

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

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

B E T W E E N:

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

COLBRAN MARJERRISON

DECISION AND REASONS

A panel of the Discipline Committee of the College of Naturopaths of Ontario (the “Panel”) held a hearing on August 9, 2023. The hearing proceeded electronically pursuant to the *Regulated Health Professions Act, 1991* - Health Professions Procedural Code, the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the Discipline Committee Rules.

Rebecca Durcan was counsel to the College of Naturopaths of Ontario (the “College”). Andrew Parr and Jeremy Quesnelle attended on behalf of the College. Colbran Marjerrison (the “Registrant”) was represented by Gary Srebrolow. Lonny Rosen acted as independent legal counsel (“ILC”) to the Panel. Leslie-Anne St. Amour made submissions on behalf of the patient during the penalty phase of the hearing.

ALLEGATIONS

The Notice of Hearing, dated October 18, 2022, was filed as Exhibit 1 and set out the following:

The Registrant

1. The Registrant registered with the College on April 4, 2019.

2. At all relevant times, the Registrant worked at and/or owned Beechwood Naturopathy (the "Clinic") in Ottawa, Ontario.

Concurrent Therapeutic and Sexual Relationships

3. It is alleged that between, in or about September 2020 and February 2021, the Registrant provided ongoing treatment to a patient (the "Patient"), including approximately twenty appointments at the Clinic for naturopathic services.
4. It is alleged that at the onset of the treatment, the Patient informed the Registrant that they were suffering from PTSD related to a prior intimate relationship.
5. It is alleged that the Registrant started seeing the Patient socially outside of the Clinic on or about December 31, 2020.
6. The Registrant's last appointment with the Patient was on or about February 13, 2021.
7. It is alleged that in or about February 2021, following the last appointment, the Registrant began a sexual relationship with the Patient, including sexual intercourse.
8. Although the Registrant ceased treating the Patient on or about February 13, 2021, the Patient continued to be the Registrant's patient for the purpose of sexual abuse during the course of their concurrent therapeutic and sexual relationships as a result of section 1(6) of the Health Professions Procedural Code (the "Code"), being Schedule 2 of the *Regulated Health Professions Act, 1991* (the "RHPA").

Record Keeping

9. It is further alleged that between, in or about September 2020 and July 2021, the Registrant failed to keep records as required in respect of their treatment of the Patient in one or more of the following ways:
 - a. Failing to make treatment notes for each appointment as required, in particular by failing to make treatment notes for appointments that occurred on or about the following dates:
 - i. September 16, 2020;
 - ii. September 21, 2020;
 - iii. November 5, 2020;
 - iv. November 26, 2020; and/or

- v. December 3, 2020.
- b. Failing to make chart entries for each appointment as required, in particular by failing to make chart entries for appointments that occurred on or about the following dates:
- i. September 16, 2020;
 - ii. September 21, 2020;
 - iii. November 5, 2020;
 - iv. November 26, 2020; and/or
 - v. December 3, 2020.
- c. Failing to make chart entries as soon as possible after a patient interaction, in particular by making late entries on or about July 13, 2021 for appointments that occurred on or about the following dates:
- i. September 21, 2020;
 - ii. October 1, 2020;
 - iii. October 8, 2020;
 - iv. October 29, 2020;
 - v. January 30, 2021; and/or
 - vi. February 6, 2021.
- d. Creating and/or amending chart entries months after a patient interaction and/or failing to record the amendments to the patient record as required, in particular by creating entries on or about July 13, 2021 for appointments that occurred on or about the following dates:
- i. October 8, 2020;
 - ii. October 29, 2020;
 - iii. January 30, 2021; and/or
 - iv. February 6, 2021.

[REDACTED]

[REDACTED]

Allegations of Professional Misconduct

11. It is alleged that the above-noted conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Code (sexual abuse of a patient, more specifically sexual intercourse or other forms of physical sexual relations between the member and the patient).

12. It is further alleged that the above-noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
 - a. **Paragraph 1** (contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, including but not limited to:
 - i. Code of Ethics;
 - ii. Record Keeping;
 - iii. Therapeutic Relationships and Professional Boundaries; and/or
 - iv. Conflict of Interest.

 - b. **Paragraph 2** (abusing a patient or a patient's representative [REDACTED] physically, [REDACTED] or emotionally);

 - c. **Paragraph 17** (acting in a conflict of interest when acting in a professional capacity);

 - d. **Paragraph 23** (failing to keep records in accordance with the standards of the profession);

 - e. [REDACTED]

 - f. **Paragraph 46** (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional); and/or

 - g. **Paragraph 47** (engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession).

ADMISSION AND PLEA INQUIRY

The Registrant admitted to the allegations of professional misconduct set out in paragraphs 11 and 12 (a), (b), (c), (d), (f) and (g) of the Notice of Hearing.

The allegation of professional misconduct set out in paragraph 12(e) was withdrawn with the permission of the Panel.

The Panel received a written plea inquiry which was signed by the Registrant. The Panel also conducted an oral plea inquiry and was satisfied that the Registrant's admissions were voluntary, informed and unequivocal.

AGREED STATEMENT OF FACTS

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

The Registrant

1. The Registrant registered with the College on April 4, 2019.
2. Between April 4, 2019 and February 16, 2023, the Registrant held an Active certificate of registration. On February 17, 2023, the Registrant moved to the Inactive registration class. A copy of the Registrant's public register profile is attached to the ASF as **Tab "A"**.
3. At all relevant times, the Registrant worked at and owned the Clinic.

Concurrent Therapeutic and Sexual Relationships

4. It is agreed that between September 7, 2020 and February 13, 2021, the Registrant provided ongoing treatment to the Patient at the Clinic. Specifically, the Registrant provided naturopathic services to the Patient during twenty appointments. A copy of the Patient's patient record is attached to the ASF as **Tab "B"**.
5. At the onset of the treatment on September 7, 2020, the Patient informed the Registrant that they were suffering from PTSD related to a prior intimate relationship. The Patient also indicated that they were suffering from PTSD on their intake form (see Tab "B").

6. The Registrant started seeing the Patient socially outside of the Clinic in December 2020. Specifically, the Registrant and the Patient did the following:
 - a. attended a gift exchange on December 31, 2020;
 - b. socialized for several hours after a treatment session on January 30, 2021; and
 - c. planned a birthday party for the Registrant on February 6, 2021.
7. The Registrant's last appointment with the Patient was on February 13, 2021 (see Tab "B").
8. It is agreed that in February 2021, following the last appointment, the Registrant began a consensual sexual relationship with the Patient, which included sexual intercourse.
9. Pursuant to section 1(6) of the Code, the definition of patient includes an individual who was a patient of a member for one year from the date on which the individual ceased to be the member's patient. As a result, the Patient remained a patient at the time the Registrant began a sexual relationship.
10. Pursuant to paragraph (a) of section 1(3) of the Code, sexual abuse of a patient by a member means sexual intercourse or other forms of physical sexual relations between the member and a patient. As a result, the Registrant sexually abused the Patient because the Registrant engaged in a concurrent sexual and therapeutic relationship with the Patient.
11. It is further agreed that the conduct set out in paragraphs 4 to 9 above amounts to a conflict of interest because the Registrant engaged in concurrent personal, sexual and therapeutic relationship with the Patient as a result of which the Registrant's personal interests could improperly influence their professional judgment and conflict with their duty to act in the Patient's best interest.
12. It is further agreed that the conduct set out in paragraphs 4 to 9 of the ASF, above, amounts to physical and emotional abuse of the Patient.

Record Keeping

13. It is agreed that between September 2020 and July 2021, the Registrant failed to keep records as required in respect of their treatment of the Patient in the following ways:

- a. Failing to make treatment notes for each appointment as required, in particular by failing to make treatment notes for appointments that occurred on the following dates:
 - i. September 16, 2020;
 - ii. September 21, 2020;
 - iii. November 5, 2020;
 - iv. November 26, 2020; and
 - v. December 3, 2020.

- b. Failing to make chart entries for each appointment as required, in particular by failing to make chart entries for appointments that occurred on the following dates:
 - i. September 16, 2020;
 - ii. September 21, 2020;
 - iii. November 5, 2020;
 - iv. November 26, 2020; and
 - v. December 3, 2020.

- c. Failing to make chart entries as soon as possible after a patient interaction, in particular by making late entries on July 13, 2021 for appointments that actually occurred on the following dates:
 - i. September 21, 2020;
 - ii. October 1, 2020;
 - iii. October 8, 2020;
 - iv. October 29, 2020;

- v. January 31, 2021; and
 - vi. February 6, 2021.
- d. Creating and amending chart entries months after a patient interaction and failing to record the amendments to the patient record as required, in particular by creating new entries on July 13, 2021 for appointments that actually occurred on the following dates:
- i. October 8, 2020;
 - ii. October 29, 2020;
 - iii. January 30, 2021; and
 - iv. February 6, 2021.

14. A copy of the audit trail documentation from the Registrant's charting software company, Jane App, is attached to the ASF as **Tab "C"**.

15. It is agreed that on July 13, 2021, after the Registrant self-reported their concurrent therapeutic and sexual relationships with the Patient to the College, they went back through the Patient's record and made the late entries identified in paragraph 11(c) of the ASF, above, and created the new entries identified at paragraph 12(d) of the ASF, above, before submitting the patient record to the College's investigator.

16. Specifically, it is agreed that the Registrant went back through the Patient's records after the self-report to the College in order to sign off or close any entries that had not been previously closed. The chart notes are accurate and the notes were left open because the Registrant forgot to sign off the Patient's chart.

Admissions of Professional Misconduct

17. It is agreed that the above-noted conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Code (sexual abuse of a patient, more specifically sexual intercourse or other forms of physical sexual relations between the member and the patient).

18. It is further agreed that the above-noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:

- a. **Paragraph 1** (contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, including:
 - i. Code of Ethics (attached to the ASF as **Tab “D”**);
 - ii. Record Keeping (attached to the ASF as **Tab “E”**);
 - iii. Therapeutic Relationships and Professional Boundaries (attached to the ASF as **Tab “F”**); and
 - iv. Conflict of Interest (attached to the ASF as **Tab “G”**).
- b. **Paragraph 2** (abusing a patient physically and emotionally);
- c. **Paragraph 17** (acting in a conflict of interest when acting in a professional capacity);
- d. **Paragraph 23** (failing to keep records in accordance with the standards of the profession);
- e. **Paragraph 46** (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional); and
- f. **Paragraph 47** (engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession).

Acknowledgements

19. By this document, the Registrant agrees that:

- a. She understands fully the nature of the allegations made against her;
- b. She has no questions with respect to the allegations against her;

- c. She admits to the truth of the facts contained in this document and that the facts constitute professional misconduct;
- d. She understands that by signing this document she is consenting to the evidence as set out in this document being presented to the Discipline Committee;
- e. She understands that by admitting the allegations made against her, she is waiving her right to require the College to prove the allegations against her at a contested hearing;
- f. She understands that the decision of the Discipline Committee and a summary of its reasons, including reference to her name, will be published in the College's annual report and any other publication or website of the College;
- g. She understands that if there is any agreement between her and the College with respect to the penalty proposed it does not bind the Discipline Committee; and
- h. She understands and acknowledges that she is executing the ASF document voluntarily, unequivocally, free of duress and free of bribe, and that she has been advised of her right to seek legal advice and has done so or had the opportunity to do so.

SUBMISSIONS OF THE PARTIES ON LIABILITY

The College submitted that the ASF provided the Panel with sufficient evidence on which to base the findings of misconduct that both parties were asking the Panel to make. The College noted that the two parties in this matter, the College and the Registrant, were adverse in interest and represented by experienced counsel. They had reached agreement on the terms of the ASF after extensive negotiations and discussions, and this should assure the Panel that the findings the parties were asking the Panel to make were warranted.

The College noted that the allegation of misconduct in paragraph 12(e) of the Notice of Hearing had been withdrawn, and noted further that there was no evidence in support of the allegation in paragraph 10 of the Notice of Hearing, which related to [REDACTED]. Additionally, the College was not seeking a finding on all of the aspects of paragraph 12(b) of the Notice of Hearing, but only the allegations that the Registrant abused a patient physically and emotionally.

The College submitted that the Registrant engaged in sexual abuse of a patient, notwithstanding that the Patient's last appointment with the Registrant was on February 13, 2021, prior to the

commencement of the consensual sexual relationship between the Patient and the Registrant. This was because subsection 1(6) of the Code defines patient to include an individual who was a patient of a member for one year from the date on which the individual ceased to be the member's patient. As a result, the Patient remained a patient at the time the Registrant began a sexual relationship with him. This constituted sexual abuse because, pursuant to paragraph (a) of section 1(3) of the Code, sexual abuse of a patient by a member means sexual intercourse or other forms of physical sexual relations between the member and a patient. As a result, the Registrant sexually abused the Patient because the Registrant engaged in a concurrent sexual and therapeutic relationship with the Patient.

The College submitted that this concurrent sexual and therapeutic relationship also constituted a conflict of interest for the Registrant, and a breach of various standards of practice of the profession as a result, because the Registrant's personal interests could influence her professional judgment.

Regarding recordkeeping, the College alleged, and the Registrant agreed, that the Registrant was required to: keep treatment notes for each appointment; make chart entries for each appointment; and make chart entries as soon as possible after a patient encounter. The Registrant breached the recordkeeping standard and engaged in misconduct by failing to do the foregoing on five occasions, by making late chart entries on July 13, 2021, and by creating and amending chart entries by creating new entries for four appointments on July 13, 2021. This was confirmed by an audit trail contained in the Registrant's electronic medical record.

The College submitted, therefore, that the facts outlined in the ASF amounted to professional misconduct as set out in the Notice of Hearing and the ASF.

The Registrant submitted that the admissions in the ASF support the findings the parties were jointly asking the Panel to make.

DECISION AND REASONS ON LIABILITY

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

The Panel found that the ASF established each of the acts of professional misconduct alleged (excluding those that were withdrawn), as follows:

Sexual Abuse of a Patient

Section 51(1)(b.1) of the Code defines sexual abuse of a patient to include sexual intercourse or other forms of physical sexual relations between the member and the patient. The College alleged – and the Registrant admitted – that the Registrant engaged in sexual abuse of a patient

on the basis that the Registrant's last appointment with the Patient was on February 13, 2021, and following the last appointment, the Registrant began a consensual sexual relationship with the Patient, which included sexual intercourse. The Patient continued to meet the definition of "patient" in subsection 51(1)(6) for the purposes of this subsection because the Registrant had provided ongoing treatment to the Patient between September 7, 2020 and February 13, 2021, for a total of 20 appointments, and during the period of their consensual sexual relationship, less than a year had passed between the Registrant's last naturopathic doctor-patient encounter with the Patient. The Panel also noted that, per paragraph 5 of the ASF, the Patient informed the Registrant at the outset of treatment that they were suffering from PTSD related to a prior intimate relationship.

Review of Misconduct Allegations

The College alleged, and the Registrant agreed, that the Registrant engaged in professional misconduct as defined in section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007* (the "Misconduct Regulation"). The Panel's reasons for finding that the Registrant engaged in the acts of misconduct alleged are set out below.

Paragraph 1 of section 1 of the Misconduct Regulation makes it an act of professional misconduct for a registrant to contravene, by act or omission, a standard of practice of the profession, or to fail to maintain the standard of practice of the profession.

The College alleged that the Registrant had contravened standards of practice relating to:

- i. Code of Ethics;
- ii. Record Keeping;
- iii. Therapeutic Relationships and Professional Boundaries; and/or
- iv. Conflict of Interest.

The ASF provides facts which support findings that the Registrant contravened each of these standards. She contravened the Code of Ethics by engaging in sexual abuse of a patient, as well as by committing the boundaries crossings described in paragraph 6 of the ASF (seeing the Patient socially outside of the clinic, attending a gift exchange with the Patient, socializing for several hours after a treatment session, and planning a birthday party for the Registrant together with the Patient). The Registrant also contravened this standard when she created and amended chart entries months after patient interactions and failed to record the amendments as required. This conduct, as well as her failure to make treatment notes for each appointment as required, to make chart entries for each appointment as required, and to make chart entries as soon as possible after a patient interaction also constituted a breach of the Record Keeping standard.

The Panel therefore found that the Registrant engaged in professional misconduct by contravening the standard of practice of the profession with respect to the Code of Ethics and Record Keeping.

The Registrant's engagement in a concurrent therapeutic and sexual relationship with the Patient was a contravention of both the Therapeutic Relationships and Professional Boundaries standard and the Conflict of Interest standard, as the Registrant's personal interests could have improperly influenced her professional interest or judgment. As a result of the blurring of boundaries which the Registrant permitted, the Registrant was not able to provide patient-focused treatment. The Panel therefore found that the Registrant engaged in professional misconduct by contravening these standards of practice.

On this basis, the Panel also found that the Registrant engaged in professional misconduct pursuant to **Paragraph 17** of section 1 of the Misconduct Regulation, which makes it an act of professional misconduct for a registrant to act in a conflict of interest when acting in a professional capacity.

Paragraph 2 of section 1 of the Misconduct Regulation makes it an act of professional misconduct for a registrant to abuse a patient or a patient's representative verbally, physically, psychologically or emotionally. Based on the facts outlined above and the Registrant's admissions, the Panel found that the Registrant abused the Patient physically and emotionally by sexually abusing the Patient and by engaging in a concurrent therapeutic and sexual relationship with the Patient.

Paragraph 23 of section 1 of the Misconduct Regulation makes it an act of professional misconduct for a registrant to fail to keep records in accordance with the standards of the profession. The Registrant admitted that she failed to keep records as required by failing: to make treatment notes for each appointment as required; to make chart entries for each appointment as required; and to make chart entries as soon as possible after a patient interaction. The Panel found that the Registrant engaged in this act of professional misconduct.

Paragraph 46 of section 1 of the Misconduct Regulation makes it an act of professional misconduct for a registrant to engage in conduct or perform an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional. **Paragraph 47** makes it an act of misconduct for a registrant to engage in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession. The Panel found that the conduct outlined above, and in particular the Registrant's sexual abuse of a Patient, constituted conduct that members of the profession would reasonably regard as disgraceful, dishonourable and unprofessional as well as conduct unbecoming a member.

POSITION OF THE PARTIES ON PENALTY AND COSTS

The parties made a joint submission as to an appropriate order for penalty and costs (the “Proposed Order”), which was filed as Exhibit 3. The Proposed Order contained terms:

1. Requiring the Registrant to appear before a panel of the Discipline Committee to be reprimanded immediately following the hearing of this matter;
2. Directing the Chief Executive Officer to revoke the Registrant’s certificate of registration effective immediately;
3. Requiring the Registrant to reimburse the College for funding for therapy and counselling provided to the Patient under the program required under section 85.7 of the Code, up to the maximum allowable amount of \$17,370.00; and
4. Requiring the Registrant to pay costs to the College in the amount of \$7,500.00 on a schedule to be determined by the Chief Executive Officer.

SUBMISSIONS OF THE PARTIES ON PENALTY AND COSTS

The College submitted that the Proposed Order contained three penalty terms, and one term requiring the Registrant to pay costs, and noted that two of the three penalty terms were mandatory: subsection 51(5) of the Code provides that where a panel of the Discipline Committee makes a finding that a registrant engaged in sexual abuse which includes sexual intercourse, the penalty order must include a reprimand and the revocation of the registrant’s certificate of registration. In that regard, the Panel has no discretion as to whether to impose these two mandatory components of the Proposed Order.

Regarding the third term of the Proposed Order, an order requiring the Registrant to reimburse the College for funding for therapy and counselling provided to the Patient under the program required under section 85.7 of the Code, up to the maximum allowable amount of \$17,370, this term is discretionary. The College submitted that this term was appropriate because the College has a program to fund therapy and counselling for anyone who has been sexually abused by a registrant of the College, and an order mandating the Registrant to reimburse the College for such costs related to the funding of therapy and counselling for the Patient would ensure that the Registrant bears responsibility for the incursion of such expenses.

The College noted that this discretionary term is part of the Proposed Order which is the subject of a joint submission and should therefore be accepted. The College noted that the guidance from the Supreme Court of Canada and the Divisional Court is clear that a joint submission on

penalty must be accepted unless doing so would bring the administration of justice or these discipline proceedings into disrepute.

The College also submitted that a costs award was not mandatory but was appropriate to ensure that the entire costs of these discipline proceedings were not borne by other registrants of the College. The College submitted that although the real costs of investigating and prosecuting the misconduct far exceeded the agreed upon amount of \$7,500, this amount was appropriate.

The College submitted that the penalty should reflect the mitigating and aggravating factors, in this case, the sole mitigating factor being that the Registrant admitted to the facts and misconduct and entered into a joint submission on penalty, precluding the need for the Patient to testify, thereby preventing further trauma to the Patient. The College submitted that the aggravating factor was the conduct itself, which was the most serious conduct in which a registrant could engage.

The Registrant submitted that the Panel should make the Proposed Order, noting that the parties proposed it via a joint submission, and that two of the three penalty terms were mandatory. The Registrant submitted that the other terms of the Proposed Order were reasonable and should be imposed.

The Registrant submitted that there were additional mitigating factors, including the Registrant's self-report, her cooperation throughout the process, and the fact that the conduct occurred with only one patient. The College rejected this proposition, submitting that where multiple patients were victimized that may be an aggravating factor, but that the conduct occurred with only one patient was not mitigating.

The foregoing submissions were made by the Registrant's counsel. The Registrant also requested, and was granted, permission to address the Panel. The Registrant expressed her profound regret for the actions and choices she took, and expressed appreciation for the College's investigation of her conduct, which led her to a deeper understanding of her conduct and to acceptance of responsibility.

EVIDENCE ON PENALTY AND COSTS

The only evidence tendered on penalty and costs was a statement (the "Impact Statement") submitted by the Patient pursuant to subsection 51(6) of the Code. This section provides that the Panel is required to consider any written statement that has been filed, and any oral statement that has been made to the panel, describing the impact of the sexual abuse on the patient. The Impact Statement was entered as Exhibit 4.

All counsel made submissions regarding the content and admissibility of the Impact Statement. The College submitted that the purpose and intent of subsection 51(6) is to permit a patient, who

has been sexually abused, to describe the impact of such abuse. The College noted that notwithstanding the Impact Statement, the penalty proposed included two mandatory components (revocation and the reprimand) and further, the Proposed Order was being submitted jointly, which means that it had to be accepted unless the high threshold for rejecting it was met.

The Registrant objected to the Impact Statement on the basis that it went beyond the scope of what was permitted by subsection 51(6) of the Code, in that it addressed the impact of the discipline process on the Patient in addition to the impact of the abuse. Relying on the cases of *College of Physicians and Surgeons of Ontario v. Bahrgard Nikoo*¹ and *Ontario (College of Physicians and Surgeons of Ontario) v. Pilarski*,² the Registrant submitted that the Impact Statement should not be admitted into evidence. The Registrant also submitted that the Impact Statement included factual statements that were not consistent with the ASF nor accurate.

The Patient's counsel submitted that the Discipline Committee proceedings flowed from the abuse and therefore, the Patient's experience of feeling triggered by these proceedings, which resulted in the Patient reliving the abuse they experienced, constituted impacts of the sexual abuse which were properly before the Panel.

DECISION AND REASONS ON PENALTY AND COSTS

The Panel accepted the Proposed Order, finding it to be in the public interest and proportionate to the misconduct.

The Panel recognized that two components of the Proposed Order, the requirement that the Registrant attend to be reprimanded, and the requirement that the Panel order the Chief Executive Officer of the College to revoke the Registrant's certificate of registration, were mandatory, by virtue of subsection 51(5) of the Code.

The reprimand was mandatory given the finding of sexual abuse, and revocation was mandatory because the acts of sexual abuse involved sexual intercourse. The sexual abuse related to a concurrent sexual and therapeutic relationship between the Registrant and her patient, through which the Registrant abused a patient, both physically and emotionally, and acted in a conflict of interest. There were also additional acts of misconduct related to the Registrant's failure to keep records as required and in accordance with the standards of the profession and the contravention of professional standards, which supported a serious penalty outcome.

The terms of the reprimand and revocation achieved specific and general deterrence as it sent a message to this Registrant and other members of the profession that sexual abuse will not be tolerated, and removal from the profession may result from this act.

¹ 2022 ONPSDT 15.

² 2016 ONCPSD 41 (CanLII).

The Panel accepted that an order for reimbursement of the College for funding for therapy and counselling provided to the Patient were appropriate in a case involving sexual abuse. The impact of the sexual abuse on the Patient, as outlined in the Impact Statement, further supported this order.

In accepting the Proposed Order, the Panel was mindful that a penalty should, first and foremost, achieve the goal of public protection, while also accounting for other generally established sanctioning principles, which the jointly submitted order would achieve. As such, the Panel found no reason to depart from the Proposed Order.

The proposed penalty achieved public protection by removing the Registrant from practice.

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

The following mitigating factors were considered:

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

Among the aggravating factors considered were the nature of the conduct itself and the fact that a patient was harmed by the Registrant's conduct.

The Panel also considered whether the imposition of the discretionary components of the Proposed Order would, if imposed, be contrary to the public interest or bring the administration of these Discipline Committee proceedings into disrepute. The Panel determined that both of the discretionary terms of the Proposed Order were appropriate and that the Proposed Order as a whole did not approach the high threshold for rejecting a joint submission. Neither the requirement that the Registrant reimburse the College for funding for therapy and counselling provided to the Patient under the program required under section 85.7 of the Code, up to the maximum allowable amount of \$17,370.00, nor the requirement that the Registrant to pay costs to the College in the amount of \$7,500.00 on a schedule to be determined by the Chief Executive Officer were so lenient or so harsh as to be considered "unhinged" from the Registrant or the circumstances of this case.

With respect to costs, the Panel accepted that it has the authority to award costs under section 53.1 of the Code to ensure that the entire financial burden of investigating and prosecuting registrants who engage in professional misconduct does not rest on the general membership of this profession. The proposed amount of \$7,500 appropriately reflected the Registrant's cooperation through the investigation and prosecution of this matter.

The Panel appreciated that the Patient prepared an Impact Statement, which was accepted into evidence, although it did not ultimately affect the order imposed. This was because the parties had presented a joint submission, and a joint submission must be accepted unless it meets the high bar for rejecting it, as outlined above. Further, two of the four terms of the Proposed Order were mandatory. Nonetheless, the Panel did consider the Impact Statement, as well as counsel's submissions regarding its scope and acceptance. The Panel determined that the Impact Statement contained factual statements that were not consistent with the ASF and comments that were not within the scope of what was permitted by subsection 51(6) or the guidance provided by the case law regarding victim impact statements. The Panel found that these aspects of the Impact Statement were not admissible, but that the Impact Statement should be admitted in order to convey to the Panel the impact of the Registrant's misconduct on the Patient. The Panel therefore followed the approach of the Ontario Physicians and Surgeons Discipline Tribunal in *Nikoo*, and directed the parties to provide an edited version of the Impact Statement, redacting the portions thereof identified by the Panel as inadmissible. The parties agreed with this approach and provided a redacted version of the Impact Statement, which was entered into evidence as Exhibit 4.

ORDER

The Panel stated its findings in its written order of August 9, 2023 (the "Order"), in which the Panel directed as follows on the matter of penalty and costs:

1. The Registrant shall appear before the Panel to be reprimanded immediately following the hearing of this matter.
2. The Chief Executive Officer is directed to revoke the Registrant's certificate of registration, effective immediately.
3. The Registrant is required to reimburse the College for funding for therapy and counselling provided to the Patient under the program required under section 85.7 of the Code, up to the maximum allowable amount of \$17,370.00.

4. The Registrant shall pay the College's costs fixed in the amount of \$7,500.00, payable on a schedule to be set by the Chief Executive Officer.

Dated in Ontario on September 12, 2023

DISCIPLINE PANEL

Dr. Jacob Scheer, ND – Chair, professional member

Dr. Denis Marier, ND – professional member

Dean Catherwood – public member

Tiffany Lloyd – public member



Signed: _____

Dr. Jacob Scheer, Chair

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

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

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

COLBRAN MARJERRISON

REPRIMAND

As part of our penalty order this Discipline Panel has ordered that you be given an oral reprimand.

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

The Panel has found that you have engaged in professional misconduct in the following ways:

1. You sexually abused a patient, by engaging in sexual intercourse or other forms of physical sexual relations between you and the Patient.
2. You contravened a standard of practice of the profession or failed to maintain the standard of practice of the profession by acting in a conflict of interest and failing to keep records as required.
3. You abused a patient, both physically and emotionally, in engaging in a concurrent sexual and therapeutic relationship with the Patient.

4. You acted in a conflict of interest when acting in a professional capacity by engaging in concurrent personal, sexual, and therapeutic relations with the Patient.
5. You failed to keep records in accordance with the standards of the profession in that you failed to make treatment notes for each appointment, failed to make chart entries for each appointment, failed to make chart entries as soon as possible after a patient interaction, and you created and amended chart entries months after patient interactions and failed to record those amendments.
6. And by all of this conduct, you engaged in conduct that would reasonably be regarded by naturopaths as disgraceful, dishonourable or unprofessional and you engaged in conduct that would reasonably be regarded as conduct unbecoming a member of the profession.

It is clear to the Panel, that you have not upheld your professional commitment to:

- be a positive reflection of the profession
- conduct yourself in a manner that is honourable, professional and becoming of a registrant of this College
- abide by the laws, rules, guidelines and requirements of the College
- comply with the standards expected of our profession

Of particular concern is that

- the professional misconduct in which you engaged has put at risk the public's confidence in the profession's ability to govern itself and erodes the profile of this profession in the minds of the public and other regulated health care professionals.
- Your failure to adhere to the College's standard of practice places clients at risk of harm and impacts the public's confidence in the profession and jeopardizes the relationship between naturopaths and the public.

Consequently, it is necessary for us to take steps to impress upon you the seriousness of the misconduct in which you have engaged.

The Panel acknowledges that you took responsibility for your actions and admitted to the allegations in the Agreed Statement of Facts. However, your actions were inappropriate. The Panel would like to remind you that being a registered naturopath is a privilege and not a right.

This concludes our reprimand.