

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

PANEL:

Dr. Tara Gignac, ND, Chair
Dr. Danielle O'Connor, ND
Dr. Rick Olazabal, ND
Dianne Delany
Samuel Laldin

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

ELVIS AZAD ALI

) REBECCA DURCAN for the
) College of Naturopaths of Ontario
)
) MORGAN MARTIN for
) ELVIS AZAD ALI
)
) JUSTIN SAFAYENI, Independent
) Legal Counsel
)
) Heard: April 30, 2019
)

DECISION AND REASONS

This matter came on for hearing before a Panel of the Discipline Committee on April 30, 2019 at the College of Naturopaths of Ontario (“the College”) at Toronto.

Publication Ban

At the outset of the hearing, counsel for the College requested a publication ban preventing the disclosure of information that could identify patients, pursuant to s. 45(3) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*. Counsel for the Member did not object to this request. The Panel granted the publication ban, as requested.

The Allegations

The allegations against Elvis Azad Ali (the “Member”) as stated in the Notice of Hearing dated October 12, 2018 are as follows:

The Member

1. At all relevant times, Dr. Elvis Azad Ali, ND (the “Member”) has been a member of the College of Naturopaths of Ontario (the “College”).
2. Between approximately 2012 and 2016 the Member worked at a Clinic, in Markham, Ontario as a naturopathic doctor.

Falsification of documents – Patients A, B and/or C

3. In approximately December 2016 or January 2017, the Member agreed to create an intake form, consent form, treatment notes for November 5, 12, 19, 26, December 3 and/ 10, 2016, and/or patient sign in for Patient A at the Clinic.
4. The Member never met Patient A.
5. In approximately 2016, the Member agreed to create an intake form, consent form, treatment notes for August 17, 20, 24, 31, September 3, 7, 10, 14, 17, 28, October 1, 5, 8, 12, 15, 19, 22, 26, and/or 29, 2016 and/or patient sign in for Patient B and/or C at the Clinic.
6. The Member never met Patient B and/or C on all of the dates described in paragraph 5.
7. It is alleged that the above 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. Paragraph 23 (Failing to keep records in accordance with the standards of the profession);
 - b. Paragraph 24 (Signing or issuing, in his professional capacity, a document that the member knows or ought to know contains a false or misleading statement);
 - c. Paragraph 25 (Falsifying a record relating to the member’s practice); and/or
 - d. Paragraph 46 (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the

circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

Providing false and/or misleading information to an insurer and/or the College

8. In March 2017 an insurer met with the Member and presented him with the chart of Patient A. The Member advised the insurer of the following:
 - a. That he created all of the treatment notes;
 - b. That he personally saw Patient A;
 - c. That he reviewed the invoice and signed the invoice;
 - d. That he completed the intake form; and/or
 - e. That he had Patient A sign in at each appointment and that he also signed the sign in.
9. Subsequent to the meeting with the Member, the insurer was advised by the owner of the Clinic that the Member did not treat Patient A. The insurer contacted the Member to schedule a follow- up interview. The Member advised the insurer that he would be retaining legal counsel. The follow-up interview occurred on or about June 22, 2017. At the follow-up interview, the Member admitted that he:
 - a. Manufactured all of the treatment notes for Patient A;
 - b. Did not personally see Patient A;
 - c. Did not sign the invoice for Patient A;
 - d. Manufactured the sign in sheet for Patient A;
 - e. That he never fabricated any other treatment notes for any other patients;
 - f. That he had discovered other invoices for patients he had not seen before including Patient B and/or Patient C.
10. In approximately April 2018 the Member sent a signed letter to the College stating the following:
 - a. The only time he completed a treatment plan without seeing a patient was for Patient A;
 - b. That after his meeting in March 2017 with the insurer he “immediately regretted my behaviour and since my interview, I have met with [the insurer] and informed him of the truth”;

- c. That he had discovered other instances of the Clinic billing inappropriately in his name, and/or
 - d. That he has assisted the insurer in its investigation by providing information about other instances at the Clinic and other clinics.
- 11. In approximately May 2018, the insurer advised the College that the Member has not provided any “actionable intelligence that assisted with [the] investigation involving other clinics or providers.”
- 12. In approximately July and/or September 2018 the Member admitted to the College that he falsified treatment notes for Patient A, B and/or C.
- 13. It is alleged that the above 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. Paragraph 1 (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
 - b. Paragraph 24 (Signing or issuing, in his professional capacity, a document that the member knows or ought to know contains a false or misleading statement); and/or
 - c. Paragraph 46 (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

Member’s Plea

The Panel was directed to the Agreed Statement of Facts (reproduced in full below), signed by the Member. Based on the contents of the Agreed Statement of Facts, which are virtually identical to the contents of the Notice of Hearing, the Panel was satisfied that the Member admitted the allegations set out in the Notice of Hearing.

Based on the representations made at paragraphs 15-17 of the Agreed Statement of Facts, the Panel was satisfied that the Member’s admission was voluntary, informed and unequivocal. In particular, at paragraph 16 of the Agreed Statement of Facts, the Member confirms that he understands the allegations against him, understands the consequences of admitting the

allegations, and “is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.”

Through counsel, the Member (who was not present for the first part of the hearing) confirmed that the Panel should take his plea as set out in the Agreed Statement of Facts.

In the circumstances, the Panel was satisfied that the Member admitted the allegations and that his admission was voluntary, informed and unequivocal.

Agreed Statement of Facts (Exhibit #2)

BACKGROUND

The Member

1. At all relevant times, Dr. Elvis Azad Ali, ND (the “Member”) has been a member of the College of Naturopaths of Ontario (the “College”). Attached as Tab “A” is an excerpt of the Member’s profile on the College Public Registry.
2. Between approximately 2012 and 2016, the Member worked at a Clinic, in Markham, Ontario as a naturopathic doctor.
3. This is the first time the Member has been referred to the Discipline Committee. The Member made efforts to resolve this matter soon after the ICRC referred specified allegations of professional misconduct to the Discipline Committee.

Falsification of documents – Patients A, B and C

4. In approximately December 2016 or January 2017, the Member agreed to create an intake form, consent form, treatment notes for November 5, 12, 19, 26, December 3 and 10, 2016, and patient sign in for Patient A at the Clinic. Attached as Tab “B” is a copy of these documents.
5. The Member never met Patient A.
6. In approximately 2016, the Member agreed to create an intake form, consent form, treatment notes for August 17, 20, 24, 31, September 3, 7, 10, 14, 17, 28, October 1, 5, 8, 12, 15, 19, 22, 26, and 29, 2016 and patient sign in for Patient B and C at the Clinic. Attached as Tab “C” is a copy of these documents.

7. The Member never met Patient B and C on all of the dates described in paragraph 6.
8. It is agreed that the above 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 the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
 - a. Paragraph 23 (Failing to keep records in accordance with the standards of the profession);
 - b. Paragraph 24 (Signing or issuing, in his professional capacity, a document that the member knows or ought to know contains a false or misleading statement);
 - c. Paragraph 25 (Falsifying a record relating to the member’s practice); and
 - d. Paragraph 46 (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

Providing false and misleading information to an insurer and/or the College

9. In March 2017, an insurer met with the Member and presented him with the chart of Patient A. The Member advised the insurer of the following:
 - a. That he created all of the treatment notes;
 - b. That he personally saw Patient A;
 - c. That he reviewed the invoice and signed the invoice;
 - d. That he completed the intake form; and
 - e. That he had Patient A sign in at each appointment and that he also signed the sign in.
10. Subsequent to the meeting with the Member, the insurer was advised by the owner of the Clinic that the Member did not treat Patient A. The insurer contacted the Member to schedule a follow- up interview. The Member advised the insurer that he would be retaining legal counsel. The follow-up interview occurred on or about June 22, 2017. At the follow-up interview, the Member admitted that he:
 - a. Manufactured all of the treatment notes for Patient A;
 - b. Did not personally see Patient A;

- c. Did not sign the invoice for Patient A;
 - d. Manufactured the sign in sheet for Patient A;
 - e. That he never fabricated any other treatment notes for any other patients; and
 - f. That he had discovered other invoices for patients he had not seen before including Patient B and Patient C.
11. In approximately April 2018, the Member sent a signed letter to the College stating the following:
- a. The only time he completed a treatment plan without seeing a patient was for Patient A;
 - b. That after his meeting in March 2017 with the insurer he “immediately regretted my behaviour and since my interview, I have met with [the insurer] and informed him of the truth”;
 - c. That he had discovered other instances of the Clinic billing inappropriately in his name, and
 - d. That he has assisted the insurer in its investigation by providing information about other instances at the Clinic and other clinics.

The Member enclosed an email from the insurer wherein the insurer states that the Member “cooperated with the [insurer] investigator and provided information about the clinic’s practices and treatment records;... provided information to further the investigation into the clinic involved;...brought forward names and invalidated treatment claims for several patients who had their benefit plan administered by the [insurer]; and ...played an important role in the [insurer] investigation and his commitment is appreciated.” Attached as Tab “D” is a copy of the letter and email.

12. In approximately May 2018, the insurer advised the College that the Member has not provided any “actionable intelligence that assisted with [the] investigation involving other clinics or providers.”
13. In approximately July and September 2018, the Member admitted to the College that he falsified treatment notes for Patient A, B and C.
14. It is agreed that the above 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 the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
- a. Paragraph 1 (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);

- b. Paragraph 24 (Signing or issuing, in his professional capacity, a document that the member knows or ought to know contains a false or misleading statement); and
- c. Paragraph 46 (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

Admission of Professional Misconduct

- 15. By this document, the Member admits to the truth of the facts referred to in paragraphs 1 to 14 above (the “Agreed Facts”).
- 16. By this document, the Member states that:
 - a. He understands fully the nature of the allegations made against him;
 - b. He has no questions with respect to the allegations against him;
 - c. He admits to the truth of the facts contained in this Agreed Statement of Facts and Admission of Professional Misconduct and that the admitted facts constitute professional misconduct;
 - d. He understands that by signing this document he is consenting to the evidence as set out in the Agreed Statement of Facts and Admission of Professional Misconduct being presented to the Discipline Committee;
 - e. He understands that by admitting the allegations, he is waiving his right to require the College to prove the allegations against him at a contested hearing;
 - f. He understands that the decision of the Committee and a summary of its reasons, including reference to his name, will be published in the College’s annual report and any other publication or website of the College;
 - g. He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and,
 - h. He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.
- 17. In light of the Agreed Facts and Admission of Professional Misconduct, the College and the Member submit that the Discipline Committee should find that the Member has committed professional misconduct.

Decision

The Panel finds that the Member committed acts of professional misconduct as admitted by the Member in the Agreed Statement of Facts.

Reasons for Decision

In coming to this decision, the Panel considered the following: the Member's admission of professional misconduct, the Agreed Statement of Facts (including the documents appended as tabs to the Agreed Statement of Facts) and the parties' submissions.

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

1. He contravened a standard of the practice of the profession and failed to maintain the standard of practice of the profession, by his acts of creating charts and records for a patient he had never seen, and then lying about doing so to both the insurer and the regulator.
2. He failed to keep records in accordance with the standards of the profession, in that he created chart notes for visits he did not have with a patients.
3. He signed and issued, in his professional capacity, a document that the he knew contained false or misleading statements, in that he falsified sign-in forms and invoices for visits not actually had by patients.
4. He falsified records relating to his practice as a naturopathic doctor, in that he falsified intake forms and chart notes for visits he had not actually undertaken with patients.
5. The conduct described above would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

Penalty Submissions

Counsel for the College advised the Panel that a Joint Submission as to Penalty and Costs had been agreed upon (Exhibit #3). The Joint Submission requests an order:

1. Requiring the Member to appear before the Panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of eight (8) months, to commence on the date that this order becomes final, two (2) months of which shall be remitted if the Member complies with the provisions of paragraphs 3(a) and 3(b) no later than September 30, 2019.
3. Directing the Registrar to impose the following specified terms, conditions and limitations on the Member's certificate of registration:
 - a. Requiring that the Member unconditionally pass the ProBe course in ethics, at his own expense and no later than November 30, 2019;
 - b. Requiring that the Member write an essay between 1000-1500 words in length, and provide it to the Registrar, no later than December 20, 2019, that shall be published by the College at a time and in a format determined by the Registrar, on the following issue:
 - i. The lessons he learned in completing the PProBe course.
 - c. The Member is a non-clinical naturopath and cannot engage in direct patient care within the scope of practice of the profession, cannot perform, or delegate any controlled acts authorized to the profession, nor accept the delegation of any controlled acts as set out in section 27 of the *Regulated Health Professions Act, 1991*.
 - i. If a total of more than two years pass from the date the term, condition or limitation was placed on the Member's certificate of registration, the Member may not resume practising the profession until he:
 1. satisfies the Registration Committee of the College that he possesses the current knowledge, skill and judgment relating to the practice of the profession that would be expected of a member holding a General certificate of registration without a non-clinical term, condition or limitation; or
 2. has successfully completed, in the opinion of the Registration Committee, such additional education or training requirements determined to be necessary by the Registration Committee.

- ii. If two years or less pass from the date the term, condition or limitation was placed on the Member's certificate of registration, the Member may not resume practising the profession until he:
 1. successfully completes, to the satisfaction of the Registrar and at his own expense, the College Jurisprudence Course; and
 2. successfully completes, to the satisfaction of the Registrar and at his own expense, the Medical Records Course at the University of Toronto.
4. For greater certainty, the Member's obligation to comply with the proposed terms, conditions and limitations on his certificate of registration contained in paragraph 3(a) and 3(b) is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Requiring the Member to pay of fine of not more than \$350 to the Minister of Finance within two months of the date of the hearing.
6. The Member shall pay the College's costs fixed in the amount of \$3,500 payable in a schedule determined by the Registrar.
7. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
8. The Member acknowledges and understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.

Penalty and Costs Decision

The Panel accepts the Joint Submission as to Penalty and Costs, and accordingly orders:

1. That the Member to appear before the Panel to be reprimanded immediately following the hearing of this matter.
2. That the Registrar suspend the Member's certificate of registration for a period of eight (8) months, to commence on the date that this order becomes final, two (2) months of which shall be remitted if the Member complies with the provisions of paragraphs 3(a) and 3(b) no later than September 30, 2019.
3. That the Registrar impose the following specified terms, conditions and limitations on the

Member's certificate of registration:

- a. Requiring that the Member unconditionally pass the ProBe course in ethics, at his own expense and no later than November 30, 2019;
- b. Requiring that the Member write an essay between 1000-1500 words in length, and provide it to the Registrar, no later than December 20, 2019, that shall be published by the College at a time and in a format determined by the Registrar, on the following issue:
 - i. The lessons he learned in completing the PProBe course.
- c. The Member is a non-clinical naturopath and cannot engage in direct patient care within the scope of practice of the profession, cannot perform, or delegate any controlled acts authorized to the profession, nor accept the delegation of any controlled acts as set out in section 27 of the *Regulated Health Professions Act, 1991*.
 - i. If a total of more than two years pass from the date the term, condition or limitation was placed on the Member's certificate of registration, the Member may not resume practising the profession until he:
 - 1. satisfies the Registration Committee of the College that he possesses the current knowledge, skill and judgment relating to the practice of the profession that would be expected of a member holding a General certificate of registration without a non-clinical term, condition or limitation; or
 - 2. has successfully completed, in the opinion of the Registration Committee, such additional education or training requirements determined to be necessary by the Registration Committee.
 - ii. If two years or less pass from the date the term, condition or limitation was placed on the Member's certificate of registration, the Member may not resume practising the profession until he:

1. successfully completes, to the satisfaction of the Registrar and at his own expense, the College Jurisprudence Course; and
2. successfully completes, to the satisfaction of the Registrar and at his own expense, the Medical Records Course at the University of Toronto.
4. For greater certainty, the Member's obligation to comply with the proposed terms, conditions and limitations on his certificate of registration contained in paragraph 3(a) and 3(b) is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Requiring the Member to pay a fine of not more than \$350 to the Minister of Finance within two months of the date of the hearing.
6. The Member shall pay the College's costs fixed in the amount of \$3,500 payable in a schedule determined by the Registrar.
7. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.

Reasons for Penalty Decision

The Panel considered the Joint Submissions as to Penalty and Costs, as well as submissions from the parties. The Panel recognized that the penalty should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Member's practice.

The Panel also considered the principle that the Panel should accept a joint submission on penalty unless convinced that doing so would bring the process of this College into disrepute and would be contrary to the public interest.

In the circumstances of this case, the penalty proposed by the parties is reasonable and so ordered by the Panel.

The aggravating factors in this case include the nature of the conduct itself, in that the Member falsified documents and lied to both the investigators and the college. The mitigating factors include the fact that the Member readily agreed to the misconduct and recognized his wrongdoing, as well as the fact that he has been a long time member of this profession and this is the first time he has appeared in front of a Discipline Panel.

The penalty order meets the requirement of being both a specific deterrent to the Member, and a general deterrent to the profession for the following reasons:

1. The length of the suspension.
2. The fine.
3. The responsibility to cover some costs of the Discipline process.
4. The extent of the course work required for remediation.
5. The oral reprimand.

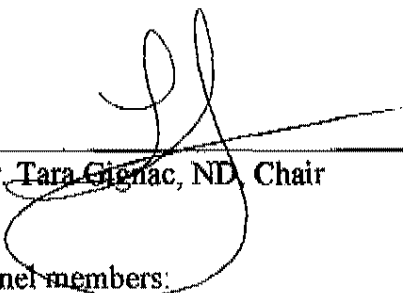
The penalty order meets the requirement of being remedial for the following reasons:

1. The requirement to unconditionally pass the ProBe course in ethics.
2. The requirement to write an essay outlining lessons learned, that will be published for all to learn from.
3. The requirement to complete the College Jurisprudence Course and the Medical Records Course at the University of Toronto, if the member wishes to resume practising the profession within the time specified in the order.

The penalty order meets the requirement to preserve public confidence in the profession to properly regulate its members to serve and protect the public interest. The penalty order is robust and sends a clear message that this matter has been taken seriously.

At the conclusion of the hearing, having confirmed that the Member waived any right to appeal, the Panel delivered its reprimand.

I, Tara Gignac, 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:



Dr. Tara Gignac, ND, Chair

Date May 14, 2019

Panel members:

Dr. Tara Gignac, ND, Chair
Dr. Danielle O'Connor, ND
Dr. Rick Olazabal, ND
Dianne Delany
Samuel Laldin

REPRIMAND

As you know, Dr. Ali, as part of its penalty order this Discipline Panel has ordered you that you be given an oral reprimand. You agreed to this term of order as part of your joint submission on penalty filed during the course of the hearing.

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

Although you will be given an opportunity to make a statement at the end of the reprimand, this is *not* an opportunity for you to review the decision made by the Discipline Panel, *nor* a time for you to debate the merits of our decision.

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

A) Falsifying documents

B) Failing to keep records in accordance with the professions standards of practice.

C) Providing false and/or misleading information to and insurer and to the College of Naturopaths of Ontario.

It is a matter of profound concern to this Panel that you have engaged in these forms of professional misconduct.

Moreover, the result of your misconduct is that you have let down the public, the profession, and yourself.

We need to make it clear to you that your conduct is unacceptable.

Of special concern to us is that fact that the professional misconduct in which you engaged has involved:

1. Lying to an insurance company that the naturopathic profession relies on to make a living and naturopathic patients rely on to access care, and by doing so have put that relationship between insurer and our profession at risk.
2. Even more importantly, your lack of integrity in the matter has decreased the public confidence in naturopathic doctors.

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

We also want to make it clear to you that while the penalty that this Panel has imposed upon you is a fair penalty, a more significant penalty will be imposed by another Discipline Panel in the event that you are ever found to have engaged in professional misconduct again.

As I have already stated, this is not an opportunity for you to review the decision or debate the correctness of the decision, which in any event, was agreed to by you and your counsel.

However, do you have any questions or do you wish to make any comments?

Thank you for attending today. We are adjourned.