

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

PANEL:

Jacob Scheer, ND, Chair
Amy Dobbie, ND
Rick Olazabal, ND (*Inactive*)
Dean Catherwood
Paul Phillion

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

MICHAEL PRYTULA

) REBECCA DURCAN and
) JUSTINE WONG for the College of
Naturopaths of Ontario
)
)
)
)
) URI KOGAN for the Member
)
)
) LUISA RITACCA, Independent
Legal Counsel
)
) Heard: November 1, 2, 15, 2023,
December 5, 2023, March 19, 20,
2024, April 9, 10, 2024,
) July 29, 30, September 13, 2024

DECISION AND REASONS

This matter came on for hearing before a Panel of the Discipline Committee on November 1 and proceeded over the course of ten non-consecutive dates 2023 and 2024. The Panel received the parties' final submissions on September 13, 2024. The hearing was conducted by way of video conference.

Overview

The Registrant, Dr. Michael Prytula, ND, has been a naturopath in Ontario since 1988 and is also registered as a naturopathic doctor in Alberta. The Registrant became a member of the College in

the General class of registration on or about July 1, 2015, following the proclamation of the Naturopathy Act, 2007.

The Registrant is or was an owner of Nature Medicine Clinic, in St. Catharines, Ontario (the “Clinic”). The Registrant has met the Standards of Practice for Prescribing and the Intravenous Infusion Therapy (IVIT). In addition to practising as a Naturopath, the Registrant has been a member of the Pastoral Medical Association (“PMA”) since approximately 2014. Presently, the Registrant has interim terms, conditions and limitations on his certificate of registration, which were imposed by the ICRC as an interim order, which requires the Registrant to adhere to the College’s General Regulation.

The College alleges that the Registrant has regularly and willfully contravened the standards of the College and the law that regulates the profession, by, among other things, offering treatment outside of the scope of practice of the profession in Ontario, engaged in controlled acts that were not authorized, advertised that he could treat cancer and/or kill cancer cells, and represented to parties who also became members of the PMA that they would be subject to different rules than Ontario patients.

While the Registrant denies having engaged in any professional misconduct, he does acknowledge providing many of the treatments at issue in this matter.

The Registrant’s Motions

At the outset of the hearing, the Panel was advised that the Registrant intended to bring several motions, including Charter motions, to be dealt with after all the evidence was presented. In brief, the Registrant argues that the College breached his rights under sections 7, 8 and 11 of the Charter and further, the Appointment of Investigator, dated October 7, 2019, was “*ultra vires*”.

Summary Conclusion

As set out in greater detail below, the Panel finds that the Registrant engaged in professional misconduct as alleged in the Notice of Hearing. Further, the Panel does not find merit in any of the Registrant’s motions.

The Allegations

The allegations against Dr. Michael Prytula, ND (the “Registrant”) as stated in the Notice of Hearing dated September 7, 2022, are as follows:

19-031R

The Registrant

1. Dr. Michael Prytula, ND (the “Registrant”) initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the “Board”) in or about 1988. The Registrant became a registrant of the College of Naturopaths of Ontario (the “College”) in the General class of registration on or about July 1, 2015 as a result of the proclamation of the Naturopathy Act, 2007.
2. The Registrant has met the Standards of Practice for Prescribing and the Intravenous Infusion Therapy (IVIT).
3. The Registrant works at and/or owns the Nature Medicine Clinic in St. Catharines, Ontario (the “Clinic”).
4. The Registrant claims that they have been a member of the Pastoral Medical Association (PMA) since approximately 2013 or 2014. The Registrant claims that their membership authorizes them to administer treatments and/or controlled acts that they are not authorized to provide as a naturopath. The PMA is not a health regulatory college in Ontario and does not regulate naturopaths in Ontario.

Breaching an Undertaking with the College

5. On or about 2008, the Registrant signed an undertaking with the Board to not participate in parenteral therapy by injecting EDTA until it is permitted. Naturopaths in Ontario are not permitted to inject EDTA. It is alleged that since July 1, 2015, the Registrant breached the undertaking by injecting EDTA into their patients.

Unauthorized treatments and advertising

6. It is alleged that the Registrant engaged in the following since July 1, 2015:

a. Advertised on their Clinic website that:

i. They were authorized to provide controlled acts despite not being authorized to do so;

ii. They were authorized to provide treatment outside of the scope of practice of the profession including but not limited to oncothermia, photodynamic therapy (for cancer), UV Light Therapy (for cancer), bio-oxidative intravenous therapies, IV chelation, prolotherapy, trigger point injection therapy (using lidocaine and/or procaine), mesotherapy (using procaine, homeopathics and/or Vitamin B), and/or platelet rich plasma therapy;

iii. Patients who also became members of the PMA would be subject to different rules than Ontario patients; and/or

iv. The practitioners at the Clinic could treat cancer and/or HIV and/or AIDS and/or cure cancer and/or kill cancer cells and /or achieve “complete cancer resolution”;

b. Failed to refer patients to and/or advise patients that they ought to consult a physician, nurse practitioner and/or other regulated health professional when they sought treatment outside of the Registrant’s scope of practice;

c. Engaged in controlled acts that they were not authorized to do including but not limited to: i. Injecting unauthorized substances including but not limited to blood, oxygen, and/or ozone;

i. Injecting Vitamin B in a manner that did not conform with Regulation 168/15;

ii. Injecting drugs including but not limited to procaine, and/or EDTA; and/or

iii. Compounding unauthorized drugs including but not limited to procaine, and/or EDTA;

d. Engaged in treatment outside the scope of the profession including but not limited to oncothermia, photodynamic therapy (for cancer), UV Light Therapy (for cancer),

bio-oxidative intravenous therapies, IV chelation, prolotherapy, trigger point injection therapy (using lidocaine and/or procaine), mesotherapy (using procaine, homeopathics and/or Vitamin B), and/or platelet rich plasma therapy;

e. Advised patients that if they became members of PMA the Registrant could provide treatment outside the naturopathic scope of practice (including but not limited to compounding an unauthorized drug and/or administering an unauthorized substance) as a naturopath in Ontario;

f. Advised an undercover investigator that they could provide prolotherapy to the undercover investigator;

g. Failed to ensure that patient records were accurate and complete;

h. Failed to ensure that invoices indicated they were the treating naturopath; and/or

i. Held themselves out as an expert and/or taught courses in IV Ozone and/or IV Chelation.

7. It is alleged that since approximately July 1, 2015 the Registrant:

a. Did not have the knowledge, skill or judgement to provide treatment outside the scope of practice of the profession yet proceeded to do so;

b. Knowingly compounded drugs and/or substances that were not identified in Regulation 168/15.

8. It is alleged that:

a. The treatment of cancer is beyond the scope of the profession; and/or

b. The Registrant recommended and/or provided cancer treatment to their patients that they knew and/or ought to have known was unnecessary and/or ineffective.

Allegations of Professional Misconduct

9. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health*

Professions Act, 1991 (the “Code”) as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:

a. **Para 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. Advertising Standard of Practice;
- ii. Compounding Standard of Practice;
- iii. Injection Standard of Practice;
- iv. IVIT Standard of Practice;
- v. Performing Authorized Acts Standard of Practice;
- vi. Record Keeping Standard of Practice;
- vii. Scope of Practice Standard of Practice; and/or
- viii. Sections 3(1) and/or 13(3) of Regulation 168/15;

b. **Para 7**- Recommending or providing treatment that the member knows or ought to know is unnecessary or ineffective;

c. **Para 8** - Providing or attempting to provide services or treatment that the member knows or ought to know to be beyond the member’s knowledge, skill or judgment.

d. **Para 9** - Failing to advise a patient or the patient’s authorized representative to consult another member of a health profession within the meaning of the *Regulated Health Professions Act, 1991*, when the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skill or judgment to offer or is beyond his or her scope of practice;

e. **Para 10** - Performing a controlled act that the member is not authorized to perform;

f. **Para 14** - Prescribing, dispensing, compounding or selling a drug or a substance for an improper purpose;

g. **Para 15** - Administering a substance by injection or inhalation to a patient for an improper purpose.

h. **Para 23** - Failing to keep records in accordance with the standards of the profession;

i. **Para 26** - Making a claim respecting a drug, substance, remedy, treatment, device or procedure other than a claim that can be supported as reasonable professional opinion;

j. **Para 27** - Permitting the advertising of the member or his or her practice in a manner that is false or misleading or that includes statements that are not factual and verifiable;

k. **Para 36**-Contravening, by act or omission, a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts including but not limited to:

i. Section 4(3) of the Act; and/or

ii. Sections 2(1), and/or 5(1) of Regulation 168/15;

l. **Para 43**-Failing to carry out or abide by an undertaking given to the College or breaching an agreement with the College; and/or

m. **Para 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.

20-023R

The Registrant

1. Dr. Michael Prytula, ND (the “Registrant”) initially registered with the Board of Directors of Drugless Therapy–Naturopathy (the “Board”) in or about 1988. The Registrant became a registrant

of the College of Naturopaths of Ontario (the “College”) in the General class of registration on or about July 1, 2015 as a result of the proclamation of the Naturopathy Act, 2007.

2. The Registrant works at and/or owns the Nature Medicine Clinic in St. Catharines, Ontario (the “Clinic”).

3. The Registrant claims that they have been a member of the Pastoral Medical Association (PMA) since approximately 2013 or 2014. The Registrant claims that their membership authorizes them to administer treatments and/or controlled acts that they are not authorized to provide as a naturopath. The PMA is not a regulated health college in Ontario and does not regulate naturopaths in Ontario.

Refusal to co-operate with investigator

4. On or about August 6, 2020, an investigator attended at the Clinic in order to obtain records relevant to the investigation. It is alleged that the Registrant:

- a. Refused to provide the requested records;
- b. Told the investigator:
 - i. The investigator had no authority over people exercising their constitutional rights;
 - ii. That the regulator(s) were “pricks”; and/or
 - iii. “I don’t care about Ontario’s rules”.

5. It is alleged that the investigator alerted the Registrant of their statutory duty to co-operate. It is alleged that this did not result in the Registrant providing the requested records.

6. It is alleged that the investigator needed to obtain a search warrant in order to obtain records relevant to the investigation.

7. It is alleged that the search warrant was executed on or about August 19, 2020.

8. It is alleged that the Registrant has not provided all of the records requested by the investigator and/or required by the search warrant and/or requested by the ICRC including but not limited to the complete copy of the PMA agreement.

Allegations of Professional Misconduct

9. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:

- a. **Para 36-** Contravening, by act or omission, a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts including but not limited to section 76 of the Code;
- b. **Para 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
- c. **Para 47** - Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.

Registrant’s Plea

The Registrant denied the allegations set out in the Notice of Hearing.

Structure of the Decision

The Panel has divided these reasons into four parts. In Part I, the Panel sets out the relevant legislation and regulations it considered in reaching its decision. In Part II, the Panel summarizes the evidence presented and provides its factual findings. In Part III, we address the Registrant’s motions. In Part IV we set out our findings on the allegations set out in the Notice of Hearing.

Part I

The Legislation

RHPA and Naturopathy Act

The *Regulated Health Professions Act* (“RHPA”) identifies fourteen treatments as “controlled acts” that can only be performed by authorized practitioners or via delegation. Section 4 of the *Naturopathy Act* identifies seven of the controlled acts that Naturopaths in Ontario can provide, so long as they abide by the requirements as described in the General Regulation.

Section 27(1) of the RHPA provides that in certain circumstances, a person can perform a controlled act even if they are not authorized or have not been delegated the controlled act, where, among other reasons, that person performs the controlled act in the course of treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment.

There was no evidence presented to the Panel that the Registrant engaged in performing controlled acts that were delegated to him by an authorized person and further no evidence that the Registrant performed controlled acts while treating a person by prayer or spiritual means. While the Panel heard some evidence to suggest that the PMA is a Christian-based organization, there was no evidence that any treatment was provided by prayer or involved any spiritual elements.

Schedule II to the RHPA is the Health Professions Procedural Code (“Code”). Section 2(1) of the *Naturopathy Act* confirms that the Code is deemed to be part of the Act. The RHPA (inclusive of the Code), the *Naturopathy Act*, and the regulations promulgated thereunder are the only pieces of legislation that govern the profession of naturopathy in Ontario.

The General Regulation

Ontario Regulation 168/15 as promulgated under the *Naturopathy Act*, provides specific standards and requirements for each authorized controlled act. Section 3(1), paragraph 6 of the General Regulation, which applies to several of the authorized controlled acts, provides that to perform any such act, the Naturopath must have the knowledge, skill and judgment to do so safely and ethically, and to determine whether the patient’s condition warrants the performance of such act.

Section 5 of the General Regulation provides that if a registrant wishes to perform the controlled act of administering a substance by injection, the registrant must, among other things; (i) only

administer a substance specified in Table 2; (ii) only administer it via the route of administration specified in Table 2; (iii) if a registrant reconstitutes, dilutes, mixes, prepares, packages or labels two or more substances specified in Table 2 for the purpose of administering a customized therapeutic product to a patient by injection, the registrant must comply with all the standards of practice set out in subsection 11(2) with any necessary modifications; (iv) only perform this controlled act if they completed a prescribed course and examination; and further, if they wish to administer a prescribed substance via IVIT they need to complete an additional prescribed course and examination.

Section 13(3) of the General Regulation provides that it is a standard of the profession that if a patient's condition is beyond the scope of the profession, the registrant is to refer the patient to a physician, or another specified regulated health professional.

The Tables

Table 2 of the General Regulation sets out the prescribed substances that may be administered by injection. Table 2 identifies the substances that can be administered by Naturopaths by injection, its route (IVIT or intramuscular) and any limitations. If a drug or substance is not listed in Table 2, it cannot be administered by injection by a Naturopath in Ontario. Table 2 does not include ozone, blood, plasma, EDTA/salts of EDTA, or oxygen.

Table 3 of the General Regulation sets out the drugs that Naturopaths in Ontario are authorized to prescribe and any limitations, their routes of administration and dosages.

Table 5 of the General Regulation sets out the drugs that Naturopaths in the province are authorized to compound and any limitations, their routes of administration and dosages. Registrants cannot compound drugs or substances for injection unless the substance is listed in Table 5. Table 5 does not include ozone, blood, plasma, EDTA/salts of EDTA, or oxygen.

Standards of Practice of the Profession

In addition to the statutory standards as set out in the General Regulation, the College has issued several non-statutory standards of practice, including the following:

- Standard of Practice Infusion Therapy

- Standard of Practice Injection
- Standard of Practice Performing Authorized Acts
- Standard of Practice Prescribing
- Standard of Practice Scope of Practice
- Standard of Practice Advertising
- Standard of Practice Record Keeping

Part II

The Evidence

The Panel heard from nine witnesses and received fifty-four exhibits. Much of the evidence called addressed facts that were either admitted or not vigorously contested. Further, much of the evidence called related primarily to the Registrant's motions and not to the allegations themselves.

Credibility of the Witnesses

In weighing the evidence presented, the Panel considered both the reliability and credibility of the witnesses who testified, including the Registrant. The Panel assessed the credibility on a principled basis and considered several factors, including honesty, interest in the outcome, ability to make accurate observations, memory, internal and external consistency, and reasonableness.

Witness #1 Rebecca McBride

Ms. McBride is the Coordinator of Professional Conduct at the College. Given her role, Ms. McBride was able to confirm the Registrant's status with the College, as well as to provide information with respect to her role in the investigation of this matter.

Ms. McBride confirmed that the Registrant has been a Naturopath in Ontario since 1988, have initially been registered with the Board of Directors of Drugless Therapy – Naturopathy (the “Board” or the “BDDT”). When the College came into force on July 1, 2015, the Registrant became a member of the College. Ms. McBride testified that at the time of the transition from the Board to the College, all available documents were transferred from the Board to the College.

Ms. McBride confirmed that the Registrant is authorized by the College to perform extended services including IVIT and therapeutic prescribing, in accordance with the General Regulation under the *Naturopathy Act*.

Ms. McBride testified that she was asked to collect and review the Clinic's website, including links to associated websites. Through Ms. McBride, the Panel was taken to various entries on the website, which included representations that the Clinic could provide oncothermia and photodynamic therapy to kill cancer cells and bio-oxidative intravenous therapies. The website entries also included references to treatment of cancer patients, including treatment where some patients have "complete cancer resolution".

Ms. McBride also took the Panel to excerpts from the Clinic's website where PMA membership is discussed. In those excerpts, membership in the PMA is described as allowing the Clinic to expand services while maintaining current services under the Canadian Charter of Rights and Freedoms. The excerpts provide that by using "our Doctor of Pastoral Science and Medicine, as well as our Naturopathic Doctor licenses on a more routine basis, more of the practice will fall under the authority of the Pastoral Medical Association". The website also lists services available to PMA members, which include various IV therapies, injection therapeutics, various lab tests, and prescriptions of substances not on Schedule 1 of the NAPRA.org website.

The Panel also reviewed with Ms. McBride excerpts from the website which state that "self government is a joke" and that members of the PMA can access health care outside of the province's regulatory oversight. The website promises readers that if they choose to become a member of the PMA, they can exercise their rights under the Canadian Charter of Rights and Freedoms to get medical services and to ensure that their medical file is personal information and "protected from prying government eyes."

In addition to reviewing the Clinic's website with the Panel, Ms. McBride also testified that the College publishes standards and guidelines on its website, many of which essentially replicate what is set out in the General Regulation. Ms. McBride testified that the Regulatory Guideline, which is available on the College's website, provides that treating cancer is not within the scope of the profession.

Ms. McBride testified that in 2008, the Registrant entered an undertaking with the Board to not participate in parenteral therapy “by means of injection of EDTA until such time such practice is authorized or permitted by regulations and/or other statutory authority authorizing such therapy pursuant to the *Naturopathy Act* and/or the *Regulated Health Professions Act*.” Ms. McBride explained that as of the present date, injection of EDTA by any route is not authorized to Naturopaths in Ontario as the substance is not listed on Table 2 of the General Regulation. Ms. McBride further explained that while Dr. Prytula ND’s undertaking was given to the Board, as of July 1, 2015, the College assumed the responsibilities of the Board and the undertaking clearly contemplated the College as the future regulator given the explicit references to the *Naturopathy Act* and the *Regulated Health Professions Act*.

Ms. McBride testified in an honest and straightforward manner. She was not asked to provide the Panel with controversial evidence or evidence meant to contradict the anticipated evidence from the Registrant. Moreover, much of her evidence was corroborated by the documents she reviewed with the Panel, including the excerpts from the Clinic website.

Witness #2 Ziggy Bardel

On October 7, 2019, Benard and Associates were appointed as investigators in this matter pursuant to an Appointment of Investigator. Mr. Bardel, an investigator with Benard and Associates, was part of the investigation team assigned.

Mr. Bardel testified that his first interaction with the Registrant was attended the Clinic undercover as a patient on March 3, 2020. He was asked by the College to determine whether the Registrant was providing prolotherapyⁱ and if so, whether patients needed to be a PMA member to receive that treatment. Mr. Bardel testified that in advance of the appointment, he would have looked at the Clinic website and specifically on the prolotherapy page. While the website indicated that the treatment entailed the injection of a solution made up of dextrose and normal saline, Table 2 of the General Regulation does not allow either of these substances to be injected into a ligament or tendon.

ⁱ According to the Clinic’s website, “the basic premise of prolotherapy is that a substance (called a prolifrant) is injected into the affected or weakened ligaments or tendons. The solution is usually made up of dextrose and normal saline.”

Mr. Bardel testified that at the outset of his appointment, the Registrant collected some information about his health background. Mr. Bardel told the Registrant that he had pain in his knees for which he was seeking treatment options. Mr. Bardel told the Panel that the Registrant recommended exercises, a knee brace, and some supplements. Mr. Bardel conceded that prolotherapy was not mentioned in his conversation with the Registrant until he (Mr. Bardel) mentioned that his brother had similar knee concerns and had received injection therapy. It was at this point in the appointment that the Registrant said to Mr. Bardel that the therapy he was describing was prolotherapy. Mr. Bardel testified that he asked the Registrant whether prolotherapy was an option for him, but that the Registrant told him that he was 99.9% certain that it was not for Mr. Bardel, and he recommended the knee brace and exercises instead. The Registrant said if those solutions did not work, then prolotherapy would be an option. Mr. Bardel testified that he understood from his conversation with the Registrant that prolotherapy was something that the Registrant would provide himself.

Mr. Bardel testified that Dr. Prytula, ND advised him to do his own research and referred him to the Journal of Prolotherapy on the Clinic's website. Mr. Bardel testified that he was never told about the PMA or that he would have to become a member of the PMA to access prolotherapy.

Mr. Bardel recorded his appointment with the Registrar and prepared a memo following the appointment summarizing the interaction. Both the audio recording and Mr. Bardel's memo were filed as exhibits with the Panel.

Mr. Bardel testified that his next interaction with the Registrant was on August 19, 2020. On that day, Mr. Bardel attended the Clinic to assist with the execution of a search warrant, together with his colleague, Dean Benard. Mr. Bardel explained that it was his role to collect Clinic records. He was not involved in preparing the search warrant or in dealing with the Clinic's computer systems. Mr. Bardel stated that in addition to Mr. Benard, Thomas and Matthew Musters, IT professionals and two police officers attended at the Clinic on August 19th.

Mr. Bardel told the Panel that when they arrived at the Clinic, the Registrant was outside. Mr. Bardel could hear and see Mr. Benard approaching the Registrant. He heard Mr. Benard explain

to the Registrant that he had a search warrant to obtain the Registrant's records from the Clinic. Mr. Bardel observed that at first the Registrant refused to permit Mr. Benard and his team to access the Clinic. Mr. Bardel recalled for the Panel that he could hear some discussion between Mr. Benard and the Registrant, before the Registrant ultimately granted Mr. Benard access. Mr. Bardel could not recall the details of the conversation that took place between the Registrant and Mr. Benard as he was not a party to the conversation and because he was standing at a distance. He testified that the Registrant allowed the search party entry to the Clinic approximately 10-minutes after they first arrived.

Mr. Bardel did not observe any physical violence between the Registrant and Mr. Benard, and he could not recall whether he heard raised voices. He confirmed that the police officers present were not asked to, nor did they intervene in the interaction. Mr. Bardel testified that he did not hear anyone suggest to the Registrant that he could be arrested.

Mr. Bardel testified that once inside the Clinic, the search proceeded in a calm and professional manner. The Registrant was asked to provide the investigators with computer access to pull the records sought. The Registrant said he did not know how to access the computer records and so he called his employee to assist. The employee arrived soon after and allowed Thomas and Matthew Musters access to pull the records. Mr. Bardel testified that they were inside the clinic for more than one hour. Mr. Bardel noted that there were no violent interactions between anyone in the Clinic.

The Panel found Mr. Bardel's evidence regarding his observations of the Registrant and Mr. Benard on August 19th to be credible. He did not embellish the facts. He conceded when he could not recall a certain point, and his memory of the interaction was consistent with the memories of the others present, save for the Registrant.

Mr. Bardel testified that some months later, after the records collected had been provided to the College, he received further instruction to follow up with the Registrant to ask him about missing records. Mr. Bardel did so and confirmed that the Registrant sent him 20 to 30 records in a banker's box in and around December 2020.

Mr. Bardel testified that his next interaction with the Registrant was on February 11, 2021. He emailed the Registrant to schedule an interview to discuss the allegations and the Appointment of Investigator, dated October 7, 2019. The interview occurred over the phone on February 16, 2021. To alleviate concerns the Registrant had about having incorrect statements attributed to him, Mr. Bardel testified that he agreed to record the interview and sent it and a summary of the interview to the Registrant for comment. The Registrant agreed.

Mr. Bardel testified that the interview lasted about four hours and covered a lot of different topics. Mr. Bardel confirmed that the Registrant told him that he provided ozone therapy, chelation (orally and intravenously), oncothermia, photodynamic therapy, Chinese medicines, laser therapy, and prolotherapy. The Registrant told Mr. Bardel that he was aware of the College's Standard of Practice for Advertising but was unaware that referencing the cure of symptoms or diseases violated the advertising standard.

Mr. Bardel testified that the Registrant further confirmed for him that he was aware of the Standards of Practice for Compounding but conceded that he had not read it in a while. The Registrant acknowledged to Mr. Bardel that he compounded blood, but only as part of ozone therapy, and said that he started compounding this substance in 1995. The Registrant further confirmed for Mr. Bardel that he compounded EDTA, which he believed he had "free reign" to do following his earlier disputes with the Board. Dr. Prytula, ND also confirmed to Mr. Bardel that he compounded oxygen, as part of ozone therapy, compounded ozone, and procaine.

Mr. Bardel testified that the Registrant confirmed that he was aware of the Standard of Practice for Injection. The Registrant further confirmed for Mr. Bardel that he does administer B vitamins, ozone, procaine and oxygen by injection, but denied administering blood, EDTA, saline solution, or dextrose by injection. Mr. Bardel testified that the Registrant confirmed that ozone, oxygen, and procaine were some of the substances he administered by injection to PMA members that he did not administer to patients. The Registrant told Mr. Bardel that he intended to continue to administer these substances to PMA members as these were substances and not drugs, and that he had access to them under his CNDA license.

With respect to EDTA, the Registrant confirmed to Mr. Bardel that he administered EDTA via IVIT since 1995. The Registrant explained that he had been in a legal battle with the Board for several years over the administration of EDTA, but that the “charges” against him were eventually dropped.

Mr. Bardel testified that the Registrant explained to him that all PMA members were also naturopathic patients and as such there was already an established naturopathic doctor-patient relationship with them before they became PMA members. The Registrant further explained to Mr. Bardel that if during a naturopathic appointment he finds that a patient’s condition warrants a particular service that is only offered to PMA members, or if a patient inquires about a PMA service, he informs the patient that the service is only available to PMA members. The Registrant then provides the patient with the PMA agreement and asks them to review it and tell him if they want to become a PMA member and have access to PMA services. The Registrant explained to Mr. Bardel that PMA members also received faith-based counselling from him and were able to request a prayer prior to or after a procedure.

Mr. Bardel testified that he confirmed that the Registrant was familiar with the Standards of Practice for Record-Keeping and Scope of Practice.

Mr. Bardel next interacted with the Registrant in October 2021 during which he interviewed the Registrant over the phone to discuss the new Appointment of Investigator, dated August 10, 2020. This second Appointment was signed by the College’s CEO and appointed the same individuals as the first Appointment of Investigator. The purpose was to discuss the Registrant’s alleged failure to cooperate with the original investigation and his interaction with Mr. Benard in August 2020. The Registrant told Mr. Bardel that his angry comments were precipitated by Mr. Benard’s belligerence towards him and his staff on August 6, 2020. The Registrant told Mr. Bardel that Mr. Benard was a bully and did not practise social distancing. Mr. Bardel confirmed that Dr. Prytula, ND did not provide any context or clarification on his comments including when he called the College “pricks”.

Mr. Bardel testified that the Registrant confirmed that at the time of Mr. Benard's first visit to the Clinic, he did not provide him with all of the records sought because he claimed that those records were PMA member files outside of the College's jurisdiction.

The Panel found Mr. Bardel to be a credible witness. Much of this testimony was supported by contemporaneous recordings and his own memos.

Witness #3 Dean Benard

Mr. Benard is the founder of and investigator with Benard and Associates. As described above, Mr. Benard conducted a regulatory investigation for the College regarding the Registrant's practice. Mr. Benard has been a licensed private investigator since 2004. He conducts investigations for regulatory bodies and workplace investigations. He was a police officer from 1994 to 1999.

On August 6, 2020, Mr. Benard arrived at the Clinic to serve a summons and obtain records as required under the Appointment of Investigator. Mr. Benard testified that upon entering the Clinic through the front door he asked a woman at the front desk if he could speak with the Registrant. The woman advised Mr. Benard that Dr. Prytula, ND was with a patient. Mr. Benard identified himself to the woman and explained the purpose of his visit. The woman told Mr. Benard that the Registrant would not be available until later in the day. Mr. Benard asked if he could see the Registrant in between patients. He then exited the Clinic to wait to speak with the Registrant.

Mr. Benard testified that he waited about five to ten minutes outside of the Clinic, at which time the Registrant came outside to speak with him. Mr. Benard told the Panel that he showed the Registrant the Appointment of Investigator, dated October 7, 2019. He also showed the Registrant the summons, which set out the specific records of specific treatments in addition to the records of the undercover investigators (including Mr. Bardel's records). Mr. Benard testified that the Registrant resisted providing the requested information. Mr. Benard recalled that the Registrant said, "you have a rule book, and I have mine. Mine is the Canadian constitution".

Mr. Benard testified that he handed the Registrant two summonses during this interaction. The summonses list the documents sought from the Registrant, including all documents pertaining to

a litany of treatments and that the ICRC required for the investigation. Mr. Benard explained that the Registrant glanced at the two summonses and agreed to provide only some of the documents listed. Dr. Prytula, ND told Mr. Benard that the documents he was withholding were not “patient” files. He explained to Mr. Benard that these documents were files for “members” as opposed to “patients”. It was the Registrant’s contention that the College does not have the right to collect member files. Mr. Benard told the Panel that he tried to show the Registrant that the summons and Appointment of Investigator gave him the authorization to collect all of the documents, but that Dr. Prytula, ND, said that Mr. Benard did not have the authority and that he did “not give a damn”.

Ultimately, the Registrant provided Mr. Benard with a subset of the documents he was authorized to collect under the Appointment of Investigator.

With respect to his demeanour during the August 6, 2020, interaction, Mr. Benard denied that he was rude or belligerent toward the Registrant or his front staff. He waited outside the Clinic as requested and he maintained social distancing. Mr. Benard said that he did not obstruct the front door and that all his interactions with the Registrant’s employee were pleasant.

Having been unable to obtain all the documents as set out in the Appointment of Investigator, Mr. Benard testified that he applied for a search warrant by completing an Information to Obtain Search Warrant, dated August 11, 2020 (“ITO”). Mr. Benard explained that as is the usual process, the Justice of the Peace reviewed his application and granted him the Warrant.

There was much discussion during Mr. Benard’s testimony both in-chief and during cross-examination about the process he undertook to obtain the Search Warrant. In summary, Mr. Benard confirmed that the ITO is a prescribed form under the *Courts of Justice Act*. Pursuant to his authority as an Investigator for the College, the *Provincial Offences Act* provides him with the authority to seek a search warrant. Mr. Benard conceded that the template language set out in the ITO and application documents do not fit squarely with the language used under the RHPA, but that he does not have any ability to depart from the form.

Contrary to what was suggested to him on cross-examination, Mr. Benard denied misleading the Justice of the Peace. He provided the Justice of the Peace with confirmation that he (Mr. Benard) was an investigator appointed under section 75 of the Code and further provided him with information regarding the documents sought and his involvement with the Registrant on August 6th. Mr. Benard specifically included in his application for a Search Warrant information regarding the Registrant's position that the PMA member files are not "patient" files and therefore beyond the reach of the College. Mr. Benard emphasized to the Panel that he obtained the Search Warrant, on instructions from the ICRC, as all other options (being the Appointment of Investigator and summons) were exhausted.

The Search Warrant was executed on the Clinic on August 19, 2020. Mr. Benard explained that he and his group (Mr. Bardel, the Musters, and two police officers) arrived at the Clinic parking lot in the morning. The Registrant was outside of the Clinic gardening. Mr. Benard testified that he approached the Registrant alone and he requested access to the documents inside of the Clinic. In doing so, he explained to the Registrant what he was doing there. The Registrant initially resisted the request. He argued with Mr. Benard that the search was not proper and that there was not right to conduct it. Mr. Benard testified that he explained to the Registrant that if he did not cooperate to allow his team access, he would call a locksmith to gain entry. Eventually, the Registrant unlocked the door. Mr. Benard testified that this was approximately three to five minutes into their interaction. Mr. Benard denied that he threatened the Registrant with violence or arrest during this interaction or at all. Mr. Benard noted that while the police were present during the execution of the warrant, he explained to the Registrant that they were there to keep the peace and to help acquire access to the Clinic.

As Mr. Bardel described during his testimony, once inside the Clinic, the execution of the Search Warrant proceeded smoothly. At one point, the Registrant had to call his employee, Elizabeth to attend at the Clinic to help access the computer records. Around 25-minutes into the search, Mr. Benard testified that he told the police officers that they could leave as there was no safety concern.

Mr. Benard identified the treatment records obtained by the Musters and Mr. Bardel for the Panel. Those records including the documents set out in the original Appointment of Investigator, that the Registrant refused to provide earlier.

Mr. Benard testified in a credible and straightforward manner. He was not defensive when challenged under cross-examination and made fair concessions where appropriate. Mr. Benard had no reason to lie or mislead the Panel with regard to his conduct during this investigation. He was ultimately successful in obtaining most of the records sought by the College. While he was vigorously challenged about his demeanour during his interactions with the Registrant, the Panel is satisfied with Mr. Benard's recollection of the events. He had good recall of his discussions with the Registrant; he acknowledged that on August 19th, the Registrant had attempted to resist the Search Warrant, but that ultimately, the Registrant cooperated. Mr. Benard further acknowledged that if the Registrant did not cooperate, he (Mr. Benard) would simply make his way into the Clinic without the Registrant's assistance. While the Registrant might have perceived this as threatening, the Panel finds Mr. Benard's version of this interaction credible and more likely.

Witness #4 Matthew Musters

Matthew Musters is a digital forensic investigator with Computer Forensics Inc. He testified that he is often retained to work with investigators and colleges to help obtain digital records. He was present at the execution of the search warrant on August 19, 2020, at the Registrant's Clinic. He confirmed that he attended that day with his brother, Thomas Musters, Mr. Benard, Mr. Bardel and two police officers. The witness confirmed that while he could observe the discussion between the Registrant and Mr. Benard, he was not close enough to hear what was being discussed. He acknowledged that it appeared to be a heated discussion, but that nothing made him concerned about violence or a physical altercation. The witness also confirmed that the police officers did not speak with the Registrant, did not engage with him physically and did not try to arrest him.

Matthew Musters testified that once the group entered the Clinic, he explained to the registrant that he was there to collect samples of patient records for various specified treatments. The Registrant told the witness that the records could be found on the computer server and that he would need to contact his employee, Elizabeth MacDonald to assist with the retrieval. Matthew Musters confirmed that once she arrived at the Clinic, Ms. MacDonald was very helpful and that with her assistance, he was able to access the documents from two separate databases – one for “patients” and the other for “PMA members”.

The witness explained that once he retrieved the records, he created a forensic image. The collection took several hours, and the records were put on an USB drive.

Witness #5 Thomas Musters

Thomas Musters works with his brother as a digital forensic investigator at Computer Forensics Inc. Like his brother, Matthew, he was present during the execution of the Search Warrant on August 19th, 2020. He confirmed that he observed Mr. Benard and the Registrant speaking outside of the Clinic for some time before the Registrant ultimately granted them entry. The witness did not hear Mr. Benard raise his voice with the Registrant or make any physical contact with him. Thomas Musters could not remember whether the police spoke to the Registrant but noted that nothing looked irregular. The witness described the interaction as tense, but that tension was typical for these kinds of investigations.

The witness testified that at some point after entering the Clinic, the Registrant said something to the group along the lines of, “(y)ou’re asking us to violate members’ agreements and constitutional rights and that this is going to the Supreme Court of Canada”.

With respect to the retrieval of the computer records, the witness confirmed that Matthew Musters sat at the computer and took the lead. Thomas Musters said he was a helper and assisted his brother as needed.

The Panel found both Matthew and Thomas Musters to be credible witnesses. They had limited interaction with the Registrant, and both conceded that they were not close enough to hear the much of the interaction between the Registrant and Mr. Benard.

Witness #6 Andrew Parr

Mr. Parr is the CEO of the College. He has been the CEO (previously known as the Registrar) since the formation of the College on July 1, 2015. Prior to that time, he was the Registrar of the transitional Council of the College from 2010. Mr. Parr testified that the Registrant was on the transitional Council when he (Mr. Parr) was hired by the Ministry of Health. The Registrant was

on the Legal Affairs Committee, assisting the transitional council identify what controlled acts would be authorized to naturopaths under the new legislation.

At the request of the Registrant's counsel, the Panel received a transcript of excerpts of Mr. Parr's testimony in a parallel discipline hearing involving the Registrant's colleague, Dr. Michael Um, ND.

Mr. Parr testified that in 2019, the College received a complaint about vaccine information on the Clinic website, which prompted a review of the Clinic's website. Mr. Parr was advised that additional concerns were discovered about this review, which could not be investigated because they were outside of the scope of the complaint. In addition, around the same time, Mr. Parr became aware of a premise inspection at the Clinic which raised some concerns about unauthorized substances being administered at the Clinic. Mr. Parr explained that he received and reviewed the information collected by the College staff regarding the Clinic's website and the results of the Clinic inspection. Mr. Parr said that as a result he became concerned that acts of professional misconduct may have occurred. He decided that an investigation would be required to collect further information. As he explained to the Panel, Mr. Parr does not have the authority under the Code to unilaterally appoint an investigator and so Mr. Parr was required to seek the approval of the ICRC in order to do so. Mr. Parr testified that if he receives the approval of the ICRC to appoint an investigator, he makes every effort to not become involved.

On September 23, 2019, Mr. Parr sent a lengthy memo to the ICRC, stating that "I believe on reasonable and probable grounds" that the Registrant has committed certain acts of professional misconduct. The memo goes on further to ask the ICRC to approve the Appointment of Investigator, as provided for under section 75(1)(a) of the Code. Mr. Parr's memo, which the Panel reviewed in detail, included information to support his reasonable and probably grounds to believe that the Registrant had engaged in professional misconduct. The memo included excerpts from the Clinic's website and a summary table setting out Mr. Parr's information in support of the allegations. The ICRC approved Mr. Parr's request to approve the Appointment.

Mr. Parr was asked several questions in his examination-in-chief and on cross-examination about his use of the phrases "may have committed" and "alleged misconduct" in describing the

Registrant's conduct to support his request for the Appointment. Mr. Parr explained that he used qualifiers like "may" and "alleged" because it has not been proven that misconduct actually happened. He said that only a panel of the Discipline Committee can confirm that misconduct has, in fact, occurred. Mr. Parr, insisted, however, that he sought approval of the Appointment because he had "reasonable and probable grounds" to "believe" that the Registrant had engaged in misconduct. Mr. Parr made clear that he does not make the final decision as to whether professional misconduct has in fact occurred.

Mr. Parr was also asked to explain his concern about the Registrant allegedly promoting a demand for unnecessary services. Mr. Parr explained that based on his review of the Clinic website, he believed that the Registrant was playing on an individual's fear. If a person has a history of cancer, for example, the Registrant included information on the website that was promoting treatments that may not be necessary. Further, Mr. Parr explained that the Registrant has no ability to treat cancer, and it appeared that the Registrant was promoting treatments without knowing if they were actually required.

Mr. Parr was also asked about the undertaking the Registrant entered with the BDDT in 2008. Mr. Parr testified that when registrants, including Dr. Prytula, ND became registrants of the College on July 1, 2015, all obligations, terms, and conditions that existed under the BDDT transferred to the College. As a result, any agreement the Registrant reached with the BDDT would continue as an agreement with the College.

Mr. Parr delivered his testimony in a straightforward manner. He answered questions fully and made reasonable concessions when he did not know an answer to a question asked. Mr. Parr withstood a lengthy cross-examination, where his decision making was called into question. Mr. Parr to did not waiver under cross-examination. The Panel found Mr. Parr's evidence to be reliable and credible.

Witness #7 The Registrant

The Registrant testified on his own behalf. Throughout his testimony he referred to the fact that he is not a "Naturopath" or "Registrant" of the College, but an "authorized agent". He also referred

to the Magna Carta and the Oath of Helsinki as sources of his authority to engage in the conduct at issue.

The Panel also notes that during his evidence, the Registrant insisted that because he isn't the "regulator" he is not familiar with the Regulations. The Panel did not find this assertion credible. Dr. Prytula, ND is required in his annual registration with the College to confirm his familiarity with the College's Regulations. Further, the Panel notes that the Registrant was the member of the Transitional Council and as such privy to several discussions about proposed regulations, standards of practice and other rules.

While the Registrant refused to provide much of his background in a straightforward manner, the Panel understands that the Registrant has been a naturopath in Ontario since 1988. He is also a registered naturopathic doctor in Alberta. He insisted that because he was authorized to administer substances in Alberta, he was equally allowed to do so here in Ontario, despite the prohibitions in the Ontario legislation.

The Registrant is the owner or part-owner of the Clinic. He acknowledged that the information found on the Clinic website is under his review and that he and his colleague were the authors of the oncothermia essay found on the website.

The Registrant testified at length about his prior dealings with the BDDT and the transitional council. He acknowledged that several notices of hearing were issued against him by the BDDT, but that none resulted in a hearing or a disciplinary finding. In May 1999, the BDDT alleged that the Registrant failed to comply with the BDDT policy on ozone therapy, IVIT and Injection therapy, which confirmed that these treatments were not approved for Ontario naturopaths at the time. The matter was resolved by way of an undertaking, signed by the Registrant (the "1999 Undertaking"). In 2004, the BDDT alleged that the Registrant contravened the governing legislation and the standards of practice and the RHPA by prescribing or administering EDTA in chelation therapy, and further contravened the legislation by advertising EDTA as a treatment for arteriosclerosis and treated persons with ozone therapy not approved by the BDDT. An amended notice of hearing was issued in 2005 further alleging that the Registrant contravened the Health Care Consent Act by treating individuals without consent. In 2007, the BDDT issued another

notice of hearing alleging that the Registrant engaged in chelation therapy using EDTA. The Registrant signed a further undertaking to resolve the matter (the “2008 Undertaking”).

The 1999 Undertaking provided that the Registrant agreed “not to treat any person...using intravenous and injection therapy until such time the BDDT approves of such therapies and advises its Registrants in writing.” The original wording of the document expressly stated that the undertaking would include “members of the Naturopathic Healing Therapies Association, or any other association or institution”. The Registrant confirmed that he scratched that language out and inserted “general public”. The Registrant testified that in receiving the undertaking with this revision, the BDDT had implicitly condoned his view that he was not bound by his undertaking when it came to treating members of private associations. Under cross-examination, the Registrant conceded that he created the Naturopathic Healing Therapies Association and that he received all the membership dues.

The 2008 Undertaking includes an agreement from the Registrant that he will not participate in the practice of parenteral therapy by means of injection using EDTA until such time as such a practice is authorized or permitted by regulations. The Registrant explained to the Panel that in his view the 2008 Undertaking did not prohibit him from administering the salts of EDTA. The Registrant maintains this position, even though the substance is not set out in Table 2 of the General Regulation. The Registrant confirmed that he continued to administer salts of EDTA at the time of the investigation into this matter.

The Registrant further admitted that he would sometimes perform chelation under delegation, but that he would not record when he did so when providing treatment to a PMA member. He also agreed that naturopaths could not treat cancer but claimed he did not diagnose or treat cancer, but rather that he supported the body. He admitted, however, that he used to provide oncothermia, which he said, stopped the growth of cancer.

With respect to his interaction with Mr. Benard on August 6, 2020, the Registrant claimed that Mr. Benard was belligerent. He said further that Mr. Benard did not provide him with a copy of summonses to be provided to his colleague, Dr. Um, ND. The Registrant told the Panel that he provided Mr. Benard with the patient records which he said fell under the authority of his

naturopathic license and that Mr. Benard had no right to access his PMA member records. The Registrant maintained this position even under cross-examination, where it was pointed out that his PMA records include reference to his College registration number, the term naturopath and the doctor title.

The Registrant admitted that he was frustrated during Mr. Benard's visit on August 6th. In his conversation with Mr. Benard, he said that he had engaged in a ten-year legal battle with "these pricks", referring to the College. The Registrant did not contest the fact that he refused to provide Mr. Benard with all the documents requested under the summonses.

With respect to the execution of the search warrant on August 19th, 2020, the Registrant confirmed that he was outside of the Clinic doing yard work when Mr. Benard and his team arrived. The Registrant testified that Mr. Benard told him to open the door to the Clinic and provide access to the requested records otherwise he would be arrested. The Registrant testified that in addition, Mr. Benard explained to him that the search warrant gave him the authorization to enter the Clinic and search for and seize the records. The Registrant conceded that he initially resisted cooperating with Mr. Benard, as he was concerned about the oath, he made to his private PMA members to protect their files at all costs. The Registrant told the Panel that he found Mr. Benard, Mr. Bardel and the Musters brothers as "intimidating" during the execution of the search warrant.

The Panel did not find the Registrant's testimony regarding his interaction with Mr. Benard on August 6th and August 19th to be credible. The Registrant's memory of the interactions differed greatly from the memory of the other witnesses. While there is no doubt that the Registrant was likely frustrated by the delivery of the summonses and the search warrant, his suggestion that Mr. Benard was belligerent, and intimidating is not reasonable. The fact that the Registrant did not fully comply with the summons on August 6th, initially refused entry to the Clinic on August 19th, and used the word "prick" to describe the College, suggests to the Panel that if the interactions were in fact heated, they were likely heated because of the Registrant's conduct and not because of Mr. Benard.

The Registrant made a series of admissions during cross-examination, including the following:

- The Registrant is aware that if a naturopath did not meet the additional standards as set out in the General Regulation, they would not be permitted to engage in prescribing and IVIT.
- The Registrant confirmed that he told the ICRC that he complied with the General Regulation and the Standards of Practice, but that when there was any conflict with his oath as a naturopath and the Canadian Bill of Rights, his oath and the Bill of Rights would prevail.
- The Registrant believes that unless he is expressly and explicitly told not to do something, he believes that he can do it.
- The Registrant confirmed that he was involved as a member of the transitional Council, as Mr. Parr had noted. He further conceded that while he was involved in drafting the proposed list of substances that naturopaths could administer by injection, several of his proposed recommendations were not accepted (including, ozone, EDTA, and dextrose).
- In his response to the ICRC in March 2022, the Registrant admitted that he was providing unauthorized treatment, but that the BDDT had condoned the conduct.

With respect to the PMA, the Registrant confirmed that his PMA license did not require the completion of examinations, did not identify and required competencies in the administration of drugs or substances, and did not require renewal. While he agreed that administering a substance by injection and prescribing and compounding a drug were controlled acts as set out in the RHPA and the Naturopathy Act, he told the Panel that he could provide these services to PMA members because they were exercising their constitutional rights. Despite the Registrant's position before the Panel, the PMA Agreement expressly provides that these services are not incorporated into the agreement because they are services already regulated by government agencies (i.e., the College).

Throughout his testimony, the Registrant explained to the Panel that the College and the BDDT as its predecessor both "permitted" him to provide ozone, chelation and unapproved injection therapies for years. This position was based on what the Registrant described as condonation of his conduct by both the College and the BDDT because they did not explicitly advise him that he was prevented from engaging in practice outside of the scope of practice, including administering substances and drugs not listed on the Tables found in the General Regulation.

Witness #8 Dr. Michael Um, ND

Dr. Um, ND is the Registrant's colleague. He is also being prosecuted by the College for similar allegations as the Registrant. Dr. Um, ND confirmed that while he was present at the Clinic on August 6, 2020, he was with an oncology patient and so left the Registrant to deal with Mr. Benard alone. He did not observe any part of the Registrant's interaction with Mr. Benard, and he did not speak with the investigator at all. Dr. Um, ND confirmed that following Mr. Benard's attendance at the Clinic, the Registrant told him that the College had summonsed certain records, but that he did not receive a copy of his own summons until sometime in 2024, prior to the start of this hearing and his own. Dr. Um, ND was not present at the Clinic on August 19, 2020, when the warrant was executed.

The Panel did not find Dr. Um, ND's evidence to be helpful. He had no direct knowledge of the Registrant's interactions with Mr. Benard and conceded that while he was present at the Clinic on August 6th, he chose not to speak with the investigator. Further, while the Panel doubts the suggestion that Dr. Um, ND did not receive his personal summonses as Mr. Benard testified, that issue of not relevant to the issues before this Panel.

Witness #9 Elizabeth MacDonald

Ms. MacDonald was a former employee of the Clinic and a patient of the Registrant. She testified that when Mr. Benard attended at the Clinic on August 6, 2020, she could tell right away that he was "aggressive". Ms. MacDonald testified that she told Mr. Benard that Dr. Um, ND and the Registrant were both present in the Clinic, but that Mr. Benard seemed more interested to speak with the Registrant. Ms. MacDonald said that Mr. Benard demanded to see the Registrant. She asked Mr. Benard and another investigator accompanying him to wait outside. She asserted that when Mr. Benard was waiting outside, he blocked the door of the Clinic so that patients could not enter. She said that she had to go outside and ask Mr. Benard to move away from the door, which he did. Ms. MacDonald had no recollection of the fact that Mr. Benard and the Registrant spoke on August 6th.

Ms. MacDonald confirmed that she was called into the Clinic on August 19th, 2020, to assist with accessing files for the execution of the search warrant. She described the atmosphere as "aggressive". She also stated that it was her understanding that they kept the PMA member files separate because they had promised the members that their files would not be accessed by the

College or any other authority. Finally, Ms. MacDonald confirmed that you could not tell from reviewing a file whether it belonged to a PMA member or patient, and whether Dr. Um, ND or the Registrant had provided the treatment.

The Panel did not find Ms. MacDonald's testimony regarding her limited interactions with Mr. Benard to be credible. Her version of the events differed sharply from Mr. Benard, his team and even the Registrant. She did not remember that the Registrant and Mr. Benard had interacted on August 6th. Further, the Panel noted that Ms. MacDonald went to great lengths to offer evidence that was helpful to her former employer, the Registrant. In the circumstances, the Panel did not find Ms. MacDonald's evidence to be helpful.

Part III - The Registrant's Motions

The Registrant brought four separate motions wherein he seeks a variety of relief, including the exclusion of evidence and/or a stay of proceedings.

For the reasons set out below, the Panel was not persuaded that any of the Registrant's motions had merit. In reaching our decision, the Panel considered the evidence presented, as well as the parties' lengthy oral and written submissions on each motion.

Motion #1 – Section 8 Charter Challenge

Section 8 of the Charter codifies the right of an individual to be secure against unreasonable search or seizure. The Registrant argues that his section 8 rights were breached as a result of the College relying on a search warrant that was not properly or legally obtained, was not properly issued, and was not properly executed. The Registrant asks that as a result of this alleged section 8 violation, this Panel should exclude the evidence collected pursuant to the search warrant, namely the treatment records obtained from the Clinic during the execution of the search warrant.

For a search or seizure to be unreasonable, the Registrant must show that the search was not authorized by law; the law itself is unreasonable; and/or the way the search was carried out was unreasonable. Here, there is no issue that section 77 of the Code explicitly allows for the College to obtain a search warrant and there is no suggestion that the law itself is unreasonable. Therefore,

for the Registrant to succeed on his motion, he must satisfy the Panel that the way the search and seizure was carried out was unreasonable.

The Registrant argues that Mr. Benard failed to provide the Justice of the Peace with complete or accurate information to support his request for a search warrant. The Registrant submits that Mr. Benard failed to make clear in his application that the treatment records sought included medical records belonging to PMA members, as well as patients. In its submissions, the College reminded the Panel of Mr. Benard's evidence and of the steps he took to obtain the search warrant. The Panel had the opportunity to consider Mr. Benard's evidence, as well as the application materials he filed and the Information to Obtain. The Panel is satisfied that, contrary to the Registrant's position, the search warrant was properly and legally requested. Mr. Benard did not fail to provide the Justice of the Peace with the necessary background information. There is no issue that Mr. Benard had statutory authority under the Code to seek a search warrant, particularly given that the Registrant had previously refused to provide all the documents listed in the summons.

The Registrant contested the fact that Mr. Benard used court forms that are normally used in criminal cases in order to obtain the search warrant, which was misleading and improper. This is not correct. Mr. Benard explained that the court forms are prescribed by statute (the *Provincial Offences Act*) and as such he had no choice but to use the forms available. It is clear from our review of the materials that the Justice of the Peace was provided with information confirming that the search warrant was being requested pursuant to an investigation under the RHPA; that the documents sought related to medical treatment, and that the Registrant did not believe that the College was entitled to the documents at issue, and had refused to provide them prior to the execution of the search warrant.

With respect to the execution of the search warrant itself, the Panel heard from Mr. Benard, Mr. Bardel, the Musters brothers, Ms. MacDonald, and Dr. Prytula, ND. As set out in our factual findings above, the preponderance of the evidence does not support the Registrant's position that Mr. Benard was threatening or intimidating during the execution of the search. The Panel was not persuaded by Dr. Prytula, ND's evidence that Mr. Benard was threatening or acting outside of the scope of his authority as investigator. Even if we accept the Registrant's version of events, and that Mr. Benard was intimidating (something that we do not find in the evidence), that does not

mean that the search warrant was executed in an unreasonable manner. There was no suggestion of violence or physical coercion. The search warrant authorized the investigators to enter the Clinic and to retrieve the records with or without the Registrant's cooperation. The fact that Mr. Benard tried to seek the cooperation of the Registrant, suggests to the Panel that he approached the search in a professional manner. The search warrant was required because the Registrant was uncooperative on August 6th. There is no evidence before this Panel to suggest that the investigators approached the execution of the search warrant in a manner that was unlawful or unreasonable. The Musters brothers, Mr. Bardel, and Ms. MacDonald all confirmed that once the investigators gained entry to the Clinic, the search proceeded in a professional manner.

The Panel is satisfied that the search conducted on the Registrant's Clinic on August 19th, 2020 was reasonable and did not violate the Registrant's rights under section 8 of the Charter. The search warrant was properly obtained, under legal authority, and was executed in a reasonable manner. As such, the Panel denies the Registrant's motion to exclude the evidence collected on August 19th.

Motion #2 – “Lack of Authority” Motion

The Registrant argues that the Appointment of Investigator, dated October 7, 2019, was “*ultra vires*” (i.e. beyond the jurisdiction of the ICRC) and asks that the Panel make a finding that the specified allegations set out in the Notice of Hearing which resulted from the investigation, ought to be struck. The Registrant makes this argument because he says that the Mr. Parr's request to the ICRC to approve the appointment of an investigator did not set out Mr. Parr's belief that the Registrant engaged in professional misconduct but only that the Registrant “may” have engaged in professional misconduct. The Registrant submits that because of this language, the Appointment of Investigator should not have been issued as the request did not properly comply with the requirements set out in section 75(1)(a) of the Code. In support of his position, the Registrant relies heavily on Mr. Parr's memo he provided to the ICRC in support of his request for the appointment of investigator, as well as Mr. Parr's testimony at both this hearing and at Dr. Um, ND's hearing. The Registrant is correct to argue that in both his memo to the ICRC and in his testimony, Mr. Parr used qualifying words like “may” and “may have” to describe his concerns regarding the Registrant's misconduct.

Section 75(1)(a) of the Code provides that the Registrar (CEO) may appoint one or more investigators to determine whether a member has committed an act of professional misconduct, where the Registrar *believes on reasonable and probable grounds* that the member has committed an act of professional misconduct, and the ICRC approves the appointment. In his request for the appointment of an investigator, as supported by his memo, dated September 23, 2019, Mr. Parr set out, “I believe on reasonable and probable grounds that” the Registrant committed “the following acts of professional misconduct.” Mr. Parr then set out in detailed tables the information he collected, to support his belief that the Registrant committed professional misconduct. Based on Mr. Parr’s request and the information he provided; Mr. Parr received approval from the ICRC for the appointment of the investigators.

Upon review of the documentary evidence and Mr. Parr’s evidence, the Panel cannot conclude that the CEO failed to meet the requirements set out in the Code for the appointment of investigator. Mr. Parr made clear in his memo and in his testimony, including in cross-examination, that he had reasonable and probable grounds to believe that the Registrant committed acts of professional misconduct, and that is why he sought the approval of the appointment of an investigator from the ICRC. There is no evidence before this Panel and no suggestion from the parties that Mr. Parr appointed investigators without the approval of the ICRC or that he misled the ICRC in obtaining their approval.

The evidence shows that Mr. Parr formed his belief based on a review of the Clinic’s website and in consideration of the relevant tables found in the General Regulation. In his supporting memo, Mr. Parr explained that he believed that the information he reviewed uncovered conduct that could amount to professional misconduct. Mr. Parr explained that he used qualifying words like “may” and “may have” because ultimately it is not his role to decide whether there has in fact been professional misconduct. That is decision that must be made by the Discipline Committee, following a hearing, with evidence. Contrary to the Registrant’s suggestion, the Panel finds that there is nothing improper about the words Mr. Parr used in his memo or request for approval. In fact, it is clear to the Panel that Mr. Parr acted reasonably and within statutory authority to request the appointment of an investigator, given his concerns regarding the Registrant’s conduct.

For the reasons set out above, the Panel dismisses the Registrant's motion for an order declaring that the appointment of investigator was "*ultra vires*".

Motion #3 – Section 11 Charter Challenge and Abuse of Process Motion

The Registrant brings this motion seeking an order staying the proceedings. He alleges that the College delayed in the proceeding and that such delay amounts to an abuse of process. He relies on section 11(b) of the Charter and the case law. The principal question before the Panel on this motion is whether section 11 of the Charter applies to discipline proceedings. The parties agree that section 11 only applies where a person falls within the meaning of the phrase, "any person charged with an offence". Further, the parties agree that as set out by the Supreme Court of Canada in *R. v. Wigglesworth*, a person is charged with an offence if they are (1) subject to proceedings that are criminal in nature; or (2) potentially subject to "true penal consequences" in relation to the alleged offence.

The Registrant argues that section 11 applies because he is a person "charged with an offence". The Registrant's counsel argued that the Supreme Court decision in *R. v. Wigglesworth* supports his client's position. In *Wigglesworth*, an RCMP officer was found to have engaged in a "major police service offence" under the *Royal Canadian Mounted Police Act*, which subjected him to up to one year in prison. The officer was also subject to parallel criminal proceedings for the same conduct. Both adjudicative routes led to imprisonment, but the Supreme Court found that the two proceedings were separate and distinct. The Court was not satisfied that the administrative proceeding was not "criminal in nature" as it is separate from criminal proceedings and because its purpose was meant for internal discipline of police force members. However, the Court concluded that section 11 applied to the discipline proceedings in that case because of the "*true penal consequences*" test. The fact that the police discipline tribunal could imprison the police officer meant that section 11 applied. In the present case, the Registrant argues that the fact that this Panel could, among other things, impose a fine of not more than \$35,000.00 to be paid to the Minister of Finance amounts to a "true penal consequence" and as such section 11 applies. The Registrant argues that because the fine is payable to the Minister of Finance the purpose of its imposition must be to redress a wrong to society at large.

The Panel is not satisfied that section 11 applies to this discipline hearing. There was no case law before the Panel to support the Registrant's argument that section 11 applies to hearings under the RHPA. In fact, the case law that was presented made clear that section 11 of the Charter does not apply to discipline hearings (*Law Society of Alberta v. Tahn*; *Law Society of Manitoba v. Fawcett*). The Registrant has not been charged with an "offence" as that is contemplated under section 11. He is not subject to proceedings that are criminal in nature and the potential penalties that this Panel might impose (including a fine) are not "true penal consequences". The purpose of the discipline proceeding, and the imposition of a penalty (suspension, fine, or terms and conditions, among other things) is intended to encourage compliance among naturopaths in Ontario and is limited to the sphere of activity which is the practice of naturopathy. The penalty is not intended to redress a wrong to society at large, but to ensure that registrants abide by the College's rules and regulations. The fact that the Registrant may be "found guilty" of professional misconduct, does not mean that the nature of these proceedings are criminal or that the potential consequences for such a finding are truly "penal".

While the Panel has found that section 11 of the Charter does not apply to these proceedings, it has nonetheless considered the Registrant's argument regarding delay based on the governing case law. The test for whether delay amounts to an abuse of process is set out in the *Law Society of Saskatchewan v. Abrametz* decision. In order to succeed, the Registrant must show that the (1) delay is inordinate; (2) the delay has directly caused significant prejudice; and (3) if both pre-conditions are met, whether the delay amounts to an abuse of process such that it would be manifestly unfair to the Registrant to continue the proceedings or in some other way continuing would bring the administration of justice into disrepute.

The Registrant's argument fails on the first condition of the test. There is no evidence before us of inordinate delay. The Appointment of Investigator was approved in Fall 2019. The investigators completed their collection and reporting to the College by early Fall 2020. The Panel understands that between Fall 2020 and the start of this hearing in 2023, the parties exchanged correspondence and disclosure in the ordinary course. The Panel does not agree that there has been delay by the College in prosecuting this matter. Despite the COVID-19 restrictions in place at the time, the investigators took steps to collect records from the Registrant's Clinic in an expeditious manner. It was the Registrant's failure to cooperate on August 6th, 2020, that

necessitated further steps and ultimate time to be taken for the investigators to gain access to the relevant records. The Panel is not satisfied that there has been delay in these proceedings. To the extent that it took the College some time to process this matter, much of the delay was because of the Registrant's failure to cooperate in the early stages of the investigation.

The Registrant's argument that the College, and the Board before it, has attempted to "go after him" since the "last century" is misguided. The issue before this Panel on the motion is whether there has been delay in proceeding with the present allegations. The Registrant's complaints about how the Board handled matters before 2015 or how the College chose to handle matters prior to the referral of these allegations has nothing to do with the question of whether there has been delay in these proceedings.

Motion #4 – Section 7 Charter Challenge

Section 7 of the Charter provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. In this motion, the Registrant argues that his section 7 rights have been violated in that there are two types of provisions set out in the Notice of Hearing that are vague under section 7 and contrary to procedural fairness and as such should be struck.

The first type of provision he alleges is vague are those with the words "unnecessary treatment", as found at paragraphs 8(b) and 9(c) of the Notice of Hearing. The second are those provisions with the words "including but not limited to" (paragraphs 6(a)(ii), 6(c)(i), (iii), and (iv); 6(d), (5), 9(a) and (k) and paragraphs 8 and 9(a) (for matter 20-023R) of the Notice of Hearing. The Registrant argues that the inclusions of these phrases leave him unclear as to what is being alleged. The only law referenced in the Notice of Hearing that contains the allegedly vague provisions is paragraph 7 of section 1 of the Professional Misconduct Regulation, which includes reference to "unnecessary treatment".

Protection under section 7 interests arises in relation to the administration of justice which is defined as the "state's conduct of enforcing and securing compliance with the law" (*Gosselin v. Quebec (AG)*, 2002 SCC 84). That means that a section 7 breach can only be alleged in connection

with a law and not, as the Registrant has suggested, phrases used in a notice of hearing. The language used in the Notice of Hearing is not subject to section 7 compliance. Further, having considered the Notice of Hearing and the evidence that has been presented in this proceeding, the Panel does not agree with the Registrant that the language used vague or overly broad. The Notice of Hearing sets out the various allegations that the College asserts against the Registrant. It further includes particulars (or details) which support each of the allegations. The allegations, taken together with the particulars reveal that the College's concern regarding "unnecessary treatment" related primarily to treatment the Registrant advertised was available to his clients, (even though it was treatment outside of his scope of practice), including treatment for cancer and HIV. Similarly, it is clear from the Notice of Hearing that the phrase "including but not limited to" was used to provide the Registrant with examples of the Standards of Practice at issue.

Further, the Panel finds that there is nothing in the wording of the Notice of Hearing to suggest that the Registrant's life, liberty and/or security of the person was in peril. First, the right to life is engaged where the law at issue imposes death or an increased risk of death, directly or indirectly. This right does not apply to the circumstances here. Second, the right to physical liberty is engaged where imprisonment is a possible sanction for an offence. Imprisonment is not a penalty that this Panel can impose and as such, this right does not apply. Liberty as a right to protect personal autonomy goes to the core of what it means to enjoy individual independence and dignity; it does not protect an unbridled freedom to do whatever one pleases. The Panel was provided the decision of the Discipline Committee of the *College of Physicians and Surgeons of Ontario in Ontario (College of Physicians and Surgeons) v Mussani* 2000 ONCPSD, 22, wherein the panel concluded that the practice of medicine in Ontario is not a right, but a privilege that brings with it certain obligations to patients, the public, and other members of the profession. Nothing in the Notice of Hearing infringes on the Registrant's personal life choices. The Registrant does not have unlimited freedom to engage in the practice of naturopathy without regulation. It is a privilege to be a member of this College. The Registrant does not have a right to be a member or a right to practise naturopathy in this Province. Third, the right to security of the person is meant to protect a person's freedom from the threat of physical punishment or suffering, or undue police force. None of these rights are engaged in the present circumstances.

For these reasons, the Panel denies the Registrant's section 7 motion.

Part IV – The Panel’s Findings

Having considered the testimony of the witnesses and the documents filed, the Panel finds that the Registrant engaged in professional misconduct as alleged in the Notice of hearing. In many instances, the Registrant admitted to the conduct either during his testimony or in his interviews with Mr. Bardel. Where there was no admission, the Panel was satisfied primarily based on the documentary evidence that the Registrant’s engaged in conduct contrary to the law and the College’s standards of practice.

In response to the largely uncontroverted evidence, the Registrant took the position that he was entitled to advertise for and provide treatment he is not authorized to perform in Ontario by virtue of the private contractual relationship he has with his PMA members. The Registrant argued vigorously that he was allowed to offer services outside of the purview of the College by simply arranging for his patients to become members of the PMA. The Registrant’s argument with respect to the PMA is simply not tenable. Membership in the PMA does not relieve the Registrant from complying with the law when offering naturopathic services in Ontario. The Panel is not aware of any law to suggest otherwise. The Registrant admitted that his clients received treatment he was not authorized to provide, including oncothermia, UV light therapy, and chelation therapy. It does not matter that some of these patients may have also been members of the PMA. The Registrant is duty bound as a member of the College not to provide treatment outside of the scope of practice. He may disagree with the scope as legislated and he may believe he has the competencies to provide out-of-scope treatment, but that does not relieve the Registrant of his obligations as naturopath in Ontario. The Registrant cannot circumvent the College’s regulations or the professional standards by purporting to sign away those obligations via contract. Moreover, the Panel notes that despite the Registrant’s argument that he provided PMA members with services not as a naturopath but as a PMA member himself, the records reveal that he used his title as a naturopath on his PMA charts, there is no mention of the PMA membership on the charts, and there is nothing in the members’ personal records reviewed to indicate that the members fully understood the purported effect of signing a PMA contract (i.e. that they would receive services outside of the scope of practice for a naturopath in Ontario). The Panel found this attempt to work around the governing legislation to be particularly troublesome as it put the Registrant’s PMA

members at significant risk. They received treatment from a health care professional who was not authorized by law to perform such treatment.

With respect to the allegations relating to the Clinic's advertising, the website excerpts provided to the Panel made clear that the Registrant and his colleague offered services outside of the scope of naturopaths in Ontario and made claims to be able to treat and essentially cure cancer, HIV and other diseases, which fell below the College's advertising standards. The Registrant argued that the exact words used on the website did not promise "treatment" or a "cure" for cancer, but the Panel finds that the words that were used, including "killing cancer cells" were unclear and could be confusing and misleading to the public.

Further, the Panel is satisfied that the Registrant failed to cooperate with the College's investigation. He failed to abide by the request for documents as set out in the summons he received on August 6th, and he failed to provide his records in a timely fashion, resulting in the further referral from the ICRC to the Discipline Committee. There was no doubt that throughout his dealings with the investigators and the College, the Registrant was aware of his obligations and chose to ignore them. He did so by attempting to argue that there was a distinction between his patient records (which he said the College was entitled to) and his PMA member records (which he said the College was not entitled to). Again, as noted above, the Panel finds that there is simply no support in law for such a position. The Registrant was providing health treatment to his PMA members, at his Clinic, where he is held out as a naturopath and member of this College. The records of those treatments fall squarely within the type of records the College is entitled to seek under summons as they did here. If the Registrant position was correct, the College would have no way to ensure that its members are abiding by its standards and in turn no way to adequately protect the public. The Registrant repeatedly argued that contracting out of the governing legislation was analogous to an individual driving within the confines of the *Highway Traffic Act* rules on public roads but being allowed to drive contrary to the rules on private property. With respect, this analogy is flawed. Drivers are not free to engage in unlawful behaviour simply because they do so on private property. A driver cannot drive while impaired, or drive in a manner that results in injury or death. Similarly, in the present case, while the Registrant and his PMA members are free to enter into whatever contract they would like, they are nonetheless required to follow the law. In this case, that means the Registrant cannot ignore his professional and legal

obligations as a member of the College when purporting to provide services “under private contract”.

Finally, the Registrant admitted to defying his obligations under the 2008 Undertaking made with the BDDT. He has been administering EDTA since July 1, 2015. He argued that he only administers EDTA salts, which does not offend the undertaking. This is incorrect. The 2008 Undertaking is clear, as are the communications between Board counsel and the Registrant’s counsel at the time the undertaking was finalized, that the Registrant was prohibited from administering EDTA, in any form.

Summary of findings

Based on the evidence presented and the Registrant’s admissions, the Panel finds that the Registrant engaged in professional misconduct as set out in the Notice of Hearing. The Registrant failed to maintain the standards of practice of the profession, in providing treatment outside of the scope of the practice; in failing to maintain records which accurately indicated who provided treatment; in offering IVIT using substances not listed in the Tables of the General Regulation; and in performing acts not authorized to the profession in Ontario.

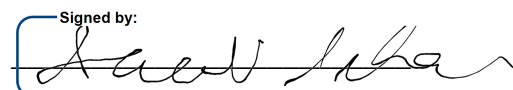
Further, the Registrant offered or provided treatment that he knew or ought to have known was unnecessary or ineffective, including treatment for cancer, which is outside of the scope of practice and therefore unnecessary and/or ineffective. While the Registrant may be trained to offer certain treatments for cancer in other jurisdictions, he is not allowed to do so in Ontario and therefore is not qualified here with the necessary skill or judgment. The Panel finds that the Registrant provided or attempted to provide treatment beyond his knowledge, skill or judgment. The Registrant ought to have referred his patients elsewhere, when the Registrant believed that the patient required services beyond his scope of practice.

The Registrant admitted to performing controlled acts that he is not authorized to perform and further admitted to compounding blood/plasma, EDTA, oxygen, ozone and procaine, contrary to the General Regulation and the Tables set out therein. He further admitted to injecting blood/plasma, EDTA, oxygen, ozone, and procaine, contrary to the regulations.

The Registrant's actions put his clients at risk and misled the public who visited his website. He flouted the governing legislation and the College's standards. The Registrant behaved in conduct which suggests to this Panel that he believes he is above regulatory control. The Registrant's approach to the College and his professional obligations is disappointing and dangerous. He willingly put patients at risk simply to engage in practice that he believed should be part of the scope of practice in this province. In the circumstances, the Panel is satisfied that members of this profession would reasonably regard the Registrant's behavior as disgraceful, dishonorable, and unprofessional, and unbecoming a member of this College. Registrants of this College cannot offer services outside their allowed practice. Ignoring these rules can harm patients. Self-regulation only works when registrants follow the rules and standards. The Registrant provided services without the College confirming his knowledge or skills. It is not enough for him to say he can do these services in another place or that his clients agreed to it. The College's role is to protect the public in Ontario and ensure the governing legislation is followed. The Registrant's attempt to work outside his regulatory body's control goes against the law and endangers patients.

The Panel asks the parties to contact the Manager, Professional Conduct to arrange for a penalty hearing.

I, Dr. Jacob Scheer, ND, sign this decision and reasons for the decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline panel as listed below:

Signed by:

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Chairperson

11/7/2024

Date

Dr. Jacob Scheer, ND, Chair
Dr. Amy Dobbie, ND
Dr. Rick Olazabal, ND (*Inactive*)
Mr. Dean Catherwood
Mr. Paul Phillion

