intervention, the report must be made right away.

#### **Sexual Abuse Mandatory Report Scenario**

*Mandy Myers, ND, receives information from their patient, Rebecca, concerning an affair they had with their family doctor. Mandy asks Rebecca whether their family doctor was treating them while the affair was going on and Rebecca tells her that it was. Mandy informs Rebecca that they are required by law to report this information to the Registrar or CEO of the College of Physicians and Surgeons of Ontario (CPSO) and explains that the CPSO will investigate the report. It will be very difficult for the CPSO to investigate the report if Rebecca’s name and contact information are not included in the report, as the CPSO will likely want to interview them about the affair. The investigation could also lead to a discipline hearing. However, the law*

*is clear that Mandy cannot include Rebecca's name and contact information, unless Rebecca is prepared to sign a written consent permitting Mandy to do so. To aid Rebecca in their decision regarding consent, Mandy suggests that they call the CPSO, anonymously, to see what the process would be like. After the call is completed, Rebecca tells Mandy that they will not give her consent to include their name and contact information. Mandy submits a report in writing to the CPSO without identifying Rebecca.*

### ***Incompetence, Incapacity and Professional Misconduct***

A naturopathic doctor must report if they end a business relationship with another health care provider on the basis that the other health care provider is incompetent, incapacitated or engaged in professional misconduct. Examples of business relationships include employer-employee, partners, and shareholders in a professional corporation or space sharing. The report must be made even if the person quits or resigns first, if there are reasonable grounds to believe that the departure or resignation reasonably relates to the person's professional misconduct, incompetence or incapacity. A report must also be made where the person resigns or quits or during an investigation into such concerns.

The report must be made in writing to the Registrar or CEO of the College that regulates the other health care provider. The report must be made in 30 days of ending (or proposing to end) the business relationship. Under this mandatory reporting obligation, a patient's name can be included without the patient's consent.

In addition, if a naturopathic doctor operates a health facility (which includes an office or clinic), the naturopathic doctor must report any reasonable grounds that lead them to believe that another health care provider is incompetent or incapacitated.<sup>8</sup> This report must be made even if the business relationship with the other health care provider has not ended. For example, if a health care provider at the facility is found to have a drug addiction and goes into a treatment program while the job is kept for them, the report would still have to be made.

Again, the report must be made in writing to the Registrar or CEO of the College to whom the alleged incompetent or incapacitated health care provider belongs. The report has to contain the reporting naturopathic doctor's name and the grounds of the report. Under this mandatory reporting obligation, a patient's name can be included without the patient's consent. The report must be made within 30 days of receiving the information. If it appears that patients are continuing to be harmed, the report must be made right away.

### ***Incompetence, Incapacity and Professional Misconduct Mandatory Report Scenario***

*James, a naturopathic doctor, learns that his employer, also a naturopathic doctor, is dependent on alcohol. James tries to help his employer get treatment, but the employer keeps relapsing. Recently, the employer came back after lunch impaired so much so that James had to call in his employer's wife to pick them up and take them home. Of biggest concern to James was that his employer treated three patients after lunch before James found out about their condition. James prepares his letter of resignation and consults with a lawyer about what to do. Their lawyer advises him that he must make a written report to the CEO of the College.*

### ***Offences – Self Report***

Naturopathic doctors must report themselves when they have been charged with or found guilty of an offence. All offences must be reported. Thus, criminal offences, offences under federal drug or other legislation and provincial offences (including highway traffic offences) need to be reported. Only courts can hear offence matters. Any charges before or findings by a body that is not a court (called "tribunals") are not reportable under this provision. **All charges**

<sup>8</sup> This duty to report, unlike the termination reports discussed above, does not apply if the person just committed professional misconduct but is not incompetent or incapable (e.g., the health care provider published a misleading advertisement).

**and findings are reportable regardless of whether they resulted in a conviction** (a finding of guilt that leads to an absolute or conditional discharge, is not a conviction).

Practitioners are also required to report any bail conditions or other restrictions imposed on or agreed to by them. For example, if the terms of release for the charge require the registrant to only see patients under supervision, that must be reported.

Reports are to be made to the CEO of the College as soon as possible after the charges or finding and should contain the following information:

- the name of the ND filing the report,
- the nature of, and a description of the charges or offence,
- the date the ND was charged or found guilty of the offence,
- any bail conditions or other restrictions imposed on or agreed to,
- the name and location of the court where the charges were laid or that found the ND guilty of the offence, and
- the status of any appeal initiated respecting the finding of guilt.

The report will be reviewed by the College and may result in an investigation. Also, the CEO is required to put relevant offence charges and findings on the public register (see the discussion of the register below).

If there is an appeal that alters the information reported, an updated report must be made.

#### ***Offence Mandatory Report Scenario***

*Huan, a naturopathic doctor, is found guilty of careless driving under the Highway Traffic Act. On the College's annual renewal form they see a question asking if they have been found guilty of any offence. They don't think that this question is meant to include their careless driving charge, but they decide to call the College for clarification. Huan is told that the RHPA requires all offences to be reported. The intent of requiring such reports is to prevent NDs from determining whether the findings were relevant or not; a decision which needs to be made by the College.*

*In reality, Huan should have reported both the charge and the finding within 30 days instead of waiting six months for the annual renewal form. Huan makes the report. A few weeks later they receive a letter from the College thanking them for their report and stating that the College does not believe that this finding is worth investigating further. The letter also advises that in the future such findings need to be reported right away.*

#### **Registration with Other Regulators**

NDs must advise the CEO if they are registered with a regulatory body for a profession. This applies to both other professions in Ontario (e.g., massage therapy) or in another jurisdiction (e.g., registration as a naturopathic doctor in another province or another country). In addition, if the ND is found to be incompetent or to have engaged in professional misconduct, the ND must report the full details to the CEO as soon as possible. Any changes to the findings (e.g., on appeal) must also be reported as soon as possible. The reports of disciplinary findings should contain the following information:

- the name of the ND filing the report,
- the nature of, and a description of the finding,
- the date of the finding,
- the name and location of the regulator making the finding, and
- the status of any appeal initiated respecting the finding.

### **Professional Negligence – Self-Report**

- Naturopathic doctors must report themselves when they have been found to have engaged in professional negligence or malpractice. Findings of professional negligence or malpractice are only made by the courts; findings made by a tribunal are not reportable under this provision. Settlements of claims for professional negligence may not be included in the reporting requirement if they did not result in a court “finding”.
- Reports are to be made to the CEO of the College as soon as possible after the finding and should contain the following information:
  - the name of the ND filing the report,
  - the nature of, and a description of the finding,
  - the date of the finding,
  - the name and location of the court that made the finding, and
  - the status of any appeal initiated respecting the finding.

The report will be reviewed by the College and may result in an investigation. The report is automatically put on the public register (see the discussion of the register below).

If there is an appeal that alters the information reported, an updated report must be made.

#### **Professional Negligence Mandatory Report Scenario**

*Aaron, a naturopathic doctor, is sued in Small Claims Court by a patient, Geoff. Geoff claims that he told Aaron about pain in his lower abdomen, but that Aaron attributed those symptoms to stress. After two weeks of supportive treatment for the stress, despite increasing pain, Geoff went to the emergency department. After being admitted, Geoff was rushed into surgery for appendicitis and stayed in the hospital for almost a week. Geoff claims his ND, Aaron, should have referred him to another health care provider to rule out appendicitis before treating the symptoms as purely stress related. The Small Claims Court judge agrees and orders Aaron to pay Geoff \$10,000 for their malpractice. Aaron reports the finding to the College, who places a note about the finding on the public register.*

### **Duty to Warn**

Under case law, a naturopathic doctor who has reasonable grounds to believe that another person is likely going to cause severe bodily harm must warn the appropriate people of the risk. This duty applies even if the person who will likely cause the harm is the patient of the naturopathic doctor. The College has included an aspect of this duty to warn in its professional misconduct regulation. Where a naturopathic doctor learns of an incident of unsafe practice by another naturopathic doctor, the first ND must report this to the CEO of the College. The report must be made promptly to the College in writing with all necessary details. Under this mandatory reporting obligation, the name of a patient can be included without the patient’s consent.

This duty to report does not include all forms of incompetence, incapacity, or professional misconduct. It only applies where the naturopathic doctor jeopardizes the safety of a person (normally, but not always, a patient), and only when the other person, causing the risk of harm, is a naturopathic doctor.

However, where the health care provider causing a risk of harm belongs to another profession, there may be an ethical or even a case law duty to intervene in an appropriate way to prevent harm to a patient or another person.

### **Duty to Warn Mandatory Report Scenario**

*Sofia, a naturopathic doctor, learns from her patient, that another ND, Rene, strongly recommended that she undergo a month-long cleanse which involves no food and only lemon juice and water to drink. The patient is in her fifties and is underweight. The patient notes that at least two of Rene's other patients had been given similar advice. Sofia is concerned that the cleanse is not a safe treatment option for many people, certainly not the patient disclosing this information. Sofia makes a report to the CEO of the College.*

### **Sample Exam Question #7**

Is a mandatory report required when a naturopathic doctor overhears another naturopathic doctor tell two male patients a sexually explicit joke, which causes the patients to laugh loudly?

- (i) No. Dirty jokes are not sexual abuse.
- (ii) Yes. This is sexual harassment. The report should be made to the Human Rights Tribunal.
- (iii) No. The patients liked the joke and would not have been harmed by it.
- (iv) Yes. This constitutes sexual abuse.

*The correct answer is (iv). Sexual abuse includes comments of a sexual nature to a patient. Reporting sexual abuse is mandatory. While it is not clear that punitive action would be taken by the College, it is still important that naturopathic doctors learn that such conduct can be harmful to some patients. One never knows what experiences patients have had in their past that might make even a dirty joke harmful.*

#### **Sample Exam Question #7 Explanations:**

- *Answer (i) is incorrect because dirty jokes are sexual abuse as that term is defined in the RHPA.*
- *Answer (ii) is incorrect because there are no mandatory reporting requirements under the Human Rights Code. Also, the RHPA uses the term sexual abuse rather than sexual harassment and gives that term a unique meaning.*
- *Answer (iii) is incorrect because it is irrelevant whether or not the patient was a willing participant, the comment still should not have been made. One never knows what experiences patients have had in their past that might make even a dirty joke harmful. Sexualizing the practice of the profession is inherently confusing to patients who assume that there is not a sexual aspect to their relationship with naturopathic doctors.*

### **3.2.5 Public Register**

The RHPA requires that the public have access to certain information about naturopathic doctors. This information helps the public (e.g., patients, employers) to decide whether to choose a particular naturopathic doctor, helps the public to see how well the College is regulating the profession, and helps ensure that naturopathic doctors practise only as permitted. For example, if a naturopathic doctor is suspended for three months, people can more easily report to the College if the naturopathic doctor is still working during the suspension period when the suspension shows on the public register.

The register must contain the following information about each naturopathic doctor:

- name,
- business address and telephone number,
- name and business address and telephone number of each professional corporation.
- class of registration,
- any terms, conditions, and limitations on the certificate of registration,
- any referrals to the Discipline Committee for a discipline hearing,
- any discipline hearings, inspections, and their outcomes,

- any Oral cautions and SCERPs (specified continuing education or remediation),
- a summary of every finding of professional misconduct, incompetence or incapacity,
- any findings by a court of professional negligence,
- any findings of guilt, undertakings, and bail conditions,
- every suspension of registration for any regulated profession,
- every revocation of registration for any regulated profession,
- applications for and decisions surrounding reinstatement, and
- any agreement to resign and never reapply for registration.

The by-laws of the College also require the inclusion of the following information on the public register:

- names other than legal names used by the registrant in practise and any changes in the registrant's name,
- the naturopathic doctor's practice addresses including those of any employer of the ND,
- the reason and date a registrant ceases to be a Registrant,
- any information on a former registrant for a period of two years, except for discipline findings which shall remain for 50 years,
- any interim order to which a registrant's certificate of registration may be subject to,
- disciplinary findings by other regulators,
- information about referrals to the Fitness to Practise Committee,
- any information jointly agreed upon by the registrant and the CEO,
- a notation of whether a registrant meets the Standards of Practice for Intravenous Infusion Therapy (IVIT) or Prescribing,
- information relating to every inspection conducted under the Inspection program of the College,
- a colour passport-sized photograph,
- where the registrant is Inactive, the last known primary practice location or the location of the registrant's patient records,
- where the registrant has retired, resigned or been revoked, the date and the address of the health information custodian of the registrant's patient records,
- information relating to an application to the Discipline Committee for reinstatement and any decision once it is rendered,
- a summary of any terms, conditions or limitations or variations to those,
- a notation where the CEO has publicly confirmed that the naturopathic doctor is under investigation, and
- the naturopathic doctor's registration status with other regulators.

This list is not exhaustive. A complete list can be found in Section 20.06 of the by-laws.

To make this information easier to access by the public, the College has set up four separate registers containing information about the following:

- naturopathic doctors,
- professional corporations,
- premises providing IVIT, and
- unauthorized practitioners who have held themselves out as NDs.

There are a few circumstances where the College can choose not to put this information on the register or to remove information from the register. It can do so only in the following situations:

- The information (e.g., contact information) would jeopardise the safety of the naturopathic doctor (e.g., if an ND is being stalked).
- The information is obsolete or no longer relevant (e.g., the finding of professional misconduct relates to conduct that is now acceptable, for example if the advertising rules happen to change).
- It includes unnecessary information about the personal health of an ND (e.g., in incapacity matters).

- After six years, where there was only a reprimand, a fine or a finding of incapacity and the Discipline Committee or Fitness to Practise Committee agrees that there is no public interest in keeping the information on the register.

The register is available to the public in a number of ways; it is on the College's website, available at the College's office and a paper copy can be requested. The College can also give information on the register over the telephone. Where a person asks about a naturopathic doctor, the College must help the person find whatever information that person wants that is on the register.

#### ***Public Register Scenario***

*Emily, a naturopathic doctor, has separated from her abusive husband. Since the separation, Emily's husband has been following her, which the police have been unable to stop. Emily moves to another city and asks the CEO not to put her new business address or telephone number on the public register to prevent her husband from finding her. Emily provides documents from the police and the courts about her husband's behaviour and the CEO does not include Emily's new contact information on the register.*

### **3.2.6 Professional Corporations**

Naturopathic doctors can choose to practise personally (i.e., in their own names), through a partnership or through a professional corporation (i.e., a special type of corporation for regulated professionals). Naturopathic doctors can no longer practice through regular business corporations; they can only practice through a professional corporation. Naturopathic doctors who already have a regular business corporation will have to change that corporation to a professional corporation once they become registered with the College.

Professional corporations have a number of conditions and restrictions. These include the following:

- only naturopathic doctors can hold shares,
- the officers and directors of the professional corporation must be shareholders,
- the name of the professional corporation must include the words "Professional Corporation",
- the professional corporation cannot be a numbered company (e.g., 1234567 Ontario Inc.); and
- the professional corporation can only practise the profession or provide related or ancillary services. It cannot, for example, practise another profession like registered massage therapy.

Naturopathic doctors cannot avoid professional liability through a professional corporation. Injured patients can sue the ND personally. However, NDs working through a professional corporation do have protection against trade creditors. For example, if suppliers or other creditors are not paid by the professional corporation, they cannot sue the ND personally.

A number of provisions have been made to prevent naturopathic doctors from hiding behind the professional corporation when facing scrutiny by the College. These include the following:

- The RHPA applies to naturopathic doctors despite their practising through a professional corporation.
- A naturopathic doctor's fiduciary (i.e., loyalty and good faith) and ethical obligations to patients remain in place and now apply equally to the professional corporation as well.
- During investigations and other proceedings involving naturopathic doctors, the College has the same powers over the professional corporation (e.g., access to premises and documents) as it does against the naturopathic doctor.
- Any monetary orders against naturopathic doctors are also payable by the professional corporation.



- Any duty to a patient, the public or the College takes precedence over the duties of the ND as an officer or director of the professional corporation.
- Any terms, conditions and limitations against a naturopathic doctor apply to the professional corporation as well.
- Any knowingly false representation made to obtain a certificate of authorization is an offence.

Professional corporations must obtain from the College a "certificate of authorization", similar to a certificate of registration, for individual NDs.

To obtain a certificate of authorization, a naturopathic doctor goes through the following process:

- Selecting a name for the professional corporation. Ministry regulations require that the name must contain the surname of at least one shareholder (as set out in the College register). The name can also include the person's given name and initials. The name of the corporation must also indicate the name of the registrant's health profession (i.e., "naturopathy"). The name must also include the words "professional corporation". The name can include nothing else.
- The professional corporation must then be incorporated with the government. This involves preparing articles of incorporation, corporate by-laws, paying a fee and submitting an application form with the government. If the paperwork is acceptable the government will issue a corporation profile report and a certificate of incorporation.
- Within 30 days of obtaining one's corporation profile report, the professional corporation must apply to the College for a certificate of authorization. Such an application will require the following:
  - Completing the application form that can be obtained from the College. The application form will require the name, registration numbers and addresses of each shareholder. The application form will require the applicants to specify which shareholders hold which positions with the corporation. The business premises or practice locations of the corporation will also have to be identified.
  - Paying the fee required by the College in its by-laws.
  - Enclosing a copy of a corporation profile report, issued by the Ministry of Government and Consumer Services or by a service provider which is under contract with the Ministry of Government and Consumer Services, that is no more than 30 days old.
  - Enclosing a copy of the certificate of incorporation issued by the government.
  - Providing a declaration (i.e., a written statement) from a director of the corporation that was completed not more than 15 days before the application date that certifies the accuracy of the documents submitted with the application and that the corporation will only practise the profession or related or ancillary activities.

Once incorporated, the professional corporation must:

- Notify the College immediately if its name or articles of incorporation change.
- Notify the College promptly of any change in shareholder, officer or director of the professional corporation or if the corporation changes its location or locations of practice.
- Renew its certificate of authorisation each year. The renewal process involves completing the same sort of paperwork as was involved in the initial application. The renewal process updates the information about the corporation and its shareholders.

A certificate of authorization can be revoked if the professional corporation does not follow the rules.

The College cannot give advice to naturopathic doctors as to whether a professional corporation is beneficial for them. Naturopathic doctors will need to obtain advice from an accountant or a lawyer.

### **Professional Corporation Scenario**

*Jim Jantzen, ND, sets up a business corporation with his wife and children as shareholders. It is not a professional corporation. What can happen?*

*Jim cannot operate a regular business corporation because it does not follow the rules for professional corporations. Jim has to either change his business corporation into a professional corporation or give up the business corporation. Unless Jim's wife and children are also registered NDs they cannot be shareholders of the professional corporation. If Jim fails to convert his business corporation into a professional corporation Jim could face prosecution by the College and could face significant tax implications if the Canada Revenue Agency looks into the matter. Jim should speak to his accountant or lawyer to get advice as to what his best option is.*

### **3.3 Naturopathy Act, Regulations, By-Laws**

The *Naturopathy Act, 2007* is the profession-specific statute of the College of Naturopaths of Ontario. As mentioned before, the *Naturopathy Act, 2007* works together with the RHPA so that they can be treated as one Act. Together, these acts authorize the College to develop regulations and by-laws to regulate the profession.

Regulations and by-laws are both forms of law. The major difference between a by-law and a regulation is that a by-law is made directly by the Council, while a regulation must be approved by the Government of Ontario. By-laws typically relate to the administration and internal affairs of the College, although there are some exceptions (e.g., the public register by-law). Regulations generally deal with matters of broader public concern.

#### **3.3.1 Registration Regulation**

The *Registration Regulation* sets out the requirements for obtaining and maintaining registration with the College. It is intended to make sure that registrants of the College are competent and are of good character.

The *Registration Regulation* establishes two classes of registrants:

1. General - intended for registrants who are actively practising the profession; and
2. Inactive - intended for existing registrants who for whatever reason are not currently practicing the profession but wish to remain registrants of the College.

#### **General requirements**

There are certain requirements that must be met by all applicants for registration with the profession:

- All applicants must complete an application form fully and pay applicable fees.
- All applicants must also inform the College of any criminal or other findings or regulatory proceedings or findings against them.
- All applicants must provide information regarding their training and experience, past professional experiences (including current and previous registration with another regulatory body).
- All applicants must provide any information that may affect their ability to practise effectively and safely (i.e., professional liability insurance).
- All applicants must have adequate fluency in either English or French.
- Applicants must not be incapacitated (i.e., have an illness that prevents them from practising safely, like a drug addiction that is not under control).

### **Specific Requirements**

There are specific requirements for each class of registration. For example, individuals seeking registration in the General class must have completed an acceptable educational program and passed the registration examinations.

Applicants must have completed a jurisprudence program on basic health regulation and law that applies to their practice.

There are registration regulation provisions that allow for out-of-province NDs from elsewhere in Canada to transfer to Ontario with recognition of their qualifications. These are called mobility provisions. College will not require qualified applicants registered in a regulated jurisdiction elsewhere in Canada to once again prove that they have adequate education, experience, and examination credentials for entry-to-practise in Ontario.

### **Conditions of Registration**

Once a person is registered with the College, they must continue to meet certain general terms, conditions and limitations. For example, if a registrant is charged with or is found guilty of a criminal or other offence, the registrant must inform the College. If a registrant is disciplined by another professional regulator, the registrant must inform the College. If the registrant no longer has professional liability insurance coverage, the registrant must inform the College. Inactive NDs must use "(Inactive)" after their designation so that the public can identify their registration status.

#### **Registration Regulations Scenario**

*Jorge is a practising ND, registered with the College of Naturopathic Physicians of British Columbia. They are not registered in Ontario but have been invited by a colleague to come to Ontario to demonstrate naturopathic spinal manipulation at a conference and provide demonstrations with patients. To do this, Jorge would have to obtain registration in Ontario to use the naturopathic doctor title and to perform any controlled acts granted at entry-to-practise. However, Jorge could rely on the mobility provisions that recognise their ND registration in a regulated jurisdiction to become registered in Ontario without having to undergo the Ontario entry-to-practise examinations.*

### **3.3.2 Professional Misconduct Regulation**

As discussed previously, some types of professional misconduct are contained in the RHPA itself. For instance, the RHPA makes breaking the law professional misconduct (e.g., to be found guilty of an offence relevant to a naturopathic doctor's suitability to practise the profession). Being found guilty of professional misconduct by another regulator outside of Ontario can also lead to disciplinary action in Ontario. Sexual abuse of a patient is professional misconduct, as is failing to cooperate with the quality assurance program.

The College's *Professional Misconduct Regulation* describes additional examples of professional misconduct. Some provisions found in the professional misconduct regulation are common to many of the professions under the RHPA, while others are more specific to this profession.

The following are the main topics found in the *Professional Misconduct Regulation*:

#### **Standards of Practice**

The *Professional Misconduct Regulation* makes failing to maintain the standard of practice of the profession professional misconduct. Usually, this relates to the assessment and treatment of patients by the naturopathic doctor. The standards of practice may be written, or unwritten. They reflect a shared understanding of the profession

and how it should be practiced effectively and safely. This is based on what would be reasonably expected of the ordinary competent naturopathic doctor in their field of practice. Expert witnesses are often used to describe a standard of practice when it is unwritten or under consideration.

One specific standard of practice in the *Professional Misconduct Regulation* is that a naturopathic doctor must refer a patient to another health care provider where the patient has a condition that is beyond the knowledge, skill and judgment of the naturopathic doctor. For example, if a patient had symptoms that suggested advanced cardiovascular disease, the naturopathic doctor should not try to treat this alone. A referral to a medical doctor would be required.

### ***Inappropriate Behaviour towards Patients or the Public***

Many provisions in the *Professional Misconduct Regulation* relate to inappropriate behaviour towards patients or the public. For example, physical or verbal abuse of patients is professional misconduct. This also includes rude or unbecoming behaviour towards patients, registrants of the public or other health professionals. In addition, if a patient has a concern about an ND's conduct and wishes to make a complaint, the ND has a professional obligation to advise the patient about the College's regulatory role and how to get in contact with the College.

### ***Record Keeping***

Failing to make and keep appropriate and adequate records is professional misconduct. This is an important area which NDs need to understand and is discussed in depth in its own section below.

### ***Informed Consent***

Informed consent has been discussed in detail in the section on communication and is mentioned again regarding record keeping. The regulation makes it professional misconduct to fail to obtain informed consent before assessing or treating a patient.

### ***Controlled Acts, Delegation and Supervision***

Naturopathic doctors must ensure that any person to whom they delegate a controlled act authorized in the *Naturopathy Act, 2007* has the knowledge, skill and judgment to perform it. If a registrant is not permitted to perform specific authorized acts without meeting additional requirements (e.g., prescribing or IVIT), they cannot try to circumvent that restriction by delegating the authorized act to a colleague.

In addition, a registrant may assign certain tasks, which are not controlled acts to another person. It is a general expectation that naturopathic doctors will be responsible for, and appropriately supervise all assigned activities within their practices. The level of supervision may vary with the risk associated with the assigned procedure. Direct supervision refers to situations in which the naturopathic doctor is physically present in the same clinical location. This allows the naturopathic doctor to immediately intervene when necessary. Remote (in indirect) supervision refers to situations in which the presence of the naturopathic doctor is not necessarily required since there is little potential risk of harm to the patient. This would be appropriate for certain clinical procedures and objective data collection.

### ***Confidentiality***

Naturopathic doctors must keep all patient information confidential. Failing to maintain confidentiality can be considered professional misconduct. There may be exceptions depending on the circumstances to this duty of confidentiality. For example, patients can consent to the ND disclosing information. Also, where an ND is required (e.g., by a court summons) or permitted (e.g., when selling one's practice) by law to disclose patient information, it can then be disclosed. The concept of confidentiality is discussed further in the section below on PHIPA.

### ***Conflict of Interest***

Practitioners have a duty to act in the best interest of their patients. A conflict of interest arises when an ND has an inconsistent duty to both the patient and to someone else at the same time. For example, an ND has a duty to only refer patients to others where it is in the best interest of the patient. Where a health care provider pays an ND to refer patients to them, the ND has a conflicting interest (i.e., getting paid for the referral) that is unprofessional. This topic is discussed in its own section below.

### ***Improper Billing and Fees***

As already noted, naturopathic doctors must be honest in their billings. Because of this, the *Professional Misconduct Regulation* prohibits improper billing.

### ***Misrepresentation***

It is professional misconduct to be dishonest in one's dealings with patients, colleagues, third party payers and with the College. Dishonesty with third parties is also not acceptable (even if the intent is to help a patient). Third parties often rely upon the integrity of naturopathic doctors because of their professional status. For example, it would be professional misconduct to issue a letter for a patient to verify that a patient was too sick to work when the naturopathic doctor does not know this to be true.

### ***Improper Use of Names, Title or Descriptions***

There are specific rules in the *Professional Misconduct Regulation* that restrict use of certain names, titles, or descriptions. For example, Inactive NDs must use "ND (Inactive)". This rule is intended to ensure consistent, appropriate, and clear use of titles that help the public know with whom they are dealing and to prevent confusion. Also, as discussed above, registrants of the College cannot, at the present time use a term, title or designation indicating or implying that they are specialists. Practising the profession under a name that is not registered with the College may be considered professional misconduct (e.g., if a naturopathic doctor uses a nickname when practising, the College must be told of that nickname first).

### ***Improper Advertising***

It is professional misconduct to engage in false or misleading advertising. There is a section below describing more details regarding improper advertising for naturopathic doctors.

### ***Conduct towards Colleagues***

Naturopathic doctors must treat their colleagues with courtesy and civility. For example, if a patient goes to another ND or another health care provider and that practitioner asks for a copy of the patient's record (with patient consent), one cannot simply ignore the letter. If an ND disagrees with the treatment being provided by another health care provider, the ND must not make insulting comments about the other health care provider to the patient.

### ***Conduct towards the College***

Obligations come with the privileges of self-regulation. One obligation is that NDs must accept the regulatory authority of the College. Examples of conduct towards the College which can constitute professional misconduct include:

- Publicly challenging the integrity of the College's role or actions.
- Breaching an undertaking given to the College.
- Failing to co-operate in, or obstructing, an investigation by the College.
- Failing to participate in the quality assurance program. Failing to comply with an order or direction of a panel of a Committee of the College (e.g., Inquiries, Complaints and Reports Committee, Discipline Committee, Quality Assurance Committee or Registration Committee).

- Failing to respond appropriately and promptly to correspondence from the College.
- Failing to report an ND to the College who has jeopardized the safety of a patient.

### ***Disregarding Restrictions on a Certificate of Registration***

A naturopathic doctor must confine their practice to what is legally permissible. If the *Naturopathy Act, 2007* or a committee of the College restricts a naturopathic doctor in certain areas, it would be professional misconduct to exceed those restrictions. For example, a naturopathic doctor who is required by a committee to practise under supervision must always do so.

### ***General 'Catch-all' Provisions***

The College has two general catch-all provisions. These cover types of conduct that are not specifically dealt with elsewhere. The first provision prohibits conduct that would be reasonably regarded as dishonourable, disgraceful or unprofessional. This provision assumes that there is a general consensus in the profession of conduct or behaviour that would be considered unacceptable. For example, there is no specific provision that says that a naturopathic doctor cannot abuse a patient's mother during a visit. However, no one doubts that this conduct would be unprofessional.

The second catch-all provision makes it professional misconduct to engage in conduct unbecoming a member of the profession. This provision refers to conduct in an ND's private life that brings discredit to the profession. For example, an ND who engaged in a fraud on a charity or embezzled their employer could be disciplined for the dishonesty.

### ***Professional Misconduct Regulation Scenario***

*Sasha, a naturopathic doctor, has recently been criticized by their clinic colleague, Wendy, for sometimes being loud with patients. Wendy mentions that in speaking loudly Sasha is disrupting other naturopathic doctors in the clinic. Sasha apologizes for disrupting the other NDs and any patients and promises to try to keep their voice down or lower it out of respect for the rest of the practice. Wendy however feels this is a serious problem, and that Sasha should be reported to the College for professional misconduct because she cannot stand loud noises while practising. She wants the very best atmosphere created for her patients and thinks loud talking is completely unprofessional. Is Wendy correct in saying this would be professional misconduct according to the regulations?*

*Most likely not, Wendy holds a particular view about Sasha's level of voice that may not be consistent with the rest of the profession. Unless the conduct persists and unless it is so loud that most neutral observers would agree that Sasha is disrupting the rest of the office, it is not professional misconduct. While it is courteous for Wendy to raise the issue with Sasha so that they can come to a reasonable resolution, professional misconduct is not meant to apply to uniquely personal views of unacceptable behaviour. Instead, it is intended to be based on conduct that is by a consensus in the profession considered unacceptable.*

### Sample Exam Question #8

Which one of the following situations is (are) possible professional misconduct according to the professional misconduct regulation?

- (i) Failing to maintain patient confidentiality.
- (ii) Using verbal threats and insults to a patient in an email to them when they do not show up for an appointment.
- (iii) Refusing to give a patient the contact information for the College if the patient wishes to make a complaint.
- (iv) All of the above.

*The correct answer is (iv). The regulation describes many types of professional misconduct. All of the situations described involve conduct that is specifically prohibited in the professional misconduct regulation.*

#### Sample Exam Question #8 Explanations:

- *Answer (i), (ii) and (iii) are incorrect because **all** of the situations listed are clear examples of professional misconduct.*

### 3.3.3 Record Keeping

One important aspect of the standards of practice is record-keeping. Keeping records is essential for providing good patient care. Records permit the monitoring of changes in patients, assist other NDs who may see the patient afterwards, and enable a naturopathic doctor to explain what they did for patients if any questions arise. Records also help NDs to defend themselves if a patient recalls things differently than the ND. Failure to make and keep adequate records can be a failure to maintain minimum professional standards and is professional misconduct.

College publications on record keeping cover matters such as:

- the information that must be recorded,
- the form in which records can be kept (e.g., written, computerised),
- how long the information must be kept,
- maintaining or transferring records upon leaving a practice or retiring,
- confidentiality and privacy issues, and
- patient access to records.

#### ***The information that must be recorded***

The patient record is intended to record what was done and what was considered by the naturopathic doctor. It acts as a communication aid to ensure that there is continuity of care for the patient. Proper records also enhance patient safety. The following is a list of general requirements of the health record:

- The record should always contain identifying information such as the name and date of birth of the patient. Identifying information should be on each document in the record so that a particular document may be returned to the record if separated.
- The record should include all relevant subjective and objective information gathered regarding the patient. This includes all relevant information provided by the patient (or their authorized representative, or other health care providers involved in the patient's care) to the ND regardless of the medium or format (e.g., communicated in person, on paper, email, fax, telephone, etc). It also includes any records regarding

findings from assessments or during observations (e.g., if the ND notices that the patient walked into the office with a limp).

- Any results of testing done (including physical and laboratory testing, etc) by the ND should be recorded. If a patient discloses test results from another health professional, it should be noted in the record. However, NDs do not have to ask for copies of testing results from other practitioners if they are not needed.
- The treatment plan should be recorded. Then the actual treatment provided should be noted. The record should also include any progress notes of how the patient progressed during treatment, any changes in the patient's condition, or any reassessments or modifications of the treatment plan. It should be clear to any ND reading the record what happened. The details of any compounded or dispensed drugs or other substances should be noted.
- If the patient was referred by another practitioner, the person who made the referral and the reason for the referral should be in the record.
- Other communications with or about the patient.
- Any consent that is obtained should be included in the record. While such information can be recorded either through the use of a consent form or by making clinical notes, prudent practitioners will use both methods. Please see the consent section above for additional information about obtaining consent. This is a critical portion of the record and should contain information about the following:
  - That a discussion regarding consent took place and the patient understands the proposed assessment or treatments and their risks, limitations and benefits.
  - Any modifications to the consent.
  - When consent was obtained through the use of an interpreter, alternate means of communication, or a substitute decision maker; the identity of the interpreter or substitute decision maker, the legal entitlement of the substitute decision maker as applicable (documentation on file, copy of Power of Attorney for personal care provided, etc.).
  - That the patient withdrew consent, why they did so, and what specifically was withdrawn.

For specific procedures additional information should be contained in the record. For example, for the administration of drugs, the following information is expected:

- name and strength of all drugs and/or substances administered,
- dosage and frequency,
- date of administration,
- method of administration, and
- how treatment was tolerated.

In addition to patient-specific information, other types of records are required for many practices such as records relating to finances, appointments (e.g., date and duration), drug inventory and equipment maintenance.

### ***The form in which records can be kept***

**Records must be legible.** Failure to maintain a legible record would defeat the purpose of maintaining a complete and accurate record.

**Records can be on paper or on computer.** Computerised records should be printable and viewable and should have an audit trail of changes made. These requirements are discussed further in the section on PHIPA below.

**It should be clear who made each entry into the health record, and when that entry was made.** Any change or amendment to the record should be indicated, the date of which the change was made should be noted, and who made the change should be recorded. Importantly, any changes to the record should still permit the reader to read the original entry.



Naturopathic doctors cannot falsify records; this means that if an error is made in a previous entry, it cannot be removed (e.g., 'whited-out', or deleted). **The record should be maintained with correction to the error (usually a simple line through the erroneous entry with the date and initial of the person correcting the error).**

**The record should be in English or French.** The information can be recorded in other languages so long as all of the information is also recorded in English or French. These are the generally accepted languages in the health care system in Ontario. This permits other health care providers on the patient's health care team (e.g., hospitals, other NDs, other health care providers) to understand the record.

### ***How long the information must be maintained***

The naturopathic doctor (or health information custodian for whom the ND works) needs to keep the record for 10 years from the last interaction with the patient, or the patient's 18<sup>th</sup> birthday, whichever is later. For example, if a patient was 8 years of age the last time the ND saw the patient (i.e., last patient visit) then the ND would have to keep the record for 20 years from that last interaction. An interaction can involve any contact with the patient, including a phone call or an email.

The rule regarding keeping records for 10 years includes financial records, appointment, and attendance records, in addition to the health record. Equipment records are to be maintained for five years.

### ***Maintaining or transferring records upon leaving a practice or retiring***

The entire original record should be kept by the naturopathic doctor (or the health information custodian for whom the naturopathic doctor works) and only copies are supplied to others.

Even when a naturopathic doctor retires or leaves practice (i.e., resigns as a registrant of the College) the original record should be kept for the 10-year retention period, unless the record has been transferred to another ND or other suitable individual who will maintain the record. The patient must be notified of the transfer. In these circumstances, the original record can be transferred to the new ND or the health information custodian.

However, if the patient has just been referred to another health care provider and the patient record has not been transferred, then the retention period of the entire original record (i.e., 10 years from last contact or the patient's 18<sup>th</sup> birthday) is still mandatory.

The only exception to the requirement to keep the original record is if there is some legal compulsion to provide the original record (i.e., in a police, Coroner's or College investigation or with a summons). If this circumstance occurs, the ND should keep a legible copy of the record for their file.

### ***Destroying patient records***

When the time period for keeping the record has expired, the destruction of the records should be done in a secure manner that prevents anyone accessing, discovering, or otherwise obtaining the information (i.e., shredding, complete electronic destruction). If an ND destroys any records, a good practice would be to keep a list or record of the names of the files which were destroyed and the date they were destroyed.

If transferring from paper records to electronic records, and the original paper record has been scanned into an electronic form, then the original may be destroyed. The electronic version of the document becomes the original.

### **Confidentiality and privacy issues**

Naturopathic doctors should take reasonable steps to keep records safe and secure. In general, no one outside of the authorized circle of care of health professionals should be able to access the records. Privacy protections must be in place to ensure the records cannot be seen, altered, or removed by others. Paper records should be kept under lock and key. Computer records need to be password protected on computers that have firewall and virus protections and be backed up regularly. Particular privacy issues are discussed later in the section on PHIPA. Cloud-based servers should be used with caution as access to the information stored on those servers is subject to the local jurisdiction in which the server resides. For example, records stored on servers in the United States are subject to access in accordance with US laws.

### **Patient access to records**

Generally, a patient has the right to review and receive a copy of all clinical records kept by a naturopathic doctor unless access would significantly jeopardize the health or safety of a person. Although the ND may own the health care record and be responsible for it, patients are authorized by PHIPA to access the record. Also, the patient has the right to correct any errors in the health record. If a patient requests any relevant parts of the record, the ND should provide them with a copy and not the original. This topic is discussed later in the section on PHIPA.

#### **Record Keeping Scenario**

*Terry, a naturopathic doctor, has been practising for 45 years, and has built up a busy and successful practice. He decides he is ready for retirement but wonders what he's supposed to do with his patient records. Does he have to keep them himself? Ordinarily, he would have to retain patient records for 10 years from the last interaction with the patient, or the patient's 18<sup>th</sup> birthday, whichever is later. However, in this case Terry may be transferring his practice over to another ND to take over the business and treatment of patients. If this is the case, he does not have to retain the records himself but needs to notify the patients of the transfer of their patient records. This can be done through a combination of telling patients on their next visit, corresponding directly with patients via mail or electronic means and placing a notice in the local newspaper.*

#### **Sample Exam Question #9**

Which one of the following does not need to be recorded in the patient's record?

- (i) The patient's birth date.
- (ii) The person who recommended the patient to you.
- (iii) The patient's health concerns.
- (iv) The treatment plan for the patient.

*The correct answer is (ii). If the patient was referred by another health care provider there must be a record of who recommended the patient. If another patient recommended the person, or the person found out about your office through advertising, this information does not have to be recorded (although in some cases it may be helpful).*

#### **Sample Exam Question #9 Explanations:**

- *Answer (i) is incorrect because NDs need to record the patient's birth date. It is relevant to many treatment decisions.*
- *Answer (iii) is incorrect because NDs need to record the patient's health concerns (sometimes called chief complaints). It is relevant to many treatment decisions.*

- *Answer (iv) is incorrect because NDs need to record the treatment plan for the patient. It is relevant to following through with the treatment on future visits and for justifying one's actions should questions be raised later.*

### 3.3.4 Conflicts of Interest

A naturopathic doctor cannot engage in conflicts of interest; defined as any personal interest that reasonably affects a naturopathic doctor's professional judgment. Conflicts of interest arise where a naturopathic doctor does not take reasonable steps to separate their own personal interests from the interest of patients. In order to avoid a conflict of interest, naturopathic doctors must put the interests of their patients first, and not allow personal or other interests to interfere. For example, if a naturopathic doctor refers a patient to a health food store owned by the naturopathic doctor's spouse to buy products, a reasonable person would question whether the naturopathic doctor recommended that product because the patient needed it or in order to help their spouse.

In reviewing issues concerning conflict of interest, one looks to what a reasonable person might conclude from the circumstances regardless of what is going on in the mind of the naturopathic doctor. A conflict of interest can be actual, potential, or perceived. In that way, the conflict-of-interest rules are intended to prevent concerns from arising.

A conflict of interest can be direct or indirect. For instance, an improper benefit conferred on a close relative (i.e., parent, grandparent, child, spouse or sibling) of a naturopathic doctor can put the ND in a conflict of interest.

Some common examples of conflicts of interest are as follows:

- splitting fees with a person who has referred a patient,
- receiving benefits from suppliers or persons receiving referrals from the ND,
- giving gifts or other inducements to patients who use the services where the service is paid for by a third party (e.g., insurance),
- working for an unregistered person who is in a position to interfere with professional decisions (e.g., how much time is scheduled for each appointment or which procedures should be used in the treatment of the patient),
- using or referring a patient to a business in which one has a financial interest, and
- selling a drug to patient for a profit.

Many of the examples depend on the reasonableness of the circumstance in determining if a conflict of interest exists. The ND should always ask themselves – would another objective and reasonable person think that there is a conflict of interest, given this circumstance? For example, it probably would be appropriate to give a patient a small calendar to record their future appointments even if an insurance company pays for the treatment. However, giving the patient a new pair of expensive running shoes is unreasonable in the circumstances (even if the patient needs to exercise).

Many conflicts of interest are prohibited outright, however, there are certain circumstances where taking certain safeguards could remove the concern. In the example above about referring a patient to a health food store owned by the ND's spouse to buy a product, such a referral would not raise concerns if the ND did the following:

- disclosed the nature of the relationship with the health store (e.g., "my spouse owns the store"),
- provided alternative options (e.g., "here are three other places you could get the product I am recommending for you"), and
- reassured the patient that choosing another store will not affect the patient's care (e.g., "You are free to choose any of the places to get the product; you will still be welcome here as my patient").

Naturopathic doctors may be asked to provide the College with any documents, explanations, or information regarding a suspected conflict of interest to enable the College to assess whether a conflict of interest is a concern. For example, if the College receives information that a naturopathic doctor is making unusual payments to a health

food store whenever they refer patients to the naturopathic doctor, then the College could ask for an explanation of those payments, and any financial records related to them, to determine whether there is a conflict of interest.

#### **Conflict of Interest – Scenario No. 1**

*Katrina, a naturopathic doctor, owns a practice down the street from a gym where she has been practicing for less than a year. In trying to build her practice and wanting people in the area to know about her services, Katrina offers to give the manager of the gym a free cruise to the Mediterranean in return for having them and their staff refer patients to her. The manager of the gym thinks this is a great idea and offers Katrina a free membership to the gym and personal training if she in turn refers her patients to their gym. While this may seem like a good business decision, Katrina is in a conflict of interest for two reasons. Giving a free trip to the manager of the fitness center in order to obtain referrals would constitute a collateral benefit. Patients should be referred to Katrina because they need her services and not because the referring person is getting a free cruise. Further, accepting a free membership and free personal training at the gym would conflict with Katrina's duty to refer patients to a gym only if she honestly believed that this would be in their best interest. In addition, unless there was something special about the local gym, Katrina should only recommend that the patient look into gym services rather than recommending they go to any one gym specifically. Referrals must be based on professional judgment and not on any 'kickbacks' the ND may receive.*

#### **Conflict of Interest – Scenario No. 2**

*Michael is a naturopathic doctor who has a busy and successful practice. Recently, he began using a new brand of healthy bread that he has received positive feedback on from his patients who have been eating it. Michael calls the company to provide this feedback and notes that he enjoys eating and recommending the bread. The company asks him if he would like to be in a new advertising campaign they are going to put into some health and wellness magazines where they would provide statements, similar to what he just made, to promote the bread. They plan to put a picture of Michael within the advertisement and identify him by name and professional qualifications. They advise they cannot pay him because they are still a small company, and don't have the budget for it. Michael thinks, why not? He likes the bread, and since he's not getting paid, he's not inappropriately benefiting from the relationship.*

*Unfortunately, this would still likely be a conflict of interest and would be professional misconduct. A naturopathic doctor cannot use their professional status to promote a product commercially. This is so even if they have not been paid for the endorsement. It can also be assumed that they will benefit from the advertisement in some indirect manner (for example, they may have an increased patient influx from those people who see the advertisement). Also, without making any observations or assessments of an individual, a naturopathic doctor should not be making any sort of clinical recommendations. Michael can give advice on products and remedies, including in choosing what type of healthy diet to recommend to patients, provided it is within a naturopathic doctor-patient relationship, and it is based on professional judgment regarding a patient's individual needs through proper assessment.*

### **3.3.5 Advertising**

Advertising is an appropriate way to provide information to potential new patients. The purpose of advertising should be to provide relevant information to the public in order for them to make informed choices regarding their health care needs. Naturopathic doctors can use suitable advertising to communicate the type and availability of services within their scope of practice to the public, or to other health professionals, but must ensure that all advertising is honest, truthful, and responsible.

Advertising is any message that communicates information about an ND, their practice and what services they may offer, under the ND's control. Advertising may be in any medium and may include (but is not limited to) the following:

- radio,
- television,
- websites,
- social media,
- print based notices – i.e., letterheads, newspapers, magazines, journals, flyers,
- contact listing services – i.e., yellow pages.

Advertising should be factual, accurate, objectively verifiable, independent of personal opinion, comprehensible, and professionally appropriate. It should not include any information that is misleading by either leaving out relevant information, or including non-relevant, false or unverifiable information. For example, providing before and after pictures of how one's services can enhance a patient's appearance is inherently misleading and unverifiable. When advertisements are placed by others (i.e., employees, employers, marketing consultants), naturopathic doctors also have a professional responsibility to take reasonable steps to ensure that those advertisements meet these standards.

In particular, references to qualifications in the advertisement should be consistent with the College's rules. For instance, an Inactive practitioner must use the "ND (Inactive)" title. Another example is that the advertisement should not suggest that the naturopathic doctor is a specialist.

Important information such as office hours and days of operation, telephone or fax numbers, languages spoken, website address, location, and methods of payment are acceptable inclusions in advertising. Fees or prices advertised should meet expectations for honesty and accuracy.

Further, advertisements are prohibited if they:

- Promote a demand for any unnecessary services.
- Make a claim or promise a result that cannot always be delivered (i.e., be interpreted as a guarantee as to the success of a service provided).
- Use comparative (e.g., "better"), superlatives (e.g., "best"), provide a suggestion of uniqueness, or appeal to a person's fears about any service quality, products or people (e.g., comparing one's services to another, or claims their service to be superior to others, is not verifiable).
- Contain testimonials from a patient, former patient, or other person in respect of the registrant's practice.

Advertising must not involve the pressuring of vulnerable patients. Soliciting or permitting the solicitation of an individual in person, by telephone, through electronic communications or by similar means, is unprofessional. However, it is not solicitation to remind existing patients of appointments, new developments, or changes in the office.

### **Advertising Scenario**

*Monique, a naturopathic doctor, is noticing great results from a new procedure she has just started performing on her patients which helps improve posture and wants to let other people know about it. She adds a description of the service to her weekly advertisement in the community paper and ensures that the description only describes the procedure, does not offer any guaranteed outcomes, and does not provide comparisons to other procedures or provide reasons why she might be a better choice as a practitioner. However, she also wants people to know the great results she has been seeing, so with the consent of a few of her patients, she takes some before and after pictures and publishes them in the local paper, feeling that people can decide for themselves based on the pictures whether they want to try the procedure.*

*Unfortunately, in doing this Monique has violated the advertising standards for the profession. Before and after pictures are inherently misleading, as they cannot be verified for authenticity, and involve comparisons in order to promote a specific procedure. Also, before and after pictures may be construed as suggesting an outcome, or a guarantee, that cannot always be expected. There are other non-advertising issues as well, such as patient confidentiality and informed consent.*

#### Sample Exam Question #1

Advertising needs to be:

- (i) Accurate.
- (ii) Verifiable.
- (iii) Not contain personal opinions.
- (iv) All of the above.

*Answer (iv) is the correct answer. All of the qualities are those that are required of advertising. There are more qualities that advertisements should be such as factual, objective, comprehensible, and professionally appropriate.*

#### Sample Exam Question #10 Explanations:

- *Answers (i), (ii) and (iii) are incorrect because all of the qualities listed would apply.*

## 3.4 The College

The College does a number of things in order to protect the public. Under the *Naturopathy Act, 2007*, the College has to set up various committees and operate various programs. The following are some of the most important processes the College carries out in the regulation of the profession.

### 3.4.1 Registration Process

As mentioned previously, registration is the way for a person, who meets the requirements set out in the *Registration Regulation*, to become a registrant of the College and thereby enter into the profession.

To become a registrant of the College, a person must complete the three-step registration process and pay the applicable fees. Information must be provided using the secure College website. Through the application process, the applicant provides the College with information about their training and experience, their past conduct and other information that may affect their ability to practise effectively (e.g., language fluency, professional liability insurance, education, current and past registrations with other regulators, etc.). The applicant must provide all required information to demonstrate that they meet the requirements for registration and must not make any false statements on the application.

Where the applicant meets the requirements, the CEO's office will simply accept the application. In this case, a certificate of registration is issued to the new registrant of the College.

However, if it appears the applicant does not meet the registration requirements (or if the CEO has doubts as to whether the requirements have been met) the CEO will refer the application to a panel of the Registration Committee for review and decision. The applicant will be advised of the concerns and the date the Panel will review the information the applicant has provided and be given 30 days to provide any additional submissions (in writing) to respond to the concerns. The Panel will consider the application, and all submitted materials when determining the applicant's suitability to become a registrant. If the Panel concludes the applicant meets the requirements, the Panel will direct the CEO to issue a certificate of registration. If the Panel concludes that the applicant does not meet the requirements it can make a number of decisions including:

1. Direct the applicant to complete further training, education, or examinations.
2. Register the applicant with terms, conditions and limitations (for example, if the missing requirement is exemptible and the public can be protected in the circumstances).
3. Refuse the application.

If the Panel does not grant an unconditional certificate, the applicant has further options. The decision may be appealed to the Health Professions Appeal and Review Board (HPARB). HPARB is appointed by the government and is independent of the College. HPARB will review the file and, if the applicant wishes, hear from witnesses. HPARB can determine that an applicant meets the registration requirements or can require the Registration Committee to obtain additional information and make a new decision. HPARB's decision can be appealed to the courts.

To ensure a College's registration process is fair, the registration system itself is audited and reviewed through the Office of the Fairness Commissioner of Ontario. Further, the *RHPA* has provisions to ensure that the registration process of Colleges is transparent, objective, impartial and fair.

Where an applicant is registered in another part of Canada, the College must, with rare exceptions, accept the applicant's education, experience, and examination credentials without further inquiry; however, the College can still review the other registration requirements (e.g., good character, professional liability insurance, jurisprudence requirements).

#### **Registration Process Scenario 1 – Making False Statements**

*Jake, an applicant, filled out their online application for registration. However, when asked if they had any previous criminal findings, they did not want to put down the shoplifting conviction they received 20 years ago, worried that it would affect their application. Instead, they report that they do not have any previous criminal findings. On the basis of the application information provided, the College registers Jake. A few years later the College is informed of Jake's previous conviction and realizes that Jake made a false statement.*

*The College can revoke Jake's certificate of registration because they made a false statement on their application form. Ironically, if they had disclosed the conviction, the Registration Committee would probably have accepted Jake's application for registration since they have had no other findings in 20 years. However, making a false statement on the application form is so serious and reflects current dishonesty, that they now may be barred from practising the profession.*

An applicant who has received a pardon or who has received a conditional or absolute discharge from court must still report the offence.

### **3.4.2 Complaints and Discipline Process**

In order to protect the public, investigating concerns about a naturopathic doctor's professional conduct or competence is an essential element of self-regulation. Where a concern appears serious, disciplinary action must be taken. Where possible the College deals with professional misconduct and incompetence in an educational manner. If a matter is referred for discipline, the College provides a fair process to the ND.

The following outlines how the complaints and discipline process works:

## **The ICRC**

The Inquiries, Complaints and Reports Committee (ICRC) is the statutory Committee of the College that handles registrant-specific concerns (e.g., professional misconduct, incompetence and incapacity).

The ICRC can only handle concerns regarding registrants and some former registrants of the College. Further, the ICRC is only involved in allegations regarding professional misconduct, incompetence or incapacity. It does not handle claims about professional negligence (i.e., civil lawsuits) unless the negligence also constitutes professional misconduct, incompetence or incapacity.

For professional misconduct and incompetence issues there are two ways to bring the concerns to the attention of the ICRC:

1. formal complaints; and
2. formal investigative reports (called Registrar's Reports).

Incapacity concerns are also dealt with by the ICRC but will be discussed in a later section because they are handled in a different way than complaints that bring an ND's professional conduct or competence into question.

## **Intake of Complaints**

For a complaint to be a formal complaint the following requirements must be met:

- It must be in writing or recorded on tape, film, disk or other medium (as set out in the *Health Professions Procedural Code*).
- The complainant must be identified.
- The registrant must be identifiable (the ICRC may be able to assist in identifying the registrant based on the information provided by the complainant).
- The complaint must identify some conduct or actions that are of concern (i.e., not just the complaint that a registrant is "unprofessional", "incompetent" or "incapable", but including some level of detail about those complaints).
- The complainant must intend the matter to be a complaint.

The CEO must give the registrant notice of complaint within 14 days of the receipt of the formal complaint.

## **Intake of Registrar's Reports Investigations**

As mentioned previously, the discipline process can be initiated by a Registrar's Report. In this method the following occurs:

- A concern arises that the CEO believes warrants investigation, and it is brought to the ICRC with the request for the ICRC to approve appointment of an investigator.
- An investigator is appointed.
- The investigation is conducted, and the investigator makes a report to the CEO.
- The CEO then makes a Registrar's Report to the ICRC.

Once a CEO's Report is submitted to the ICRC, it proceeds in much the same way as a complaint.

At any point after a complaint is received or an investigator is appointed by the CEO, the ICRC may make an interim order to protect the public while awaiting the outcome of the investigation and any discipline hearing. For example, the ICRC may order that the practitioner's registration be suspended until the investigation and any discipline hearing is finished. Interim orders are fairly rare and are only used when necessary to protect patients from harm.



## **Investigations**

Investigations by the ICRC should be thorough, neutral, objective and fair.

### 1. Complaints Investigations:

- *Frivolous or Vexatious Complaints:* A rare exception to the rule which requires the ICRC to investigate every complaint is when a complaint is 'frivolous or vexatious', made in bad faith, is moot or is otherwise an abuse of process. In this instance the ICRC can choose not to investigate it, however it must be fairly obvious that there is little merit to the complaint and the processing of it would be unfair given the circumstances. For example, a complaint repeating an older complaint without any new evidence would usually be considered frivolous and vexatious. Notice is given to the registrant and complainant if the ICRC intends to take no action in these cases.
- *Investigative Steps:* Both complainant and registrant are usually first asked to provide all documentation available to them. The ICRC staff gathers additional information (e.g., from College files, the ND's files, public databases such as court files, other regulators, witnesses, and other NDs) until they determine it is likely that all reasonably relevant and available evidence has been obtained.
- *ICRC decision:* At the completion of the investigation the ICRC makes its decision about the complaint.
- *Time limits:* The goal is to complete a complaints investigation within 150 days of it being filed with the College. After that, the parties must be notified regularly about the progress of the complaint. If the College takes too long, the complainant or the registrant can ask the Health Professions Appeal and Review Board to take action.

### 2. Registrar's Reports Investigations:

- A Registrar's Report Investigation can occur when:
  - concerns regarding an ND come to the attention of the CEO;
  - a request is made by the ICRC to help investigate a complaint, or
  - information is provided from the Quality Assurance Committee.
- Any concern that is about the conduct or actions of a registrant that is not a formal complaint is generally brought to the attention of the CEO. If the CEO is of the view that there are reasonable and probable grounds that the registrant engaged in significant professional misconduct or is incompetent, the CEO brings the concerns to the attention of the ICRC to approve the appointment of an investigator.
- Complaints Investigations: If the ICRC cannot obtain important information about a complaint on its own (e.g., a person refuses to provide it), the ICRC can ask the CEO to use their special powers set out in the *RHPA* to help.
- Appointments based on Quality Assurance Committee Information: Where a registrant does not co-operate with the quality assurance process, or the process has revealed significant concerns about the registrant, the Quality Assurance Committee can bring the concern to the ICRC. The ICRC can decide whether to appoint an investigator.
- The investigator appointed by the CEO has special legislative powers. For example, they can enter the office of the ND and examine files, can summons documents, and can compel witnesses to answer questions.
- There is no set deadline to complete a Registrar's Report Investigation and render a decision. However, they should be completed within reasonable time.

## **ICRC Disposition (Decision)**

Once the investigation is completed, the ICRC makes a decision on the issues. There are many options for the ICRC, discipline being only one of the options available. As a 'screening' body, the role of the ICRC is to direct the concern to the most reasonable resolution. The ICRC does not hold a hearing, make findings of credibility, find wrongdoing or impose a disciplinary sanction (i.e., fine or suspension). Only the Discipline Committee can do these things.

The following are some of the dispositions that can take place:

- *Withdrawal of complaint:* If a complainant wishes to withdraw a complaint, the ICRC has to decide whether to accept the withdrawal and whether to proceed with an investigation (which can proceed regardless of a complaint withdrawal).
- *Referral to Discipline:* Discipline is intended for serious concerns (e.g., dishonesty, breach of trust, wilful disregard of professional values, inability to practice competently). Even then the ICRC must ensure that there is reasonable evidence to support the concern. This disposition is placed on the public register.
- *Referral for Incapacity Proceedings:* This is done when the conduct may be due to an illness or health condition. This process is described separately below. This disposition is placed on the public register.
- *Appearance for a Caution:* The registrant can be required to appear before the ICRC for a conversation about the conduct. Often this is accompanied with the statement that if the behaviour does not change the registrant will face more formal action in the future. This disposition is placed on the public register.
- *Request an Undertaking:* An undertaking is a solemn promise by a registrant to do certain things (or refrain from doing certain things). No further action is necessary because the undertaking addresses the concern. This disposition is placed on the public register.
- *Other Action:* The ICRC can be creative in their decisions and solutions. For example, the ICRC can require the registrant to undergo a specified continuing education and remediation program (SCERP) such as a record keeping course. This disposition is placed on the public register.
- *Taking No Action:* If there is no basis for concern the ICRC can close (or dismiss) the complaint.

Unless the ICRC refers the concerns to discipline for a hearing or begins the incapacity process, the ICRC must give written reasons explaining why it made its decision.

### **Review before HPARB**

In a complaint matter either party can seek a review of an ICRC decision before the Health Professions Appeal and Review Board (HPARB), unless the decision was referred to discipline proceedings or for incapacity proceedings. HPARB may confirm a decision of the ICRC, return the matter to the ICRC to make a new decision or make recommendations to the ICRC.

### **Discipline Proceedings**

All discipline matters are referred to the Discipline Committee by the ICRC. Formal complaints and other matters first go through the ICRC. Where the ICRC views the matter as serious, it can refer specified allegations to the discipline process.

As noted above, in very serious cases the ICRC may make an interim order (for example, the suspension of the registrant's certificate of registration) to protect the public while awaiting the completion of an investigation or a discipline hearing. Such interim orders are only used when necessary to protect patients from harm.

### **Procedure before the Discipline Hearing Starts:**

- Notice of the hearing officially initiates proceedings before the Discipline Committee. The notice contains information necessary to ensure that the registrant can participate effectively in the hearing. It is usually accompanied by a statement of allegations outlining the facts, and legal conclusions to be drawn from the facts (i.e., incompetence, or category of professional misconduct).
- Disclosure of all relevant information in the College's files is made to the ND to enable the ND to present the fullest possible defence.

- The Chair of the Discipline Committee selects a panel from among the members of their Committee to hold the hearing for any allegations that have been referred. This panel usually consists of five people (two must be public members or public representatives, and three are usually professional members), who, to ensure impartiality, have been vetted to confirm that they have no conflicts of interest with the presented allegation. Pre-hearing conferences may be held before the discipline hearings to reach an agreement on as many issues as possible, and to plan for the hearing. Discussions at pre-hearing conferences are 'off the record'. If a resolution is agreed upon (e.g., settlement) it is presented to the panel of the Discipline Committee for acceptance.

#### ***Procedure at the Discipline Hearing:***

- The procedure of a discipline hearing is similar to a court case in that there are two sides that each present their arguments and evidence to the panel. The Discipline Committee panel ensures that the cases are presented fairly, by listening impartially to the evidence and arguments, and deciding on the issues only after both parties have completed their presentations.
- To uphold transparency and fairness in the process, the hearing is open to the public unless there is a compelling reason for privacy (e.g., a person's sensitive health privacy information might be disclosed, outweighing the interests in a public hearing).
- The College presents its witnesses first. The ND is then permitted to call their witnesses and may choose to testify, following which the College can call witnesses to address statements made by the ND and their witnesses.

#### ***Evidence at the Discipline Hearing:***

- Rules of evidence that apply to civil court trials generally apply to discipline hearings. For example, hearsay evidence is not admissible.
- Decisions are to be based exclusively on the evidence admitted. The members of the panel cannot rely on any personal knowledge that was not presented as evidence to make a finding.
- A record is kept, compiling all the exhibits of evidence.

#### ***Findings of Professional Misconduct:***

- Once a panel of the Discipline Committee has made a finding, it must then decide whether or not that behaviour constitutes professional misconduct as is outlined in the *RHPA* and the regulations (as described above).

#### ***Findings of Incompetence:***

- Incompetence is different from professional misconduct. It generally does not involve unethical or dishonest conduct, but rather that the ND does not have the knowledge, skill and judgment to practise safely. A finding of incompetence is based on the care of one or more of the ND's patients.
- A finding of incompetence can either be that the ND is unfit to continue to practise, or that the registrant's practice should be restricted.

### **Decisions and Orders in Discipline Cases:**

If a naturopathic doctor has been found to have engaged in professional misconduct, the panel can make one or more of the following orders:

- **Revocation** - the removal of the registrant from the profession; at minimum a revocation lasts at least a year, following which the ND must satisfy the panel that they ought to be permitted back into the profession.
- **Suspension** - the temporary removal of a registrant from the profession. Its duration can be fixed or flexible or dependent on an event occurring (e.g., successful completion of a course).
- **Terms, conditions or limitations** - can either be for a specified period (e.g., until the ND successfully completes certain remedial training) or for an indefinite period (e.g., the ND cannot consume any alcohol). The terms, conditions or limitations must relate to the finding made by the panel. For example, if the ND was dishonest because of a substance abuse problem, the condition cannot be to take remedial education courses because there was no finding the ND lacked any basic knowledge.
- **Reprimand** - conversation between the panel and the ND where the panel tells the ND its views of their conduct and how to avoid similar problems in the future.
- **Fine** - the panel can impose a fine of up to \$35,000.
- **Reimbursement for funding in sexual abuse cases** - where there is a finding of sexual abuse the panel can require an ND to reimburse the College for any funding for counselling or therapy provided to the patient.
- **Minimum order in sexual abuse cases** - cases involving frank sexual acts have a mandatory **minimum order of both a reprimand and revocation**. No reinstatement can be made for five years after revocation on these grounds. The minimum order can also be imposed where the practitioner has been found guilty of professional misconduct of a frank sexual nature.
- **Costs** can be ordered by the panel to cover a portion of the expenses associated with the hearing.

In incompetence cases, the panel can order revocation, suspension or terms conditions and limitations. The panel must issue both a written decision and written reasons for that decision.

### **Appeals**

Either party at the discipline hearing may appeal to the Divisional Court. The Divisional Court has the power to confirm, amend or reverse a decision of the panel if it acted unreasonably or made an error of law.

#### **Complaints and Discipline Scenario – The Typical Complaint**

*A patient sends a letter of complaint to the College saying that Rochelle, their naturopathic doctor, was rude to them. The letter notes that Rochelle became angry when the patient expressed concern that the treatment was not working and that Rochelle “threw them out of the office”. The CEO sends a letter notifying Rochelle of the complaint and asks for a response. Rochelle responds to the complaint noting that the patient was extremely challenging and, after doing all that she could for the patient, the patient became verbally abusive resulting in the need for Rochelle to terminate the professional relationship. Rochelle’s letter is sent to the patient, who replies to say that they were never verbally abusive to their ND and that they believe Rochelle is making this up to defend herself. The Inquiries Reports and Complaints Committee (ICRC) obtains statements from the patient’s husband, Rochelle’s receptionist, and a couple of patients who were around at the time of the incident. It is difficult to reconcile the stories but the picture that emerges is that there was a verbal confrontation in which both parties may have used intemperate language. The ICRC decides that this is not a case for discipline, particularly since there have been no previous complaints about Rochelle. However, the ICRC invites Rochelle to attend a verbal caution reminding her of the need to be professional in her dealing with patients, even in challenging circumstances.*

### **Investigation Scenario – Duty to Cooperate**

*Sargon is a busy naturopathic doctor. A patient complains that Sargon billed for days in which the patient did not attend. The College asks for a copy of Sargon's records. After numerous follow-up requests Sargon finally sends the clinical record but forgets to include the attendance records and billing records. Sargon does not get around to responding to follow-up requests for those records. The College appoints an investigator to attend at Sargon's office. Sargon asks the staff to help the inspector, but they are unable to locate the information and Sargon promises to retrieve it that evening. A month later, the information is still not provided. A final demand is made by the ICRC for the information. Sargon sends some documents, but they are for a different patient. The ICRC refers Sargon to discipline for failing to cooperate with the investigation. Sargon finally provides the information and admits to their lack of cooperation. The Discipline Committee reprimands Sargon and imposes an order that they pay the College \$10,000 for the costs of the unnecessary investigation and hearing.*

### **3.4.3 Incapacity Process**

As noted previously, incapacity has a particular definition when it refers to a naturopathic doctor under the *Regulated Health Professions Act*. It relates to a naturopathic doctor having a condition or dysfunction which adversely affects their ability to practise the profession safely and competently and which may warrant some restrictions on their registration. This portion of the handbook focuses on what happens when incapacity becomes a concern.

The intent of the incapacity provisions is not to punish an ill naturopathic doctor, but rather to ensure that the registrant receives appropriate treatment and is supervised and monitored sufficiently that they can continue to practice without undue risk to the public. Only on rare occasions will the naturopathic doctor have their certificate of registration suspended or revoked by the Fitness to Practise Committee.

#### **Concern of Incapacity Initiated**

When incapacity becomes a problem for a naturopathic doctor, the concern is brought to the ICRC. The information of possible incapacity can come from a number of sources including a law enforcement agency, a mandatory report by an employer, or an expression of concern by a registrant of the profession or the public.

#### **ICRC Inquiry**

Once an ICRC panel is selected, notice is given to the registrant that the ICRC panel intends to inquire into whether the registrant is incapacitated. The ICRC panel is an investigative body. Its role is to gather information and then determine if formal proceedings should be initiated. The inquiry may involve any (or all) of the following:

- an interview with the ND;
- a review of any relevant information that might be contained in other College files;
- obtaining of witness statements from patients, co-workers, colleagues, family members and others who have observed the ND's behaviour, particularly any unusual behaviour;
- obtaining hospital and health care provider office charts of relevant treatment of the ND;
- obtaining a report from health care providers who have treated the registrant; and
- ordering the ND to undergo an examination by an independent specialist.

The ICRC must prepare a report of its inquiries and send a copy to the ND for comment. The ICRC then determines if the matter should be referred to the Fitness to Practise Committee for a hearing.

### ***ICRC Decision to Refer to the Fitness to Practise Committee for a Hearing (or not)***

The decision to refer to the Fitness to Practise Committee for a hearing is not taken lightly and must be supported with sufficient evidence to support a reasonable prospect of finding incapacity. This usually occurs when there is some concern that the registrant's condition or dysfunction will, now or in the future, negatively affect their professional practice.

The ICRC can make an order that directs the CEO to suspend the certificate of registration of the registrant, or to impose terms, conditions or limitations on the registrant's registration, temporarily until the Fitness to Practise Committee addresses the matter.

### ***Hearing before the Fitness to Practise Committee***

The hearings before the Fitness to Practise Committee share many similarities with the hearings before the Discipline Committee. Generally, the procedure at a Fitness to Practise hearing is as follows:

- A Panel is selected by the chair of the Fitness to Practise Committee - a Panel consists of at least three people including at least one public member of the College Council and at least two other persons (usually registrants of the College).
- Disclosure of evidence - the College has the same disclosure obligations as in a discipline hearing.
- Closed hearing - ordinarily Fitness to Practise hearings are closed to the public because of the sensitive personal nature of such a hearing (and because the hearing is not meant to be punishment to the ND). Only the ND can request that the hearing be opened to the public.
- Order of hearing - is similar to a discipline hearing, with the College presenting its case first. The burden of proving that the ND is incapacitated lies with the College.

### ***Decisions of a Fitness to Practise Hearing***

The Fitness to Practise Committee must determine if a naturopathic doctor is indeed incapacitated, which as mentioned, requires that the registrant have a condition or dysfunction which warrants, in the public interest, some restrictions on the registrant's registration (e.g., supervision or treatment). This is based on evidence presented at the hearing, usually involving expert opinion on the registrant's health status, which a Panel of the Committee will review.

If the panel finds the registrant to be incapacitated, it must also decide what restriction to place on the registrant's certificate of registration. It can revoke a registrant's certificate entirely, suspend a registrant's certificate, or impose terms, conditions or limitations on the registrant's certificate of registration, the latter being the most common outcome (for example, an order for treatment followed by monitoring and supervision).

If circumstances change, the panel can vary an order it made in the past. For instance, if a naturopathic doctor establishes a period of time that their illness has been in remission (e.g., sobriety) there can be a loosening of the restrictions on their certificate of registration.

### ***Appeals***

Either party at the fitness to practise hearing may appeal to the Divisional Court. Despite an appeal being made, any order from the panel takes effect while the appeal is pending. Again, the Divisional Court can confirm, amend or reverse a decision of the Panel.

### ***Fitness to Practise Scenario – The Typical Case***

*Ken is a naturopathic doctor working with John, another ND. John reports to the College that he is terminating his partnership with Ken because Ken's drinking is beginning to affect his work. John is tired of covering for Ken when he comes to the office two hours late after a binge. The CEO makes some inquiries that tend to confirm John's report; however, Ken denies he has any problems. The CEO reports the matter to the ICRC. The ICRC asks Ken for consent to obtain a copy of his medical records, which he provides. Ken's medical records indicate that he has separated from their wife who accuses him of drinking and that he has recently been charged with impaired driving. The ICRC directs that Ken attend an assessment with a specialist in substance abuse disorders, whose report indicates that Ken clearly has a substance abuse disorder. The ICRC refers Ken to the Fitness to Practise Committee for a hearing and suspends his certificate of registration until the hearing can be completed.*

*Ken enters and successfully completes a 30-day in-patient treatment program for substance abuse and is an active participant in the recommended after-care program. At the Fitness to Practise hearing Ken's lawyer and the College's lawyer present a joint submission asking the Committee to find that Ken is incapacitated, as defined in the Act, and order that Ken's certificate of registration be restored on the condition that he continue in regular treatment, that he work with another ND who will monitor his work performance, and that regular reports be made to the College of his progress. The Committee accepts the joint submission.*

### **3.4.4 Quality Assurance Program**

#### ***Purposes of the program***

Every College must have a Quality Assurance program. The Quality Assurance program is intended to assist NDs and enhance their practice by participating in professional development activities and receiving constructive feedback.

The Quality Assurance program is not a form of discipline. No details about a naturopathic doctor obtained through the Quality Assurance program may be used by the College or by any person in any legal proceeding. At most the Quality Assurance Committee can report the naturopathic doctor's name and alleged misconduct to the Inquiries, Complaints and Reports Committee. The only exception is where the registrant makes a false statement to the College or fails to cooperate with the program.

The Quality Assurance program is administered by the Quality Assurance Committee of the College (the "QA Committee"), and has the following components:

- continuing Education and Professional development,
- self, peer and practice assessments, and
- monitoring of registrant's participation in and compliance with the program.

#### ***Self-assessment and professional development***

All registrants who hold a General Certificate of Registration, have a duty to participate in self-assessment and professional development activities. The QA Committee has developed a number of online self-assessments to be annually completed by registrants. These self-assessments are based on various Standards of Practice and Guidelines and use questions and scenarios to help you, by allowing you to assess and update your practices where necessary. The online self-assessment component must be completed annually as part of your registration renewal and prior to the March 31 renewal deadline. Part of being a naturopath is continuously improving and updating your knowledge and skills. In addition to completing your annual self-assessments, all registrants who hold a General class certificate of registration with the College, are required to participate in Continuing Education and Professional

Development. This includes engaging in relevant activities and submitting a summary log with supporting documentation when selected. Continuing Education and Professional development activities allow naturopathic doctors to remain informed about changes and innovations in practice standards and techniques and develop and maintain skills and knowledge that support their practice competence.

### ***Peer and practice assessment***

Every year, the QA Committee selects naturopathic doctors to participate in peer and practice assessments. This allows the QA Committee to objectively assess naturopathic doctors' knowledge, skill and judgment, and help them identify areas of strength and opportunities for improvement.

### ***Selection of registrants***

Naturopathic doctors may be randomly selected for a peer and practice assessment. An ND may also be selected if their record of self-assessment and professional development activities is incomplete or inadequate, or if they have practised infrequently for a few years and their knowledge, skill and judgment may not be up-to-date.

### ***Peer and Practice assessors***

A peer and practice assessment is conducted by a peer assessor appointed by the QA Committee. All peer assessors are NDs in good standing with the College, who have been trained on the assessment process. A peer and practice assessor may review an ND's continuing education, professional development, and self-assessment records. A peer and practice assessor can also obtain information about an ND's practice by various methods including reviewing patient charts and visiting the ND's office. More specifically, practice assessments usually involve an onsite visit that consists of the following:

1. An initial meeting.
2. A Patient Chart Review.
3. Premises Review.
4. Professional Portfolio Review.
5. Chart Stimulated Recall.
6. Review of Competencies, Standards, Policies and Guidelines.

Naturopathic doctors must cooperate with an assessment. In particular, during a peer and practice assessment, naturopathic doctors must:

- Permit the assessor to enter and inspect the premises where the ND practices (however, assessors may not enter an ND's home).
- Permit the assessor to inspect the ND's records of the care of patients, even if they are confidential.
- Give the assessor any information requested regarding the care of patients or the ND's records.
- Meet with the assessor upon request.

### ***Role of the Quality Assurance Committee***

Following a peer and practice assessment, the peer assessor will prepare a report for the Quality Assurance (QA) Committee. The peer and practice assessor's role is simply to review and report on an ND's practice, and not to make any decisions about the ND's practice.

The QA Committee's role is to determine if the ND's knowledge, skill, and judgment is satisfactory. If the QA Committee is of the opinion that the ND's knowledge, skill, and judgment is not satisfactory, the QA Committee may do any of the following:

- Require an ND to participate in specified continuing education or remediation programs.



- Direct the CEO to impose terms, conditions, or limitations on the ND's certificate of registration for a specified period of time.
- If the QA Committee believes the ND may have committed an act of professional misconduct, or may be incompetent or incapacitated, the QA Committee may disclose only the name of the ND and the allegations (but not the evidence) against the ND to the Inquiries, Complaints and Reports Committee.

Since the quality assurance program is educational and supportive in nature, it will be rare for the QA Committee to direct anything other than upgrading (e.g., courses or seeing a mentor) even in cases where there are significant gaps in the ND's knowledge, skill, and judgment.

The QA Committee must consider any written submissions by the ND before taking any action.

#### **Quality Assurance – Scenario No. 1**

*Sarah, a naturopathic doctor, is asked by the College to provide her record of professional development and self-assessment activities. Sarah has not kept any record of her professional development activities and as a result a peer and practice assessor is appointed to review her practice. The assessor meets with Sarah, and prepares a report for the QA Committee, which describes the professional development activities that she participated in. The QA Committee decides that there is no reason to take any action because Sarah is keeping current, has signed a formal undertaking to keep records of her professional development activities and has learned from this experience.*

#### **Quality Assurance – Scenario No. 2**

*Etienne, a naturopathic doctor, is randomly selected for a peer and practice assessment. A peer assessor is appointed, and Etienne cooperates with the peer assessor's review of his records and inspection of his office. The peer assessor provides a report to the QA Committee, who reviews the report and finds that Etienne has not been keeping adequate clinical records. The QA Committee gives Etienne an opportunity to respond in writing, which he does. After reviewing Etienne's response, the QA Committee decides that he must take a record keeping course and that his practice be reassessed in one year's time to see if there has been an improvement.*

#### **Sample Examination Question #11**

If a naturopathic doctor is selected for a peer and practice assessment, the naturopathic doctor should:

- (i) Cooperate with the peer and practice assessor's review, including permitting the assessor to inspect their office and provide any requested records.
- (ii) Permit the peer and practice assessor to inspect their home.
- (iii) Give the assessor all records except those that are confidential.
- (iv) Complete all required professional development records and fill in gaps in patient records before sending them to the peer and practice assessor.

*The correct answer is (i). Naturopathic doctors have a duty to cooperate with peer and practice assessments.*

**Sample Exam Question #11 Explanations:**

- *Answer (ii) is incorrect because peer and practice assessors are not permitted to enter private homes. An exception to this is if the ND practices from their home in which case the peer and practice assessor will access the part of the home in which the ND practices.*
- *Answer (iii) is incorrect because the peer and practice assessor's right to access premises and records overrides patient confidentiality.*
- *Answer (iv) is incorrect because while a peer and practice assessment is a good opportunity to improve record keeping and other practices, an ND should always update patient records immediately so that they are accurate. NDs should never wait until they are selected for an assessment to update their records. Additionally, if records are falsified, the QA Committee may report the ND's name and this allegation to the Inquiries, Complaints and Reports Committee.*

**3.4.5 Intravenous Injection Premises Inspection Program**

Since 2017, all premises where intravenous infusion therapy (IVIT) procedures (compounding drugs or substances for the purposes of administration via IVIT, or administration of drugs or substances intravenously) are performed must be inspected. The inspection is conducted by trained inspectors who review compliance of the premises with the requirements set out in the standards published by the College. Those standards address matters such as the premises, the equipment used, the procedures for ensuring the safe compounding and administration of IVIT and the required documentation.

Each premises where IVIT occurs must have a designated registrant who is responsible for communications with the College and ensuring that the requirements are met. The designated registrant must be an ND.

Before commencing IVIT at a premises (including a relocation of an existing premises), the designated registrant must arrange for an inspection by a College inspector. The designated registrant does this by delivering a written notice to the College of the intention of providing IVIT at the premises including providing the specified information that enables the inspection to take place. The inspection will include a review of the following:

- the physical layout of the premises,
- its equipment,
- storage of drugs and substances being compounded and/or administered by IVIT,
- infection control,
- emergency preparedness,
- the Policies and Procedures Manual, and
- compliance with the Inspection Program Requirements and standards of practice.

The inspection report will be provided to the designated registrant who can make comments on it. The report and comments (and any other pertinent information) are reviewed by the Inspection Committee of the College which shall determine whether the premises passes, passes with conditions or fails the inspection. Only premises that pass or pass with conditions that do not preclude its operation can host IVIT. Reasons for the Committee's decision will be provided, if an adverse decision is made. A designated registrant can request a re-inspection which may, at the discretion of the College, be provided. The outcome of the inspection is posted on the College's website.

For new premises there will be a second phase of the inspection after it begins operations to review the records of actual IVIT and any occurrences.

An IVIT premises must record and report certain adverse occurrences. A Type 1 occurrence (e.g., the death or serious health consequence for a patient following the procedure) must be reported within 24 hours. A Type 2 occurrence (e.g., an infection) must be recorded and reported annually to the College.

### ***Intravenous Injection Premises Inspection Program – Scenario No. 1***

*Upeksha, an ND operating an IVIT premises wants to relocate it to a new facility a block away. All the equipment, records, policies and procedures and personnel will be the same. A day after the move they send a change of address form to the College. The College advises Upeksha that they are required to register the new facility as a new IVIT premises and have the premises complete the inspection process before they are allowed to offer IVIT. While the College will make every effort to expedite the inspection, Upeksha is required to cease all IVIT until after the process is completed and they receive a favourable inspection outcome from the Inspection Committee.*

## **3.5 Other Laws**

### **3.5.1 Personal Health Information Protection Act (PHIPA)**

#### ***Personal health information***

Naturopathic doctors have a legal and professional duty to protect the privacy of patients' personal health information. PHIPA governs NDs' use of personal health information, including its collection, use, disclosure, and access. PHIPA helps guide the general duty of confidentiality described above.

Personal health information refers to almost anything that would be in a patient file. It is defined in *PHIPA* as any written or oral identifying information about a person, if the information:

- (a) Relates to the person's physical or mental health, including the person's family health history.
- (b) Relates to the providing of health care to the person, including the identification of a person as someone who provided health care to the person.
- (c) Is a plan of service within the meaning of the [Home Care and Community Services Act, 1994](#) for the person.
- (d) Relates to the person's payments or eligibility for health care, or eligibility for coverage for health care.
- (e) Relates to the donation by the individual of any body part or bodily substance of the person or is derived from the testing or examination of any such body part or bodily substance.
- (f) Is the person's health number.
- (g) Identifies a person's substitute decision-maker.

#### ***Health information custodians***

A health information custodian ("Custodian") is the person or organization responsible for all health records. The Custodian must create, implement, and oversee a privacy policy that meets the requirements of *PHIPA*.

A naturopathic doctor who is a sole proprietor is the Custodian over any health information and records that they collect.

If a naturopathic doctor works for a health organization such as a naturopathy school clinic, the organization is usually the Custodian of health records.

Two or more naturopathic doctors who work together may decide to act as a single organization for the purposes of *PHIPA*. If so, the NDs can create a single privacy policy. This would allow for consistent health record keeping practices. In this case the NDs will have shared responsibility for complying with *PHIPA*.

### **Information Officers**

*PHIPA* requires every individual practitioner or organization to appoint a contact person (often called an Information Officer). An Information Officer is the person who ensures compliance with the privacy policy and requirements of *PHIPA*. The Information Officer's duties include reviewing the organization's privacy practices, providing training, monitoring compliance and acting as the contact person for requests for information from the public.

A naturopathic doctor who is a sole proprietor usually acts as the Information Officer. A health organization may appoint a person within the organization or may hire a person outside of the organization to be its Information Officer.

#### ***PHIPA Scenario***

*Three naturopathic doctors work together in an office and decide they will act as an organization for privacy purposes. Their organization is the 'Health Information Custodian' and together the NDs create a privacy policy. The NDs decide to appoint the most senior naturopathic doctor to be the Information Officer who creates a procedure to protect personal information, develops a privacy complaints procedure and ensures that all of the NDs in the office comply with the privacy policy.*

### **Protecting personal health information**

Custodians must put in place practices to protect personal health information in the Custodian's custody or control.

Practitioners or organizations must take appropriate measures to protect personal health information from unauthorized access, disclosure, use or tampering. These safeguards must include the following components:

- physical measures (e.g., restricted access areas, locked filing cabinets);
- organizational measures (e.g., need-to-know and other employee policies, security clearances); and
- technological measures (e.g., passwords, encryption, virus protection, firewalls).

Practitioners or organizations need to systematically review all of the places where they may temporarily or permanently hold personal health information and assess the adequacy of the safeguards. Almost every organization will find that it needs to make changes.

Where a practitioner has been involved in a privacy breach that results in the Custodian taking action against the practitioner (or the practitioners leaving voluntarily), the Custodian must report the conduct to the College. In addition, Custodians must report serious privacy breaches to the Information and Privacy Commissioner (IPC) and make annual reports of all privacy breaches to the IPC beginning in March of 2019.

Practitioners or organizations also need to securely retain, transfer and dispose of records in accordance with the College's requirements. For example, the College requires that patient records be kept for 10 years from the last contact with the patient (or if the patient was not an adult at the last contact, 10 years from when the patient turned 18).

A naturopathic doctor or organization's privacy policy should explain how health information will be protected.

### **Collection, use and disclosure of personal health information**

A naturopathic doctor or organization must only collect, use or disclose a person's personal information if the person consents or if the collection, use or disclosure is otherwise permitted by law. A naturopathic doctor should collect, use or disclose no more information that is reasonably required in the circumstances.

A naturopathic doctor's or an organization's privacy policy should also clearly explain how and when personal health information will be collected, used and disclosed.

Under *PHIPA*, collection, use and disclosure of personal health information is permitted without consent in limited circumstances such as within the "circle of care".

### **Circle of care**

A naturopathic doctor can share personal health information with other individuals within a patient's "circle of care" for the purposes of providing health care, without the patient's express consent.

A circle of care may include other health professionals who provide care to the same patient. A naturopathic doctor may assume that they have a patient's implied consent to disclose personal health information to other health providers in the patient's circle of care.

NDs working in a multi-disciplinary setting may share personal health information with other health care professionals who are providing care to the same patient, as these other health care professionals are within the patient's circle of care.

As such, an ND who refers a patient to another health professional may consider that health professional to be within the patient's circle of care.

The circle of care for a patient of a sole proprietor ND may also include other health care providers in other institutions, if it is necessary for providing health care to the individual, and it is not reasonably possible for consent to be obtained in a timely manner. However, some practitioners do not share information with others in the health care team without the patient's explicit consent unless it is an emergency so as to avoid misunderstandings. This caution is particularly important where the information is sensitive.

An exception to this principle is that if a patient or patient's substitute decision maker says that they do not want the information to be shared then the information must be put in a "lock box" and cannot be shared unless another provision in *PHIPA* permits it.

#### **Circle of Care Scenario**

*Juanita, a naturopathic doctor, receives a telephone call from a registered nurse at a local hospital. The nurse advises Juanita that her patient, who has dementia and is incapable of providing consent, has just been admitted to the hospital. The nurse reports that they have been unable to contact the patient's substitute decision-maker (SDM) and wants to know about the treatment Juanita has been providing to her patient. Juanita provides the nurse with information about the treatment and discloses the contact information she has for the patient's SDM. In this scenario, the "circle of care" principle allows Juanita to disclose her patient's personal health information without express consent and would be considered inappropriate to insist on a signed consent form before making any disclosure.*

### **Family and friends**

Generally speaking, consent should be obtained before sharing personal health information with members of a patient's family.

However, personal health information may be disclosed for the purposes of contacting family members, friends or other persons who may be potential substitute decision-makers, if the individual is injured, incapacitated or ill, and cannot provide consent. This may be particularly relevant for naturopathic doctors working in acute care settings.

### ***Disclosure related to risk***

A naturopathic doctor may disclose a person's personal health information if the ND believes on reasonable grounds that the disclosure is necessary to eliminate or reduce a significant risk of serious bodily harm to the person or anyone else.

For example, if a patient has a serious and highly contagious illness and has been admitted by a medical doctor to a hospital, a naturopathic doctor does not require a patient's consent to disclose this to the hospital. This is because the disclosure is necessary to reduce the risk of the illness spreading to other patients and hospital staff.

### ***Other laws***

PHIPA permits disclosure of personal health information that is permitted or required by many other acts, including the following:

- The [Health Care Consent Act or Substitute Decisions Act](#) for the purposes of determining, assessing or confirming capacity.
- Disclosure to a College in accordance with the *Regulated Health Professions Act*.
- Disclosure to an investigator or inspector who is authorized by a warrant or by any provincial or federal law, for the purposes of complying with the warrant or facilitating the investigation or inspection.

Additionally, as discussed in the section on Mandatory Reports, there are some circumstances in which disclosure of personal health information is mandatory.

### ***Access to personal health information***

Every patient has a right to access their own personal health information. One important exception is if granting access would likely result in a risk of serious harm to the patient's treatment or recovery or a risk of serious bodily harm to the patient or another person. Many students of privacy law believe that "bodily harm" includes mental or emotional harm.

If a person makes a request to access personal health information, the Custodian must either:

- Permit the person to see the record and provide a copy at the person's request.
- Determine after a reasonable search that the record is unavailable, and notify the person of this in writing as well as their right to complain to the Information and Privacy Commissioner; and
- Determine that the person does not have a right of access and notify the person of this as well as their right to complain to the Information and Privacy Commissioner.

The Information and Privacy Commissioner may review the Custodian's refusal to provide a record and may overrule the Custodian's decision.

If disclosure can be refused, a naturopathic doctor should black out (on a copy, not the original) those parts that should not be disclosed, where it is reasonable to do so, allowing the patient access to the rest of the record.

### **Sample Exam Question #12**

Which of the following best describes a patient's right to look at their personal health information contained in a naturopathic doctor's records?

- (i) A patient has an unrestricted right to access their personal health information.
- (ii) A patient generally has a right to access their health information and has a right to complain to the Information and Privacy Commissioner if access is refused for any reason.
- (iii) A patient has a right to access their health information unless the naturopathic doctor believes it is not in the patient's best interests to see the information.
- (iv) A patient can request a copy of a record containing their personal health information, but a naturopathic doctor does not have to provide it.

*The correct answer is (ii). A patient's right to access their health information is broad but has some legal limits. However, even if access is refused, the patient is entitled to bring a complaint to the Information and Privacy Commissioner.*

#### **Sample Exam Question #12 Explanations:**

- *Answer (i) is incorrect because the right to access personal health information may be restricted in some circumstances (e.g., where there is a serious risk of significant bodily harm).*
- *Answer (iii) is incorrect because an ND's opinion about whether it is good for the patient to see the record is irrelevant. Only if the ND believes on reasonable grounds that viewing the information would seriously harm the patient's treatment, may access be refused.*
- *Answer (iv) is incorrect because an ND does not have a general right to refuse a person access to personal health information.*

#### **Correction of personal health information**

Individuals generally have a right to request corrections to their own personal health information. A naturopathic doctor or other Custodian who receives a written request must respond to it by either granting or refusing the request within 30 days of the date on the written request. It is wise to respond to verbal requests as soon as possible as well. If the request cannot be fulfilled within 30 days, the person should be advised of this in writing.

Corrections to records must always be made in a way that allows the original record to be traced. The original record should never be destroyed, deleted, or blacked out. If the record cannot be corrected on its face, it should be possible for another person accessing the record to be informed of the correction and where to find the correct information (e.g., by means of a footnote or link in an electronic record). The person should also be notified of how the correction was made.

At the patient's request, the naturopathic doctor should notify anyone to whom the information has been disclosed about the correction. The exception to this is if the correction will not impact the patient's health care or otherwise benefit the patient.

The naturopathic doctor (or Custodian) may refuse the request if they believe the request is frivolous or vexatious; if the naturopathic doctor did not create the record and does not have the knowledge, expertise and authority to correct it; or if the information consists of a professional opinion made in good faith. In other words, corrections are limited to factual information, not professional opinions.

A naturopathic doctor who refuses to make a correction must notify the patient in writing, with reasons, and advise the patient that they may:

- Prepare a concise statement of disagreement that sets out the correction that the naturopathic doctor refused to make.
- Require the naturopathic doctor to attach the statement of disagreement to their clinical records and disclose the statement of disagreement whenever the naturopathic doctor discloses related information.
- Require the naturopathic doctor to make all reasonable efforts to disclose the statement of disagreement to anyone to whom the naturopathic doctor has previously disclosed the record; and
- Make a complaint about the refusal to the Information and Privacy Commissioner.

### **Complaints**

Every organization must have a system in place to deal with complaints regarding personal health information. Patients should also be aware of their right to complain to the College and/or to the Information and Privacy Commissioner.

### **3.5.2 PIPEDA**

Another privacy law that naturopathic doctors should be aware of is the [Personal Information Protection and Electronic Documents Act \(PIPEDA\)](#). PIPEDA is a federal law that governs the collection, use and disclosure of personal information in relation to commercial activity outside of health care.

PIPEDA applies only to commercial activities of NDs, such as the sale of products at naturopathic doctors' offices, and the offering of educational sessions. Unlike PHIPA, which governs personal health information, PIPEDA governs all types of non-health personal information. Examples of personal information include the person's name, date of birth, and home address.

The following ten privacy principles apply to ND's commercial activities:

1. *Accountability*: Someone in an organization (the "privacy officer", sometimes called an "information officer") must be accountable for the collection, use and disclosure of personal information. The privacy officer must develop privacy policies and procedures and ensure that staff receives privacy training.
2. *Identifying Purposes*: An organization must identify the purposes for which personal information will be used at the time that the information is collected.
3. *Consent*: Informed consent is required to collect, use and disclose personal information except in limited circumstances, e.g., in emergencies or where the law otherwise permits this.
4. *Limiting Collection*: An organization must only collect the information that is necessary to collect for the identified purposes.
5. *Limiting Use, Disclosure, and Retention*: An organization must only use, disclose and retain personal information that is necessary, for the identified purposes and is obtained with consent. It should be retained no longer than necessary.
6. *Accuracy*: An organization must make reasonable efforts to ensure that any personal information collected is accurate, complete and up to date.
7. *Safeguards*: An organization must protect personal information with appropriate safeguards in order to protect against loss, theft, unauthorized access, disclosure, copying, use or modification.
8. *Openness*: An organization must make its privacy policies readily available.
9. *Individual Access*: Upon request, an individual must be informed of the existence, use, and disclosure of their personal information and be given access to it. An individual can request corrections to the information. Access may be prohibited in limited circumstances such as the privacy of other persons, prohibitive cost to provide it or other legal reasons.



10. *Challenging Compliance*: An organization must have a complaints procedure relating to personal information and must investigate all complaints.

As one can see, PHIPA and PIPEDA are based on the same principles. PHIPA simply provides more details about how to achieve those principles in the health care context.

### 3.5.3 Health Care Consent Act

The *Health Care Consent Act* (“HCCA”) sets out rules about consent to treatment especially where there is concern about the capacity of the patient to consent to treatment. The topic of informed consent is dealt with throughout this handbook however in brief, except in cases of emergency, informed consent for any assessment or treatment must be obtained from the patient. If the patient is incapable of providing informed consent, it must then be obtained from the patient’s substitute decision maker.

Where there is a dispute about the care of incapable patients, the decision-making body responsible for making decisions in Ontario is the Consent and Capacity Board (“CCB”). An ND, patient or substitute decision-maker may apply to the CCB when a decision relating to a patient’s consent or capacity needs to be made. The powers of the CCB include the following:

- The CCB can consider a patient’s challenge to a decision by an ND that they are incapable with respect to a treatment. The CCB may agree with the ND or may overrule the ND and find that the patient is capable with respect to the treatment. If the CCB overrules the ND, the ND cannot administer the treatment unless the patient consents.
- The CCB can provide direction to a substitute decision-maker with respect to an incapable person’s wishes, e.g., whether the patient’s previously stated wishes apply to the circumstances, or whether the wish was expressed when the person was capable.
- The CCB can also consider a request from a substitute decision-maker to depart from a person’s wish that was expressed while the person was capable.
- The CCB can review decisions regarding a person’s capacity to consent to treatment, admission to care facilities, or the use of a personal assistive service.
- The CCB can appoint a substitute decision-maker to make decisions for an incapable person with respect to treatment, admission to a care facility or use of a personal assistance service.
- The CCB can amend or terminate the appointment of a representative.
- The CCB can review a decision to admit an incapable person to a hospital, psychiatric facility, nursing home or retirement home for the purpose of treatment.
- The CCB can review a substitute decision maker’s compliance with the rules for substitute decision-making.

A patient may challenge a decision of the CCB by appealing to the courts.

#### ***Health Care Consent Act Scenario***

*Andre, a naturopathic doctor, is of the opinion that a patient is not capable of providing consent with respect to a proposed treatment. The patient’s child agrees and wants Andre to administer the treatment. The patient does not agree with this decision and decides to challenge it at the CCB. The CCB holds a hearing and receives testimony from both Andre and his patient and concludes that the patient is capable of consenting to the treatment. The patient tells Andre they are refusing to consent to the treatment. In this situation, Andre cannot administer the treatment, even if he believes the treatment is in the patient’s best interest.*

### 3.5.4 Child, Youth and Family Services Act (CYFSA)

A naturopathic doctor who suspects that any child is in need of protection must report it to a Children's Aid Society (CAS). This duty overrides all privacy and confidentiality duties and laws, including PHIPA. No legal action can be taken against a naturopathic doctor for making a report, unless the report is made maliciously or without reasonable grounds. The College cannot discipline a naturopathic doctor for making such a report in good faith and with reasonable grounds.

As a result of a report, a CAS worker may investigate the report further and, where action is needed, a CAS worker will offer a family such services as counselling and foster parenting.

A naturopathic doctor has a duty to report with respect to any child under the age of 16 (or who is 16 or 17 years old and under a child protection order). This includes all children, including a child of a patient, or a child who is a patient. However, a naturopathic doctor has a special responsibility to report information about a child who is a patient if the information was obtained while providing treatment or services to the child. A naturopathic doctor may be fined up to \$5,000 for failing to make a report in this circumstance.

The duty to make a report is ongoing (for new information) even if a previous report has been made respecting a child.

A naturopathic doctor must make a report if they have reasonable grounds to suspect any of the following:

#### ***The child has been or is at risk of harm***

A report is required if a child has been or is at risk of likely being physically harmed by a person having charge of the child (e.g., a parent or guardian), either directly or as a result of neglect or a pattern of neglect.

A report is also required if a child has been or is at risk of being sexually molested or sexually exploited, either by a person having charge of the child, or by another person, if the person having charge of the child knows or should know of the risk of this happening and fails to protect the child.

#### ***Failure to provide or consent to services or treatment***

There are numerous circumstances where a report is required because the person having charge of a child does not or cannot provide services or treatment to a child or does not or cannot consent to services or treatment for a child.

A report is required where a child is not receiving services or treatment, and:

- The child requires medical treatment to cure, prevent or alleviate physical harm or suffering.
- The child has suffered or is likely at risk of suffering emotional harm, demonstrated by serious anxiety, depression, withdrawal, self-destructive or aggressive behaviour, or delayed development believed to be caused by action or inaction of the person having charge of the child.
- The child has a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.
- The child is under the age of 12, has killed or seriously injured another person or has caused serious damage to another person's property, and services or treatment are needed to prevent a recurrence.

#### ***Abandonment***

A report is required if a child has been abandoned by a parent or guardian or is otherwise left without a caregiver. This includes the death of a child's parents.

**Failure to supervise a child**

A report is required if a child has injured another person or damaged another person's property more than once as a result of the person having charge of a child encouraging the child to do so.

A report is also required if a child has injured another person or damaged another person's property more than once because a person having charge of a child has not or cannot supervise a child adequately.

**Mandatory Reporting- Scenario 1**

*Christa, a naturopathic doctor, has a patient who discloses that they have physically harmed their child. As a result of this information, Christa now has a duty to make a report, even if the patient reported this in confidence or in the course of assessment or treatment. If two months later the patient says something that makes Christa suspect that the patient has physically harmed their child again, Christa has a duty to make another report.*

**Mandatory Reporting – Scenario 2**

*Fayaz, a naturopathic doctor, has an 11-year-old patient who has been displaying signs of erratic and violent behaviour, and who has admitted to having violently attacked their friend last week. Fayaz believes that specialized health care services are necessary to prevent the patient from causing serious injury to other people again and recommends a referral to another health care provider. The patient's parents do not believe that their 11-year-old child would hurt anybody and refuse to consent to any further treatment. In this case Fayaz has a duty to make a report even if the child does not want anyone to know about the incident and the parents refuse to believe it and are angry at the naturopathic doctor.*

**3.5.5 Long-Term Care Homes Act**

The [Long-Term Care Homes Act](#) regulates long-term care homes in Ontario, which are facilities that provide 24-hour nursing care and supervision.

**Resident care and rights**

The *Long-Term Care Homes Act* sets out a Residents' Bill of Rights requiring long-term care homes to ensure residents are treated fairly and with dignity and respect. This includes the right to participate in decision-making about the resident's care, the right to privacy in treatment and care and the right to receive care and assistance that is aimed at maximising the resident's independence as much as possible.

A long-term care home must have a zero-tolerance policy with respect to abuse and neglect of residents. Abuse includes physical, sexual, emotional, verbal, or financial abuse.

**Complaints**

Naturopathic doctors have a duty to report abuse and neglect of residents and certain other conduct to the Ministry of Health and Long-Term Care. A report is required if an ND (or any other person) suspects on reasonable grounds that any of the following have occurred:

- improper or incompetent treatment or care of a resident that resulted in harm or a risk of harm to the resident,
- abuse of a resident by anyone,

- neglect of a resident by staff, including management, which resulted in harm or a risk of harm to the resident,
- unlawful conduct that resulted in harm or a risk of harm to a resident,
- misuse or misappropriation of a resident's money, or
- misuse or misappropriation of funding provided to a long-term care home.

It is an offence for an ND to fail to make a report in any of the above circumstances if the ND provides care or services in a long-term care home. An ND may be fined up to \$100,000 for a first offence for failing to make such a report.

Complaints and reports about the care of a resident or the operation of a long-term care home must be investigated by the Ministry of Health and Long-Term Care if they involve certain matters including abuse of a resident by anyone, and neglect of a resident by staff.

Every person, including an ND, is protected from retaliation for making a report or for cooperating with an investigation. This includes protection from being fired, disciplined or suspended.

Similar requirements now exist for retirement homes under the [Retirement Homes Act](#).

### **Sample Exam Question #13**

A naturopathic doctor is not required to report the following in respect of a resident in a long-term care home:

- (i) A resident's son frequently yells and swears at the resident.
- (ii) A staff member is borrowing money from a resident with memory difficulties.
- (iii) A nurse has not been monitoring a resident over the past several shifts.
- (iv) A resident's daughter has stopped visiting the resident.

*The correct answer is (iv). All of the above except (iv) must be both reported and investigated. While a resident's family member may neglect that person, this does not have to be investigated unless the neglect is to the point of emotional abuse.*

#### **Sample Exam Question #13 Explanations:**

- *Answer (i) is incorrect because this may constitute emotional abuse, and emotional abuse by any person must be reported and investigated.*
- *Answer (ii) is incorrect because this may be considered financial abuse, and any person who financially abuses a resident must be reported and investigated.*
- *Answer (iii) is incorrect because a nurse who has not been monitoring a resident may be neglecting that patient. Neglect of a patient by a staff member must be reported.*

## **3.5.6 Human Rights and Accessibility Legislation**

### **Human Rights Code**

Every person is entitled to access and receive health care services in a manner that respects their human rights. The [Ontario Human Rights Code](#) requires every naturopathic doctor to treat patients, potential patients, employees, and others equally, regardless of the person's race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability (known as the "prohibited grounds").

If a person feels that a naturopathic doctor or organization has violated the *Human Rights Code*, the person can complain to the Human Rights Tribunal of Ontario. If the Human Rights Tribunal finds that an ND has violated the Human Rights Code, it may order the ND or organization to pay damages and require an ND or organization to take corrective action, such as undergo training or implement a human rights policy.

Since the Human Rights Tribunal does not have the power to suspend or revoke an ND's certificate of registration, a person who believes their human rights have been violated may also bring a complaint to the College.

### ***Duty not to Discriminate***

An ND must not discriminate against any person on any prohibited ground. Examples of discrimination may include the following:

- Refusing to accept a new patient for a prohibited reason.
- Refusing to continue treating a patient for a prohibited reason.
- Making a treatment decision for a prohibited reason.
- Insulting a patient in relation to a prohibited reason.
- Refusing to permit a patient with a disability to meet with the ND with a support person.
- Making assumptions, not based on clinical observation or professional knowledge and experience, about a person's health or abilities because of their age or another prohibited reason.

It is not discrimination to make clinical decisions or to accept or refuse to continue seeing a patient for reasons other than prohibited grounds. For example, if an ND does not have the competency to treat or continue to treat a person, or if the treatment required is not within the ND's scope of practice, an ND should not accept or continue to treat a patient.

In order to meet the obligations of the College and to avoid a misunderstanding that could lead to a human rights complaint, NDs should always clearly communicate their reasons for treatments, referrals and other decisions. Naturopathic doctors should always make decisions to refuse or end treatment in good faith and should not use their own lack of competency as an excuse to refuse to provide services to a person if there is no real competency issue.

Naturopathic doctors are similarly entitled to rely on professional knowledge, judgment and experience to make comments upon clinically relevant matters that relate to a person's age or gender.

However, it is discrimination to treat someone unequally even if the ND did not intend to do so. For example, a policy that does not permit any animals in a building discriminates against persons who rely on service animals, even if the policy was not intended to discriminate against anyone. Such a policy would have to make exceptions for "service animals".

### ***Duty to Accommodate***

The *Human Rights Code* requires that persons with disabilities be accommodated unless the accommodation would result in undue hardship, e.g., because of a real risk to health or safety or because of undue cost.

Accommodation must be individualised. Not all persons with the same disability will require or request the same accommodation. Individual accommodations should be discussed with the person where possible and must be provided in a manner that respects the person's dignity and autonomy. However, a naturopathic doctor is not required to provide the exact accommodation that a person requests if another form of accommodation is reasonable and acceptable.

Examples of accommodation may include the following:

- Permitting a patient who uses a wheelchair to reschedule an appointment with less than 24 hours' notice if the elevator in the naturopathic doctor's office is temporarily out of service.
- Offering an extended appointment time to a patient with an intellectual, learning, or mental health disability who may need a longer time to explain their symptoms.
- Permitting a person with a disability to enter your premises with a support person, service animal, or assistive device.
- Communicating in writing if a person with a hearing impairment or other disability requests this.

The duty to accommodate also applies to other prohibited grounds of discrimination.

**Human Rights Code – Scenario No. 1**

*Stacey, a naturopathic doctor, determines they are not competent to continue to treat their patient because the patient's health condition has become increasingly more complex. The patient is unhappy about Stacey's decision and believes that the ND has always had a problem with them because of their race and religion. Stacey should carefully communicate their reasons for terminating the ND-patient relationship, so that the patient is not left with a misunderstanding such as that the decision was for a prohibited reason such as the patient's race or religion, and should also provide an appropriate referral, if possible, in a timely manner.*

**Human Rights Code – Scenario 2**

*Matthew, a naturopathic doctor, has a potential new patient who has a cognitive disability, which makes communication difficult. Matthew should ask the patient how he can help improve communication between them. If the patient has a support person who sometimes provides assistance, the patient may ask to bring their support person to appointments, which Matthew is required by law to permit. However, Matthew should not assume that the patient needs a support person and should discuss the issue with the patient if possible. Additionally, if the patient does not have the capacity to make treatment decisions, the patient may need a substitute decision maker. In any of these circumstances, Matthew cannot refuse to accept the patient because of their disability even if those visits will take more time.*

**Human Rights Code – Scenario 3**

*Anita, a naturopathic doctor, has a patient who has been diagnosed with a mental illness, who she has been having increasing difficulties interacting with. The patient has also been rude towards Anita and her staff. While no patient has a right to be abusive towards naturopathic doctors and staff, Anita may consider whether the behaviour is caused or exacerbated by the person's mental illness. Anita cannot stop providing treatment or health services because of the patient's mental illness, unless she concludes that she is not competent to continue treating the patient, or unless there are health and safety concerns for Anita or her staff. If she believes a referral to another health care provider with the appropriate competencies to manage the patient's health care needs is necessary, she should clearly explain the reasons for the decision. Anita also should consider whether any accommodations are possible. For example, a patient who is uncomfortable in a crowded waiting room because of their mental health disability might be offered an alternative space to wait. There may be other practical measures that the patient may be able to suggest that will help the patient manage their disability-related symptoms.*

**Accessibility for Ontarians with Disabilities Act**

The [Accessibility for Ontarians with Disabilities Act](#) ("AODA") provides for accessible customer service, information and communications, transportation, employment, and built environment (i.e., physical facilities). The AODA applies

to every person and organization in Ontario. The intention of the standards is to achieve accessibility for Ontarians with disabilities by 2025. A naturopathic doctor or organization the naturopathic doctor works for may be fined for not complying with the AODA.

The standards currently apply only to persons and organizations with at least one employee in Ontario. Different standards apply depending on the number of employees an organization has. A sole proprietor or a group of persons in a partnership are not considered “employees”, and therefore the AODA standards currently do not apply to some NDs. However, if an ND has incorporated as a business, the ND may be considered an “employee” of the corporation along with any other employees the ND has.

### ***Interaction between AODA and other laws***

Accessibility standards are found in regulations and have the status of law. If a standard provided in the AODA is different from a standard required under a different law, the higher standard always prevails. However, the AODA will not necessarily prevail over other legal requirements such as occupational health and safety laws.

A breach of an AODA standard is not necessarily a breach of the Human Rights Code. However, it is possible that the AODA standards will be used as a reference point in Human Rights Tribunal hearings.

#### ***AODA Scenario***

*Jonah, a naturopathic doctor, has an office with one employee who provides administrative support. Under the AODA’s customer service standards, Jonah must create an accessibility plan for providing accessible customer service and accessible information and communications. While Jonah is not required to put his policies, practices and procedures in writing, he must ensure that they are followed, including by his employees. Additionally, Jonah is responsible for ensuring that training is provided to his employees regarding the accessibility standards (e.g., that support persons, animals or devices are allowed on the premises) and that he is aware of how the information and communications and employment standards will apply to his practice.*

### **3.5.7 Municipal Licensing**

In addition to being registered with the College, NDs may require a municipal licence. A municipal licence, such as a business licence, is granted and regulated by the municipality, and not by the provincial government. A municipal licence does not give an ND the right to be registered with the College. However, an ND may be registered with the College and also hold a municipal licence.

Generally speaking, the purpose of municipal licensing is to set conditions for an ND’s premises in which an ND operates, as well as public health matters such as sanitation. For example, a municipal inspector may inspect an ND’s office and ensure that protocols are in place to avoid the spread of disease. A municipal licensing body is generally not focused on professional qualifications or professional conduct.

If the College requires a higher standard or different standard than the municipality does, the College’s standard must always be followed. The RHPA is a provincial statute and takes priority over a municipal by-law.

### ***Municipal Licensing Scenario***

*Amber, a naturopathic doctor, has a municipal licence to practice in her city and pays a fee every year to renew her municipal licence. The municipal authority recently inspected Amber's practice and found no violations. Amber is also registered with the College to practise naturopathy, and must abide by all the rules and requirements for maintaining her certificate of registration. While the municipal licensing authority did not require Amber to maintain accurate clinical records and did not look at her records during its inspection, the College does require this. Amber must understand and abide by the College's record keeping expectations.*

### **Conclusion**

If a legal issue arises, naturopathic doctors are encouraged to discuss it with colleagues and their professional association(s), and to check with the College as to its expectations. However, the College cannot provide legal advice (neither can one's colleagues or professional association), thus on many issues a naturopathic doctor may need to consult with their own lawyer.