

BOARD OF DIRECTORS OF DRUGLESS THERAPY - NATUROPATHY

PANEL:	Patricia Rennie	Panel Chair
	Belinda Clarke	
	Sheila Jaggard	

BETWEEN:

BOARD OF DIRECTORS OF DRUGLESS)	Bonnie Ellis for the Board of Directors of
THERAPY - NATUROPATHY)	Drugless Therapy - Naturopathy
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)	
- and -)	
)	
Alyson Munkley, ND (#1308))	
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)	Mikel C. Pearce for the Registrant
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Luisa Ritacca

Independent Legal Counsel

Heard: December 9, 2014

DECISION AND REASONS

This matter came on for hearing before a panel of the Board of Drugless Therapy - Naturopathy (the “Board”) on December 9, 2014 at the Board office at Toronto.

The Allegations

The allegations against Alyson Munkley, ND (the “Registrant”) as stated in the Notice of Hearing dated July 15, 2014 are as follows.

1. You have committed an act or acts of misconduct as provided by subsection 30(1) of Ontario Regulation 278, R.R.O. 1990, as amended, and as defined in paragraph 2(w) of the definition of Professional Misconduct/Incompetence established by the Board of Directors of Drugless Therapy-Naturopathy in that, you contravened standards of practice or guidelines of practice set by the Board of Directors of Drugless Therapy-Naturopathy, and, in particular, you:
 - (a) Between approximately 2012 and 2013, you contravened the Board’s Record Keeping Standards of Practice for Naturopathic Doctors (“the Record Keeping Standard”) in relation to individuals who purchased Hemocode Food Intolerance testing through Rexall pharmacies and received invoices for naturopathic services under your name and Board registration number, including L.V., E.W., T.S., D.M., J.L., M.L., and/or W.B. and, in particular, you:
 - (i) *Withdrawn*;
 - (ii) Failed to comply with the requirements set out in Appendix 1 to the Board’s Record Keeping Standard;
 - (iii) *Withdrawn*;
 - (b) Between approximately 2012 and 2013, you contravened the Board’s *Policy for Limited Naturopathic Practice* in relation to individuals who purchased Hemocode Food Intolerance testing through Rexall pharmacies and received invoices for naturopathic services under your name and Board registration number, including L.V., E.W., T.S., D.M., J.L., M.L., and/or W.B., when you failed to:
 - (i) *Withdrawn*;
 - (ii) Ensure, prior to the commencement of care, they were advised you were practicing under a limited scope of practice; and/or
 - (iii) Obtain their informed consent, prior to commencing treatment, with respect to your limited scope of practice;
 - (c) Between approximately 2012 and 2013, you contravened the Board’s *Standards of Practice and Performance Expectations for Consent* in relation to individuals who purchased Hemocode Food Intolerance testing through Rexall pharmacies and received invoices for naturopathic services under your name and Board registration number, including L.V., E.W., T.S., D.M., J.L., M.L., and/or W.B., when you failed to:

- (i) Obtain informed consent in relation to your provision of naturopathic services;
 - (ii) *Withdrawn*;
 - (iii) *Withdrawn*;
- (d) *Withdrawn*;
 - (i) *Withdrawn*;
 - (ii) *Withdrawn*;
 - (iii) *Withdrawn*;
- 2. You have committed an act of misconduct as provided by subsection 30(1) of Ontario Regulation 278, R.R.O. 1990, as amended, and as defined in paragraph 2(r) of the definition of Professional Misconduct/Incompetence established by the Board of Directors of Drugless Therapy-Naturopathy (“the Board”) in that, between approximately 2012 and 2013, you issued or allowed to be issued to individuals purchasing Hemocode Food Intolerance test through Rexall pharmacies, invoices that were false or misleading.
- 3. You have committed an act or acts of misconduct as provided by subsection 30(1) of Ontario Regulation 278, R.R.O. 1990, as amended, and as defined in paragraph 2(r) of the definition of Professional Misconduct/Incompetence established by the Board of Drugless Therapy-Naturopathy (“the Board”) in that, you committed conduct or an act relevant to the practice of naturopathic medicine that, having regard to all the circumstances, would reasonably be regarded by naturopathic doctors as unprofessional or incompetent and, in particular:
 - (a) Between approximately 2012 and 2013, you issued or allowed to be issued to individuals purchasing a Hemocode Food Intolerance test through Rexall pharmacy, invoices that were false or misleading;
 - (b) Between approximately 2012 and 2013, you allowed your name and status as a Naturopathic Doctor to be associated with the Hemocode Food Intolerance test in circumstances where you knew or ought to have known that this could be seen by consumers and potential consumers as an endorsement of the test by an ND;
 - (c) *Withdrawn*;
 - (d) Between approximately 2012 and 2013 you assigned to Rexall and/or Gemoscan staff, significant components of the naturopathic care provided to individuals purchasing a Hemocode Food Intolerance test through Rexall pharmacies, including L.V., E.W., T.S., D.M., J.L., M.L., and/or W.B.

Registrant's Plea

The Registrant admitted the allegations set out in paragraphs 1 (a), ii, (b), ii, iii, (c), i, 2, 3 (a) (b) and (d), in the Notice of Hearing. The panel also conducted an oral plea inquiry and was satisfied that the Registrant's admission was voluntary, informed and unequivocal.

Agreed Statement of Facts

Counsel for the Board and the Registrant advised the panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads as follows.

The Member

1. Alyson Munkley, ND ("the Registrant") has been registered with the Board of Directors of Drugless Therapy - Naturopathy ("the Board") as an ND since 2005, after graduating from the Canadian College of Naturopathic Medicine.
2. At the time of the incidents described below, the Registrant was employed as an ND with Gemoscan Canada Inc. ("Gemoscan") and also practised through *Thornbury Integrated Wellness* in Thornbury, Ontario and *Deer Park Naturopathic Clinic* in Toronto.
3. None of the concerns described below relate to the Registrant's practice at either *Thornbury Integrated Wellness* or *Deer Park Naturopathic*.

The Complaint/Initiating Information

(i) The Other Registrant

4. In August 2010 and May 2011, the Board received two separate complaints regarding M.J., another Board registrant.
5. Both complaints related to M.J.'s role and involvement with Gemoscan Inc. ("Gemoscan"), and a food intolerance test called "the Hemocode test" that Gemoscan was offering.
6. The first complaint was lodged by a member of the public and related to M.J.'s role vis-a-vis Hemocode tests being conducted directly through the Gemoscan office.
7. With respect to the second complaint, this consisted of two pieces of correspondence from separate individuals who asked to remain anonymous but expressed concern regarding M.J.'s role in relation to the Hemocode test as it was being offered through Rexall Pharmacies ("Rexall").

8. Specifically, the author of the first anonymous letter alleged that individuals who inquired about the Hemocode test were being advised by Rexall staff that the \$450 cost could be covered as a naturopathic service through extended health insurance benefits. Included with the anonymous letter was a sample invoice from Rexall showing the cost of the Hemocode test/system billed as four separate naturopathic consultations with M.J.
9. According to the second anonymous piece of correspondence (an email), the blood samples necessary for Hemocode testing/system were being obtained at Rexall and subsequently sent to Gemoscan. The test results were then being forwarded to M.J. and interpreted by her.
10. The author of the email expressed concern that Rexall was issuing receipts describing the test as a naturopathic service performed by M.J., despite the fact that consumers could go through the entire testing process without ever speaking to her. The author also expressed concern that patients may be opting for the Hemocode test instead of the author's own allergy testing because of the possibility of insurance reimbursement.
11. Both pieces of anonymous correspondence were sent to an External Reviewer for the purpose of assessing whether the concerns warranted a formal complaint with the Board.
12. On July 28, 2011, after reviewing the anonymous complaints, the External Reviewer lodged the second formal complaint regarding M.J.'s role in the Hemocode testing/system being offered through Rexall and the manner in which the test was being represented on Rexall invoices.
13. Both complaints against M.J. were investigated, which resulted in the CRC obtaining additional information regarding Gemoscan.

(ii) Gemoscan

14. According to its website, Gemoscan “develops, owns and markets comprehensive food sensitivity and dietary management solutions for consumers, including the HEMOCODE™ Food Intolerance System (“the Hemocode test/system”), and MenuWise™ Food Intolerance Plan, personalized naturopathic nutritional programs that promote well-being”.
15. The Hemocode test/system is described on its own website as follows:

The HEMOCODE™ Food Intolerance System acts to identify specific food intolerances and helps deliver dietary wellness. You may be able to eliminate unnecessary suffering caused by complaints such as chronic fatigue, headaches, eczema, acne, constipation, IBS, weight imbalance, back pain, arthritis and fibromyalgia. HEMOCODE™ is the most comprehensive approach towards the management of food sensitivities available to consumers today. Under supervision by naturopathic doctors, it aids in the management of potentially physically reactive foods

and provides personalized dietary guidelines, replacement food suggestions and more- all based on your personal report created by naturopathic doctors.

16. The Hemocode test/system, which requires a blood sample obtained via lancet (finger prick), includes a consultation and support from an ND, a detailed personalized report listing food intolerances, tips on nutritional and dietary wellness and recommendations for vitamins and supplements as well as,

[o]ngoing follow-up consultations with licensed Doctors of Naturopathic Medicine, Chiropractors, Pharmacists, Medical Doctors or other licensed health care professionals all certified to provide HEMOCODE™, all there to support you in managing your food intolerances and achieving long term dietary wellness.

(iii) Undercover Investigation

17. During its investigation into the two complaints against M.J., the CRC also obtained additional information regarding the manner in which Hemocode tests were being offered through Rexall. Specifically, the investigator contacted Gemoscan directly, posing as a patient, to make inquiries regarding the Hemocode test/system.
18. Through her discussions with Gemoscan, the investigator was advised that the Hemocode test was being offered through various Rexall pharmacy locations at a cost of \$450 and that the results, together with an invoice identifying naturopathic services, would be provided to her. The investigator was also advised that Gemoscan employs two NDs, one of whom was M.J. and the other the Registrant.
19. The investigator subsequently attended a Rexall store on December 23, 2011, posing as patient "AH", to inquire about and obtain a Hemocode test.
20. The investigator spoke to a Rexall pharmacist, who advised her of the following:
 - (a) she could obtain a Hemocode test that day for a cost of \$450;
 - (b) after the test was completed off-site, the results would be sent back to Rexall and reviewed with the investigator, who would receive a receipt with the Registrant's name and registration number; and
 - (c) the cost of the test might be covered by her insurance company.
21. After the investigator agreed to take the test, she was brought to a consultation room and asked to fill out various forms including an intake form and a consent form (Appendix "A").

22. Nowhere in the forms, in the pharmacy or during the investigator's discussions with the Rexall pharmacist was she clearly advised that the ND involved in the test was practising under a limited scope of practice in relation to the naturopathic services the investigator would receive.
23. Once the paperwork was completed, the pharmacist put on plastic gloves, pricked the investigator's finger and collected several drops of her blood in a vial.
24. The investigator then paid \$450 for the test and was provided with a receipt for the test itself, under the name of the pharmacist (Appendix "B").
25. The pharmacist advised the investigator that she would need to return in approximately eight business days to collect the results, at which time she would receive an Invoice with an ND's name and four consultation dates totaling \$450.
26. As the pharmacist explained it to the Investigator, the day of the blood sample was considered the first consultation date, the off-site lab performing the Hemocode test/system was the second consultation date, the ND review the results was the third consultation date and the Investigatory returning to obtain the results from Rexall was the fourth consultation date.
27. The investigator returned to the Rexall store on January 9, 2012 and met with "Andrea", a "Health Living Advisor". Andrea reviewed the investigator's test results with her in a consultation room, including a handwritten note from M.J. indicating that she had reviewed the results and inviting the Investigator to contact her with any questions (Appendix "C").
28. They also reviewed the invoice and "Andrea" advised the Investigator that that the cost of the Hemocode test/system was broken down into four dates because insurance companies pay a certain amount per visit (Appendix "D").

(iv) Amanda Jones, GreenShield Canada

29. On January 16, 2012, the investigator contacted Amanda Jones ("Ms. Jones"), Benefit Utilization Analyst at GreenShield Canada (GSC).
30. After speaking with Ms. Jones by phone, the investigator sent her an email describing her attendance at Rexall for the Hemocode test and attaching copies of the invoices she had received. The investigator asked Ms. Jones to comment on whether the receipt would be eligible for insurance coverage.
31. During their subsequent telephone call, Ms. Jones stated that they were denying claims from Rexall with the Hemocode logo and that GSC was conducting an investigation into the matter.
32. She also advised the investigator that GSC may consider a Hemocode invoice identifying four dates for naturopathic services to be false and misleading.

33. If the Registrant were to testify, the Registrant would state that she has not been advised by GSC, verbally or in writing, that they are investigating any of the above.
34. After obtaining the results report from her Hemocode test through Rexall, the investigator conducted interviews with various Gemoscan staff, including the Registrant.

(v) The Registrant's Interview

35. During the Registrant's interview in April 2012, she provided the following information:
- she had been employed by Gemoscan as an ND since November 2011 on a part-time basis and that she played a similar role to M.J. in Rexall's Hemocode testing process;
 - Gemoscan was offering Hemocode testing through approximately 400 Rexall Pharmacies and Pharma Plus pharmacies;
 - she was working approximately 10 hours per week for Gemoscan but through her home office: she did not work at the Gemoscan office;
 - her responsibilities at Gemoscan included:
 - reviewing completed intake forms for Hemocode tests;
 - providing feedback on reports to Gemoscan;
 - consulting with pharmacists; and
 - communicating with clients
 - the Rexall Hemocode testing process includes the following steps:
 - an individual interested in the Hemocode test would meet with a pharmacist, pharmacist technician or Health Living Advisor;
 - the individual would complete an intake form;
 - the individual would prick their finger with a lancet provided by the pharmacy staff person to collect a few drops of blood;
 - the blood and the intake form would be sent to Gemoscan;
 - Gemoscan would email the intake form to her, which she would review, and while Gemoscan lab technicians would conduct the blood test that would generate the individual's results report, which would be sent to her by email;

- she would review the results report and author a note for the individual advising him/her of this and the fact that she could be contacted directly if the individual had additional questions;
- the complete report, including her note are then sent back to Rexall for the individual to pick up;
- the cost of the Hemocode test is \$450, which is reflected in an invoice under the ND's name and registration number and broken down into four dates described as "naturopathic services";
- the four dates represent the following steps in the testing process:
 - day the client attends Rexall and blood sample is taken;
 - day the ND reviews the intake form;
 - day the test is run and the results report generated; and
 - day the ND reviews the results report and authors the note;
- she estimated that she reviews approximately 0-8 Hemocode test results per week;
- M.J. advised her that she had contacted the Board to confirm that the process of assigning naturopathic care to the pharmacy staff was acceptable and the Board told her it was;
- M.J. and Gemoscan also advised her that the invoice reflected four separate dates as the insurance companies M.J. had spoken to did not have a concern with that format and liked to see it that way;

(vi) The Complaint Against the Registrant

36. In September 2012, the Complaints Resolution Committee (CRC) forwarded the additional information gathered during its investigation into the two M.J. complaints to the External Reviewer, including the information regarding the Registrant's role in the Hemocode testing process.
37. The following month, the External Reviewer lodged a complaint with the Board regarding the Registrant's role and practice in relation to Hemocode tests being offered through Rexall.
38. Specifically, the External Reviewer identified various Board practice standards, policies and guidelines, which he felt were being contravened by virtue of the Registrant's role in Rexall's Hemocode testing process and recommended that these concerns warranted further investigation.

(vii) The Registrant's Response

39. The Registrant was provided with an opportunity to respond to the External Reviewer's complaint, which she did, through counsel in January 2013. In her response the Registrant states:

On the issue of invoices:

- The invoices are broken down into four dates to reflect the four separate components involved in the service. Gemoscan does not charge for a "special test" and only charges for naturopathic services and consultations.

On the issue of assigning care to non-NDs:

- She assigns care to the Rexall staff member for the purposes of conducting the initial intake with the client;
- The Board has no written policy regarding the assignment of care and all of the individuals to whom she assigns care have been trained by M.J. or herself on immune food intolerances through a course accredited by the Canadian Council on Continuing Education in Pharmacy;
- There is no requirement that she meet with the client prior to testing; any such requirement would defeat the purpose of having assigned care;

On the issue of her role in relation to Hemocode testing as a limited naturopathic practice:

- The Hemocode Food Intolerance System is not a method of diagnosis and treatment;
- The Consent to Participate Forms used for the Hemocode test make it clear that it is not intended to diagnose, treat, cure or prevent any disease and that it is not a substitute for professional medical advice or treatment for any medical condition, however, she was willing to work with the Board to revise the current consent forms to make her role as an ND practising under a limited scope of practice more explicit;
- Where the scope of practice is limited to dietary nutritional counseling for the management of food intolerances, a physical examination is not necessary prior to the completion of testing and nothing is to be gained by performing one.

The CRC's Investigation

(i) The Patient Files

40. Based on the concerns identified by the External Reviewer, the results of their investigation regarding M.J., and the Registrant's response, the CRC commenced a formal investigation into the Registrant's role and practice vis-a-vis Rexall Hemocode testing. Through that process, the investigator obtained from the Registrant a list of the Rexall clients with whom she had some involvement for the purpose of their Hemocode test.
41. From that list, the investigator randomly selected seven patient files (for patients L.V., E.W., T.S., D.M., J.L., M.L. and W.B.), which she requested and received from the Registrant. A copy of the full patient file for L.V. and copies of the significant portions of the patient files for the remaining six patients are attached as Appendix "E".
42. The patient files together with the investigation materials and the Registrant's response were sent to an independent expert in naturopathic medicine for review and comment.

(ii) The Expert Report

43. The independent expert came to the following conclusions:
 - (a) the Registrant was practising naturopathic medicine in relation to Gemoscan and in relation to Rexall clients;
 - (b) the Registrant breached the Board's *Record Keeping Standard of Practice for Naturopathic Doctors* with respect to the seven patients insofar as:
 - (i) the charts do not record any of the other health care providers involved in the patients' care as required by Appendix I;
 - (ii) the manner in which the Hemocode test/system was billed as four different dates of naturopathic services without a fee listed for the test is in contravention of paragraph 2.1;
 - (c) the Registrant breached paragraph 4.0 of the Board's Standards of Practice and Performance Expectations for Consent with respect to the seven patient charts insofar as there were no naturopathic- specific consent forms;
 - (d) the Registrant breached paragraphs 2 and 3 of the Board's *Policy for Limited Naturopathic Practice* with respect to the seven patient charts in relation to:
 - (i) her failure to specifically post/advise clients that she was practising under a limited practice; and
 - (ii) her failure to obtain informed consent specific to the limited nature of her naturopathic practice.

44. Further to point (b)(ii), above, the expert also opined that information on the Hemocode website would provide the public with a strong perception that that they would receive personalized expert advice from a registered naturopathic doctor.

The Board's Standards, Policies and Guidelines

(i) Policy for Limited Naturopathic Practice

45. The Board's Policy for Limited Naturopathic Practice (Appendix "F") specifically refers to the Board's definition of the scope of practice of naturopathic medicine and contains the following caution for discipline proceedings:

[T]he Disciplinary Committee must refer to the above scope statement to analyze what treatments were given, what treatments were possible and what treatments were not given. The Committees also have to consider whether the patient was informed of their options.

Confusion on the part of the public and resultant complaints to the Board have arisen when registrants limit their practice to one, or a few modalities.

46. The Policy goes on to provide the following requirements for NDs practising under a limited scope of practice:
- (a) clearly posting or supplying to all patients prior to commencing care information that the ND is restricting her practice to one or a few treatment modalities; and
 - (b) the ND must obtain informed consent with respect to the limited practice.

(ii) Record Keeping

47. Paragraph 3.0 of the Board's Record Keeping Standard of Practice for Naturopathic Doctors (Appendix "G") sets out the general criteria that all patient charts are expected to meet. The Board's specific expectations regarding chart content and format are set out in Appendix I and Appendix II of the Record Keeping Standard, respectively.
48. With respect to the content of patient records, Appendix I sets the expectation that the following details (among others) will be included:
- (a) record of consent; and
 - (b) identity of other healthcare providers involved in assessment or treatment.
49. Paragraph 2.1 of the Record-Keeping Standard sets out the requirements for receipts, including the expectation that:

Fees are properly itemized. For example, fees for naturopathic consultation are separated from all other fees. Fees for supplements, PT injectibles, devices, special testing etc., are listed separately, either on the same or another receipt. (Emphasis added).

ADMISSIONS

50. The Registrant admits the following in relation to individuals who purchased a Hemocode Food Intolerance test through Rexall pharmacies and received invoices for naturopathic services under her name and Board registration number, including L.V., E.W., T.S., D.M., J.L., M.L., and W.B., and in particular, the Registrant admits that:
- (a) she committed an act or acts of misconduct as set out in paragraph 1(a)(ii) of the Notice of Hearing when she contravened the Board's *Record Keeping Standards of Practice for Naturopathic Doctors* when she failed to record the other healthcare providers involved in their care, as required by Appendix I;
 - (b) she committed an act or acts of misconduct as set out in paragraphs 1(b)(ii) and 1(b)(iii) of the Notice of Hearing when she contravened the Board's *Policy for Limited Naturopathic Practice* when she failed to:
 - (i) ensure, prior to the commencement of care, they were advised she was practising under a limited scope of practice; and
 - (ii) obtain their informed consent, prior to commencing treatment, with respect to her limited scope of practice
 - (c) she committed an act or acts of misconduct as set out in paragraph 1(c)(i) of the Notice of Hearing when she contravened the Board's Standards of Practice and Performance Expectations for Consent when she failed to obtain informed consent in relation to her provision of naturopathic services;
 - (d) she committed acts of misconduct as set out in paragraph 2 of the Notice of Hearing when she allowed to be issued invoices that were false or misleading;
 - (e) she engaged in conduct that, in the circumstances described above, would reasonably be regarded by naturopathic doctors as unprofessional as set out in paragraphs 3(a), 3(b) and 3(d) of the Notice of Hearing when she:
 - (i) allowed to be issued invoices that were false or misleading;
 - (ii) allowed her name and status as a Naturopathic doctor to be associated with the Hemocode Food Intolerance test in circumstances where she knew or ought to have known that this could be seen by consumers and potential consumers as an endorsement of the test by an ND;

- (iii) assigned to Rexall staff, significant components of the naturopathic care provided to the purchasers of the Hemocode Food Intolerance tests.

Leave to Withdraw

51. The prosecution seeks leave to withdraw allegations 1(a)(i), 1(a) (iii), 1(b)(i), 1(c)(ii), 1(c)(iii), 1(d)(i), 1(d)(ii), 1(d)(iii) and 3(c).

Decision

The panel finds that the Registrant committed acts of professional misconduct as alleged in paragraphs 1 (a), ii, (b), ii, iii, (c), i, 2, 3 (a) (b) and (d) of the Notice of Hearing.

Reasons for Decision

The panel considered the Agreed Statement of Facts and the Registrant's plea and finds that this evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

The facts in this case support the allegations that Ms. Munkley is guilty of professional misconduct under a number of headings. In particular she:

- failed to advise patients that she was practising under a limited scope of practice;
- failed to obtain informed consent from patients in relation to her practice of naturopathic medicine;
- failed to meet the Board's Standard of Practice on Record Keeping ; and
- committed conduct which would reasonably be regarded by naturopathic doctors as unprofessional, or incompetent by allowing her name and/or registration number to appear in invoices where she knew or ought to have known that the invoices were misleading and might be submitted for reimbursement to insurance companies.

The Panel agreed that the facts as agreed upon amount to professional misconduct as alleged and admitted.

Penalty Order

Counsel for the Board and the Registrant advised the panel that a Joint Submission on Order had been agreed upon. The Joint Submission requests that this panel make an order as follows.

1. That the Registrant's certificate of registration be suspended for a period of two (2) weeks. The suspension shall commence on January 5, 2015 and run, uninterrupted, until 11:59 pm on January 18, 2015; and
2. That the Registrant shall pay to the Board, by certified cheque, on December 9, 2014, the sum of \$500.00, representing partial reimbursement of the legal costs and expenses incurred by the Board in relation to this matter.

Penalty Submissions

Submissions were made by the Board's Counsel and the Registrant's Counsel

The parties agreed that the mitigating factors in this case were:

- this was the Registrant's first time before a disciplinary panel of the Board,
- Ms. Munkley presented with a Joint Submission on Order and Costs and the admission itself is seen as an expression of remorse,
- the undertaking the Registrant agreed to contains significant remediation to be completed by Ms. Munkley at her own expense,
- she has agreed voluntarily to be in compliance in future with all standards,
- despite seeking clarification from another Registrant and Gemoscan that the behavior entered into was 'ok' Ms. Munkley is still taking responsibility for her independent role in the 'scheme',
- Ms. Munkley's decision to admit to certain of the allegations alleviated the need for a fully contested hearing, thereby saving the Board considerable time and resources.

The parties agreed that the aggravating factors in this case were:

- the nature of the misconduct with respect to misleading invoices is significant as the profession is largely supported by third party insurance and antagonizing insurers potentially risks the livelihood of other members of the profession.

Penalty Decision

The panel accepts the Joint Submission as to Order and accordingly orders:

1. That the Registrant's certificate of registration be suspended for a period of two (2) weeks. The suspension shall commence on January 5, 2015 and run, uninterrupted, until 11:59 pm on January 18, 2015; and
2. That the Registrant shall pay to the Board, by certified cheque, on December 9, 2014, the sum of \$500.00, representing partial reimbursement of the legal costs and expenses incurred by the Board in relation to this matter.

Reasons for Penalty Decision

The panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the Board to regulate its registrants. This is achieved through a penalty order that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The panel also considered the penalty in light of the principle that joint submissions should not be interfered with lightly.

The panel concluded that the proposed penalty is reasonable and in the public interest. The Registrant has co-operated with the Board and, by agreeing to the facts and a proposed penalty, has accepted responsibility. The panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

The proposed penalty provides for general deterrence through:

- a two week suspension which sends a message to the rest of the profession, the public and insurers that this behavior is not to be tolerated;
- a \$500 reimbursement to the Board; and
- publication of the details of the case.

The proposed penalty provides for specific deterrence through;

- each of the general deterrents above will also act as a specific deterrent, particularly having her name published with the details of the case. In addition, Ms. Munkley has signed an undertaking with the Board which requires that she complete a number of remedial activities including, meeting with a practice Expert to review Board publications. She also agreed to receive an oral reprimand from the discipline panel which was delivered by the panel chair, and which has been reproduced at the end of these reasons.

The proposed penalty provides for remediation and rehabilitation through:

- the undertaking Ms. Munkley has agreed to which provides for remediation and rehabilitation. Ms. Munkley has agreed to meet with a practice Expert to review her understanding of Board publications, the impact of her conduct and strategies to prevent similar conduct in the future. Ms. Munkley has agreed to incur the costs for these meetings.

Overall the public is protected because Ms. Munkley has admitted to her wrongdoings and agreed to an appropriate and significant penalty which includes remedial and rehabilitative activities to ensure her behaviour henceforth is appropriate and that she complies with all Board standards, policies and guidelines. Publication of the outcome of this hearing will send a strong message to other members of the profession, the public and insurers that the Board takes this kind of behaviour very seriously.

The panel also agreed that the penalty is in line with what has been ordered in previous cases.

At the end of the hearing, the panel delivered its reprimand to the Registrant, which is attached to the end of these reasons.

I, Patricia Rennie, 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 January 9, 2015

Belinda Clarke

Sheila Jaggard

Oral Reprimand

Ms. Munkley you are aware that as part of your undertaking you have agreed to attend before this panel to receive an oral reprimand. While this is not an opportunity for you to argue the panel's findings, at the end of our remarks I will give you an opportunity to speak if you so choose.

The panel appreciates that you have come before us with an Agreed Statement of Fact. We are well aware that as a contested hearing this case would have consumed considerable resources - both yours and the Board's including the personal and professional time of board members, staff and legal counsel. We understand that by coming before us you have saved all of us that trouble.

This panel has found you to have engaged in serious acts of professional misconduct including breach of a number of standards of practice in particular those relating to Record Keeping, Informed Consent, and Limited Naturopathic Practice. As a panel we are appalled by the unacceptable nature of your conduct. In particular we wish to remind you that you are responsible for how your name and registration number are shared and used.

We are disturbed by the facts that led to the findings in this case which you have admitted to today. We are very concerned that such unprofessional behaviour erodes the profile of this profession in the minds of the public, other health care providers and insurers. There is a very real risk that a profession which relies heavily on third party insurance would be crippled by a withdrawal of that coverage. Your conduct throws a negative light on our profession and puts at risk the livelihood of all of our colleagues and the public's ability to access our care.

On behalf of the panel I would like to share with you that we are extremely disappointed in your conduct. We recognize that you have been in practise for a several years and this is the first time you are before this panel and we trust that you will fully comply with the current undertaking and will continue to practise in compliance with all Board and future College standards, policies and guidelines from this point on.

While the penalty imposed today was reasonable we struggled with and seriously considered whether a more severe penalty than was proposed was appropriate in this case. We accept that we should not deviate from a joint submission unless the proposed penalty is so unreasonable or contrary to the public interest however we expect that should you come before a discipline panel of this profession again the penalty will likely be much more severe.

It is our desire to send a strong message to the public, other registrants and insurers that we consider this conduct to be unethical, and unprofessional. We sincerely hope that the lessons of this experience will remain with you as long as you are a member of this profession. It is our expectation that you will learn from these events and from the remediation program you have agreed to undertake and that your future conduct will reflect this learning.