

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

PANEL:

Dr. George Tardik, ND (Chair)
Dr. Danielle O'Connor, ND
Dr. Rosemary Hnatiuk, ND
Harpal Buttar (public member)
Deborah Haswell (public member)

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

KAREN BARNES

) REBECCA DURCAN for the
) College of Naturopaths of Ontario
)
) GARY SREBROLOW for
) KAREN BARNES
)
) LUISA RITACCA, Independent
Legal Counsel
)
) Heard: June 21, 2017
)

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee on June 21, 2017 at the College of Naturopaths of Ontario ("the College") at Toronto.

The Allegations

The allegations against Karen Barnes (the "Member") as stated in the Notice of Hearing dated October 27, 2016 are as follows:

1. At all relevant times, Dr. Karen Barnes, ND ("Dr. Barnes, ND") has been a member of the College.

Failure to comply with order of a panel of the ICRC

2. On or about November 5, 2015, a panel of the Inquiries, Complaints and Reports Committee ("ICRC") ordered Dr. Barnes, ND, to successfully complete a Specified Continuing Education or Remediation Program ("SCERP") no later than May 5, 2016 (the "Order").

3. It is alleged that as of October 5, 2016, Dr. Barnes, ND has failed to register for, or successfully complete, the SCERP.

4. It is alleged that the above conduct constitutes professional misconduct pursuant to 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 41 (failing to comply with an order of a panel of the College)

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practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as *withdrawn*, dishonourable or unprofessional) and/or

d. *Allegation Withdrawn*

Failure to co-operate with investigator

5. On or about May 10, 2016, the ICRC approved the appointment of an investigator to determine if Dr. Barnes, ND had committed an act of professional misconduct by failing to comply with an order of the panel of the ICRC.

6. On or about May 17, May 20 and June 1, 2016, the investigator left voicemail, and sent e-mail, messages for Dr. Barnes, ND asking her to contact the investigator to arrange a meeting. It is alleged that Dr. Barnes, ND failed to respond to any of the messages.

7. On or about June 15, 2016, the investigator attended at Dr. Barnes', ND clinic. The investigator had made an appointment under a false name in order to secure a time to see Dr. Barnes, ND. It is alleged that Dr. Barnes, ND told the investigator that she did not respond to the numerous messages as she did not believe that the investigator legitimately represented the College. The investigator asked Dr. Barnes, ND why she had not completed the SCERP and if she was intending to complete the SCERP. It is alleged that Dr. Barnes, ND declined to answer the investigator.

8. Later that day, Dr. Barnes, ND sent an email to the investigator, stating, “I have not taken the [SCERP] as I have done nothing wrong. In a similar situation I would act in exactly the same way. I do not condone murder. I will never condone murder.”

9. On or about June 27, 2016 the investigator contacted Dr. Barnes, ND requesting a time and date for an interview. It is alleged that Dr. Barnes, ND replied the same day and declined to be interviewed. It is alleged that Dr. Barnes, ND asked the investigator to not return to the clinic “uninvited” and not to “pose as a patient as you did last time.”

10. By not responding promptly to the investigator and refusing to meet for an interview, Dr. Barnes, ND failed to co-operate fully with the investigator contrary to subsection 76(3.1) of the Health Professions Procedural Code.

11. It is alleged that the above conduct constitutes professional misconduct pursuant to 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 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)

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 *withdrawn*, dishonourable or unprofessional) and/or

d. *Allegation Withdrawn*

Member's Plea

The Member admitted the allegations set out in the Notice of Hearing, save for those the College sought to withdraw.

The panel conducted an oral plea inquiry and was satisfied that the Member's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts (Exhibit #2)

BACKGROUND

The Member

1. At all relevant times, Dr. Karen Barnes, ND ("Dr. Barnes, ND") has been a member of the College.

2. The Member is currently in significant financial difficulty and has provided information to the College confirming this to be accurate.

Failure to comply with order of a panel of the ICRC

3. On November 5, 2015, a panel of the Inquiries, Complaints and Reports Committee ("ICRC") ordered Dr. Barnes, ND, to successfully complete a Specified Continuing Education or Remediation Program ("SCERP") no later than May 5, 2016 (the "Order"). Attached as Tab "A" is a copy of the Decision and Reasons sent to Dr. Barnes, ND.

4. Dr. Barnes, ND acknowledges receipt of the Decision and Reasons described in paragraph 2.

5. Dr. Barnes, ND did not appeal the Order to the Health Professions Appeal and Review Board.

6. It is agreed that as of October 5, 2016, Dr. Barnes, ND had failed to register for, or successfully complete, the SCERP. However, Dr. Barnes, ND did attend and unconditionally passed the SCERP on March 24-26, 2017. Dr. Barnes, ND advised the Registrar that as a result of completing the SCERP,

- a. she has identified areas in which she can improve her practice;
- b. she is better equipped to put the patient "first";
- c. she now understands the role of the College and that it is mandated to serve and protect the public; and
- d. she now appreciates that her actions reflect the profession as a whole.

7. It is agreed that it is a standard of the profession to comply with orders of a College committee. It is agreed that Dr. Barnes, ND contravened this standard in light of the above.

8. It is agreed that the above conduct constitutes professional misconduct pursuant to 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 41 (failing to comply with an order of a panel of the College); 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 dishonourable or unprofessional).

Failure to co-operate with investigator

9. On May 10, 2016, the ICRC approved the appointment of an investigator to determine if Dr. Barnes, ND had committed an act of professional misconduct by failing to comply with an order of the panel of the ICRC.

10. On May 17, May 20 and June 1, 2016, the investigator left voicemail, and sent e-mail, messages for Dr. Barnes, ND asking her to contact the investigator to arrange a meeting. The investigator used the contact information as provided by Dr. Barnes, ND to the College. It is agreed that Dr. Barnes, ND failed to respond to any of the messages.

11. On June 15, 2016, the investigator attended at Dr. Barnes', ND clinic. The investigator had made an appointment under a false name in order to secure a time to see Dr. Barnes, ND. It is agreed that Dr. Barnes, ND told the investigator that she did not respond to the numerous messages as she did not believe that the investigator legitimately represented the College. The investigator asked Dr. Barnes, ND why she had not completed the SCERP and if she was intending to complete the SCERP. It is agreed that Dr. Barnes, ND declined to answer the investigator.

12. Later that day, Dr. Barnes, ND sent an email to the investigator, stating, "I have not taken the [SCERP] as I have done nothing wrong. In a similar situation I would act in exactly the same way. I do not condone murder. I will never condone murder." Attached as Tab "B" is a copy of the email.

13. On or about June 27, 2016 the investigator contacted Dr. Barnes, ND requesting a time and date for an interview. It is agreed that Dr. Barnes, ND replied the same day by email and declined to be interviewed. It is agreed that Dr. Barnes, ND asked the investigator to not return to the clinic "uninvited" and not to "pose as a patient as you did last time." Attached as Tab "C" is a copy of the email.

14. By not responding promptly to the investigator and refusing to meet for an interview, Dr. Barnes, ND failed to co-operate fully with the investigator contrary to subsection 76(3.1) of the Health Professions Procedural Code.

15. It is agreed that it is a standard of the profession to comply with the requirements as set out in s. 76(3.1) of the Health Professions Procedural Code. It is agreed that the member contravened this standard in light of the above.

16. It is agreed that the above conduct constitutes professional misconduct pursuant to 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 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); 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 dishonourable or unprofessional) .

ADMISSION OF PROFESSIONAL MISCONDUCT

- 1. By this document, Dr. Barnes, ND admits to the truth of the facts referred to in paragraphs 1 to 16 above (the "Agreed Facts").
- 2. By this document Dr. Barnes, ND states that:
 - (a) she understands fully the nature of the allegations against her;
 - (b) she has no questions with respect to the allegations against her;
 - (c) she understands that by signing this document she is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
 - (d) she understands that by admitting the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
 - (e) she understands that depending on the penalty ordered by the Discipline Committee, the decision of the Committee and a summary of its reasons, including reference to her name, may be published in the College's annual report and any other publication or website of the College;
 - (f) she understands that any agreement between her and the College with respect to the penalty proposed does not bind the Discipline Committee;
 - (g) she understands and acknowledges that she is executing this document voluntarily, unequivocally, free of duress, free of inducement or

bribe, and that she has been advised of her right to seek legal advice and that she has received such advice.

19. In light of the Agreed Facts and the admission of professional misconduct, the College of Naturopaths of Ontario and Dr. Barnes, ND submit that the Discipline Committee should find that Dr. Barnes, ND has committed professional misconduct.

Decision

The panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Member committed acts of professional misconduct as alleged in paragraphs numbered 4(a), (b), (c) (dishonourable and unprofessional only), 11(a), (b) and (c) (dishonourable and unprofessional only) of the Notice of Hearing.

Reasons for Decision

The panel considered the Agreed Statement of Facts and the Member's plea and finds that the facts in this case support findings of professional misconduct as alleged in the Notice of Hearing. The facts in this case support the allegations that Dr. Barnes, ND is guilty of professional misconduct under a number of headings. In particular she, failed to abide by an order of the ICRC and failed to cooperate with an investigator for the College. Dr. Barnes', ND conduct falls below the standards of the profession, was a breach of the governing legislation and ultimately would be regarded by members of the College as dishonourable and unprofessional.

The panel was satisfied that Dr. Barnes, ND was aware of the deadline to complete the educational program as directed by the ICRC, but chose to ignore it. The College provided her with multiple opportunities to comply. Additionally, the panel was satisfied that Dr. Barnes, ND failed to co-operate fully with the College investigator. The panel finds the Member's conduct would be reasonably regarded by members as dishonorable and unprofessional. Compliance with any orders from statutory committees is vital to the College's ability to regulate its member and to the public's confidence in the College to do so effectively.

Penalty Submissions

Counsel for the College advised the panel that a Joint Submission on Order and Costs had been agreed upon (Exhibit #3). The Joint Submission provides as follows:

1. Requiring Dr. Barnes, ND to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend Dr. Barnes's, ND certificate of registration for a period of three (3) months, on a schedule to be set by the Registrar, two (2) months of which shall be remitted if Dr. Barnes, ND complies with the provisions of paragraph 3 of this Joint Submission as to Penalty and Costs by no later than August 31, 2017.
3. Directing the Registrar to impose the following specified terms, conditions and limitations on Dr. Barnes's, ND certificate of registration:
 - a. Requiring that Dr. Barnes, ND write an essay between a 500-1000 words, and provide it to the Registrar, no later than September 30, 2017, that shall be published by the College at a time and in a format determined by the Registrar, on the following issues:
 - i. the lessons she learned at the SCERP ordered by the Inquiries, Complaints and Reports Committee; and
 - ii. the importance of naturopaths co-operating with College investigators and to provide the essay to the Registrar; and
 - b. Requiring Dr. Barnes, ND provide the Registrar with a letter of apology to the public and the profession, no later than September 30, 2017, that shall be published by the College at a time and in a format as determined by the Registrar, on the following issues:
 - i. her failure to comply with an order of the Inquires, Complaints and Reports Committee of the College and her failure to cooperate with an investigation being conducted by the College; and
 - ii. the potential negative the impact of her decisions.
4. For greater certainty, Dr. Barnes's, ND obligation to comply with the proposed terms, conditions and limitations on her certificate of registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Dr. Barnes, ND shall pay the College's costs fixed in the amount of \$4000 within four (4) years of the date of this order. A payment schedule of at least \$1000 per year is included in this order.

6. Dr. Barnes, ND acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
7. Dr. Barnes, ND acknowledges that she has had the opportunity to receive, and has in fact received, independent legal advice.

Penalty and Costs Decision

The panel accepts the Joint Submission and accordingly orders:

1. Dr. Barnes, ND to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. The Registrar to suspend Dr. Barnes's, ND certificate of registration for a period of three (3) months, on a schedule to be set by the Registrar, two (2) months of which shall be remitted if Dr. Barnes, ND complies with the provisions of paragraph 3 of this Joint Submission as to Penalty and Costs by no later than August 31, 2017.
3. The Registrar shall impose the following specified terms, conditions and limitations on Dr. Barnes's, ND certificate of registration:
 - a. Requiring that Dr. Barnes, ND write an essay between a 500-1000 words, and provide it to the Registrar, no later than September 30, 2017, that shall be published by the College at a time and in a format determined by the Registrar, on the following issues:
 - i. the lessons she learned at the SCERP ordered by the Inquiries, Complaints and Reports Committee; and
 - ii. the importance of naturopaths co-operating with College investigators and to provide the essay to the Registrar; and
 - b. Requiring Dr. Barnes, ND provide the Registrar with a letter of apology to the public and the profession, no later than September 30, 2017, that shall be published by the College at a time and in a format as determined by the Registrar, on the following issues:
 - i. her failure to comply with an order of the Inquires, Complaints and Reports Committee of the College and her failure to cooperate with an investigation being conducted by the College; and

- ii. the potential negative the impact of her decisions.
4. For greater certainty, Dr. Barnes's, ND obligation to comply with the proposed terms, conditions and limitations on her certificate of registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. Dr. Barnes, ND shall pay the College's costs fixed in the amount of \$4000 within four (4) years of the date of this order. A payment schedule of at least \$1000 per year is included in this order.

Reasons for Penalty Decision

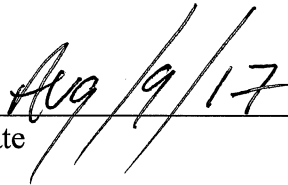
In considering the appropriateness of the joint penalty proposed, the panel was mindful of its obligations when asked to review a joint submission. The panel understands that it should not depart from a joint submission on penalty unless accepting it would bring the administration of this process into disrepute or otherwise be contrary to the public interest. In this case, the panel is satisfied that the proposed penalty is reasonable and is in the public interest. The penalty acts as both a specific and general deterrent and it will provide the Member with an opportunity to learn from her actions.

It is of significant concern to this panel that the Member chose to not comply with an order of the ICRC or to cooperate with the College investigator. Multiple attempts by the College to assist the Member were ignored.

This conduct suggests a lack of governability on the Member's part. The suspension, fine and oral reprimand serve as deterrence for the Member. The penalty sends a clear message to the membership that failing to comply with an order of any statutory committee will not be tolerated. The decision by the panel serves to protect the public. The panel trusts that the Member has learned her lesson and now understands that it is imperative for members of this College to be responsive to the College's inquiries and directions.

I, George Tardik, 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:


Chairperson


Date

Names of panel members

Dr. George Tardik, ND (Chair)
Dr. Danielle O'Connor, ND
Dr. Rosemary Hnatiuk, ND
Harpal Buttar (public member)
Deborah Haswell (public member)