

BOARD OF DIRECTORS OF DRUGLESS THERAPY - NATUROPATHY

PANEL: Patricia Rennie Panel Chair
Belinda Clarke
Sheila Jaggard

BETWEEN:

BOARD OF DIRECTORS OF DRUGLESS	)	<u>Bonni Ellis</u> for the Board of Directors of
THERAPY - NATUROPATHY	)	Drugless Therapy - Naturopathy
	)	
- and -	)	
	)	
Mubina Jiwa (#1259)	)	
	)	
	)	
	)	<u>Gary Srebrolow</u> for the Registrant
	)	
	)	
	)	

Andrea Gonsalves

Independent Legal Counsel

Heard: August 18, 2014

DECISION AND REASONS

This matter came on for hearing before a panel of the Board of Drugless Therapy - Naturopathy (the “Board”) on August 18, 2014 at the Board office in Toronto.

At the commencement of the hearing, the parties requested a publication ban on the names of the patients named in the Notices of Hearing and other documents filed. The panel ordered the ban and as such the panel has replaced any reference to a patient's name with initials in these reasons.

The Allegations

The allegations against Mubina Jiwa (the "Registrant") as stated in the Notices of Hearing dated April 22, 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:
 - (a) *Withdrawn.*
 - (b) between approximately 2010 and 2012, you contravened the Board's *Record Keeping Standards of Practice for Naturopathic Doctors* with respect to invoices that were not sufficiently and/or appropriately itemized, which you issued or allowed to be issued to patients who purchased Hemocode Food Intolerance testing through Gemoscan and/or Rexall pharmacies, including patients A.H. and C.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 - (i) *Withdrawn.*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 2010 and 2012, you contravened the Board's *Standards of Practice and Performance Expectations for Consent* in relation to patients who purchased Hemocode Food Intolerance testing through Gemoscan Canada Inc., and/or Rexall Pharmacies, which was billed under your name and your Board registration number, including patients A.H. and C.B., when you failed to:
 - (i) obtain informed consent in relation to your provision of naturopathic services;
 - (ii) *Withdrawn.*

- (iii) post or otherwise appropriately advise patients of your limited scope of practice;
 - (d) *Withdrawn.*
 - (e) in or around January 2012, you contravened the Board's *Record Keeping Standards of Practice* in relation to the clinical records kept for naturopathic services received by patient A.H. for Hemocode Food Intolerance testing through Rexall pharmacies;
 - (f) *Withdrawn.*
 - (g) *Withdrawn.*
 - (h) between approximately 2010 and 2012, you contravened the Board's *Advertising Policy and/or Guide to the Ethical Conduct of Naturopathic Doctors* when you publicly endorsed and/or otherwise permitted your name and/or your credentials as a member of the profession to be associated with the advertisement of Hemocode Food Intolerance test(s)/testing; and or
 - (i) *Withdrawn.*
2. 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(n) of the definition of Professional Misconduct/Incompetence established by the Board of Directors Therapy-Naturopathy in that, you permitted directly or indirectly the publishing, display, distribution or use of an advertisement(s) relating to the practice of naturopathic medicine which:
- (a) uses testimonials; and/or
 - (b) *Withdrawn.*
3. 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 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 July 2010 and February 2012, you allowed your name and/or registration number with the Board to appear as the provider of naturopathic services on invoices issued by Gemoscan Canada Inc., to clients purchasing a Hemocode Food Intolerance test in circumstances where you knew or ought to have known that the invoices were misleading and might be submitted for reimbursement to insurance companies.

- (b) between approximately July 2010 and February 2012, you allowed your name and/or registration number with the Board to appear as the provider of naturopathic services on invoices issued by Rexall Canada Inc., to clients purchasing a Hemocode Food Intolerance test in circumstances where you knew or ought to have known that the invoices were misleading and might be submitted for reimbursement to insurance companies.
- (c) *Withdrawn.*
- (d) *Withdrawn.*
- (e) *Withdrawn.*
- (f) between approximately 2010 and 2013, you publicly endorsed and/or otherwise permitted your name and/or your credentials as a member of the profession to be associated with the advertisement of Hemocode Food Intolerance test(s)/testing; and/or
- (g) *Withdrawn.*

Registrant's Plea

The Registrant admitted the allegations set out in paragraphs 1(b)(ii), 1(b)(iii), 1(c)(i), 1(c)(iii), 1(e), 1(h), 2(a), 3(a), 3(b) and 3(f) in the Notices 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, set out below. The appendices referred to therein have not been included in these reasons. .

The Member

1. Mubina Jiwa, ND ("the Registrant") has been registered with the Board of Directors of Drugless Therapy – Naturopathy ("the Board") as an ND since October 5, 2004.
2. At the time of the incidents described below, the Registrant was working in association with Gemoscan Canada Inc. ("Gemoscan"), as well as through her own naturopathic clinic *Essence of Health*.
3. None of the concerns described below relate to the Registrant's practice at *Essence of Health*.

Gemoscan Canada Inc.

4. 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”.
5. The Registrant has been associated with Gemoscan since 2007 and is identified on the website as a member of the company’s management team, holding the position of Senior Naturopath and Naturopathic Advisor.
6. The Registrant has endorsed and promoted Gemoscan’s Hemocode test/system as a naturopathic doctor on numerous occasions and through various media, including as a guest on television shows, in print and through local seminars at drugstores where the test was being sold.
7. 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.

8. 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.

The Complaints/Initiating Information

(i) Complaint #1 – the C.B. Complaint (#10-017)

9. On August 10, 2010, the Board received a complaint dated August 2, 2010 from C.B. regarding the Registrant.

10. C.B.'s complaint related to the Registrant's involvement with Gemoscan and the Hemocode test/system he had performed directly through the company.

(ii) Complaint #2 – the Anonymous Sources Complaint (#11-006)

11. On May 18 and 20, 2011, respectively, the Board received two pieces of correspondence raising concerns regarding the Registrant.
12. The authors of both letters asked to remain anonymous, but expressed concern regarding the Registrant's roll in Hemocode tests/systems being offered through Rexall pharmacies.
13. Both anonymous letters were sent to an External Reviewer for the purpose of assessing whether the concerns warranted the External Reviewer lodging a formal complaint with the Board.
14. On July 28, 2011, the External Reviewer lodged a formal complaint regarding the Registrant's role in Hemocode testing/systems offered through Rexall pharmacies.

(iii) Complaint #3 – the Practice Standards Complaint (#12-013)

15. In the context of reviewing the information gathered during the investigation of Complaints #1 and #2, the Complaints Resolution Committee (CRC) forwarded additional materials to the External Reviewer for consideration of whether a further complaint was warranted.
16. On October 23, 2012, the Board received the External Reviewer's second formal complaint against the Registrant.
17. This complaint raised concerns regarding the Registrant's practice that had not been identified by either C.B. or the authors of the anonymous letters. Specifically, the External Reviewer identified several ways in which the Registrant's practice in relation to Hemocode testing/system was alleged to contravene various Board practice standards, policies and guidelines.

COMPLAINT #1 – The C.B.Complaint #10-017

18. In July of 2010, C.B. attended the offices of Gemoscan Canada to provide a blood sample for the purpose of a Hemocode food intolerance test/system that was being offered by the company.
19. C.B. paid Gemoscan \$499 for the test, which was described on an invoice issued by Gemoscan Canada Inc. as an "IgG Nutritional test". The invoice also listed the Registrant as the service "provider" together with her Board registration number (Appendix "A").
20. Several days later, C.B.'s test results were sent to him via email (Appendix "B").
21. The test results included a list of:

- a. 188 recommended foods that could “be consumed without any restrictions”;
 - b. 46 foods described as “moderate intolerance foods” that “should be removed from consumption for a period of 10-12 weeks”; and
 - c. 16 “severe intolerance foods”, which were recommended to be “avoided completely” for approximately 8-12 months.
22. The results package also included several recipes intended to correspond with the food intolerance results, a 4-day rotation diet plan and some general dietary advice.
23. C.B. had several concerns with the test results, including that:
- a. they seemed inconsistent with his personal experience (e.g., foods listed as problematic he had previously been fine with and vice-versa) such that he doubted the accuracy of the results;
 - b. the recipes included foods that were listed as “severe intolerance foods” in his results; and
 - c. the test results should not have been sent via email and should, instead, have been delivered via “face-to-face meeting with a practitioner” given that the results and recommendations are subject to interpretation and warrant discussion.
24. After contacting Gemoscan to voice his concerns, C.B. was offered a meeting with the Registrant, which he attended on July 23, 2010.
25. During that meeting, C.B. requested and was provided with a full refund of the \$499 he had paid for the test.
26. Despite the refund, the meeting was unsatisfactory to C.B. and led to him lodging his complaint with the Board.
27. C.B. summed his ultimate concern to the Board as follows:

If a person using naturopathic credentials is not willing to stand behind the testing and processes that they are involved in, and pretend that it is someone else's problem (in this case Gemoscan), and they are being paid a fee for participation and involvement in a consultation exercise, then in those instances I believe that the ND designation should not be allowed to be displayed, relied on or in any way used to provide comfort to clients that they are in the hands of a qualified professional.

The Registrant's Response

28. As part of their investigation into Complaint #1, the CRC obtained information directly from the Registrant, including the following assertions regarding her role with Gemoscan and the Hemocode test/system:
- she had been a consultant for Gemoscan for a period of five years as a “spokesman” for their food intolerance program, which involved speaking to the media and promoting the merits of the test/system;
 - she was also available to answer any questions about the test/system and to review clients’ test results – indeed, Gemoscan clients and prospective clients were made aware through the company’s website and during phone inquiries that a naturopath would be available to answer their questions about the test/system;
 - typically, when clients requested to speak with the Registrant, she would explain the elimination procedure outlined in the Hemocode report and provide ideas for dietary substitutions; if clients needed further guidance, she would refer them to her private practice or a naturopath in their area;
 - she was not involved in issuing receipts; that this was done by Gemoscan after clients paid the \$499 fee for the test, which included a consultation with the Registrant about their results either at Gemoscan’s office or over the phone;
 - she was not involved in the preparation of the results report, recipe book or other nutritional information that clients received with their results;
 - clients would fill out their own intake forms and a phlebotomist would draw the blood; she was not there as a medical professional to evaluate patients’ health, but rather to answer questions regarding testing procedures and to review results;
 - she acknowledged that Gemoscan clients might believe that their testing was being conducted under the supervision of a naturopath;
 - she was paid by Gemoscan based on the number of hours that she attended their office and provided her services to the company, but she was not a Gemoscan employee.
29. With respect to her involvement with C.B. specifically, the Registrant confirmed that her first encounter with him was at their July 23, 2010 meeting; she did not conduct his intake, nor did she assess him, take a history or conduct an examination of him.
30. The Registrant also stated that she was identified as the “provider” of a “naturopathic service” on the receipt issued by Gemoscan to C.B. on July 13, 2010 because she would be available to review the results of the test with C.B. if required. However, his receipt was not itemized as a naturopathic service, but rather, as “IgG Nutritional test”.

Gemoscan’s Information

31. The CRC's investigator also interviewed Gemoscan's CEO who provided the following information:
- Gemoscan hired the Registrant because they provide nutritional and digestive assessments;
 - Gemoscan clients are informed that a naturopath is available for consultation "from the get go" and they can speak to a naturopath at any time;
 - the Registrant "consults" and "treats" "patients" in a "traditional way"; "not unlike any other clinic that you go into";
 - clients are able to submit Gemoscan receipts to their insurance provider for reimbursement on the basis that a "naturopathic" service was provided;
 - regarding the statement on the Consent Form signed by C.B., which states: "I understand that payment for these services may be subject to the approval of the insurer", Gemoscan clients who have health insurance generally submit claims for reimbursement of the cost of testing to their insurance provider and if their extended benefits insurance provider does not reimburse, Gemoscan is under no obligation to refund the client, except in the event that the client is not satisfied with the service.

COMPLAINT #2 – The Anonymous Sources Complaint #11-006

32. In May 2011, before Complaint #1 was disposed of, the Board received correspondence from two individuals expressing concern regarding the Registrant's role in the Hemocode test/system being provided through Rexall pharmacies.
33. Both individuals asked that their identity remain anonymous.
34. According to the first anonymous letter, the Registrant was promoting the Hemocode test/system online and through local seminars and news broadcasts. The author also alleged that Rexall employees were advising individuals who inquired about the test that the \$450 cost could be covered as a naturopathic service through extended health insurance benefits.
35. Included with the first anonymous letter was a sample invoice from Rexall showing the cost of the Hemocode test/system billed as four separate naturopathic consultations with the Registrant. Also included with the complaint was an advertisement for the test issued by Rexall, including general information about the test and testimonials from three clients and an ND (Appendix "C").
36. According to the second anonymous email, the blood samples necessary for Hemocode testing/system were being obtained at Rexall pharmacies and subsequently sent to Gemoscan. The test results were then being forwarded to the Registrant and interpreted by her.

37. The second anonymous email expressed concern that Rexall was issuing receipts describing the test as a naturopathic service performed by the Registrant, 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 testing/system instead of the author's own allergy testing because of the possibility of insurance reimbursement.
38. After reviewing both anonymous complaints an External Reviewer lodged a formal complaint with the Board expressing concern with the Registrant's role in the Hemocode testing/system being offered through Rexall and the manner in which the test was being represented on Rexall invoices.

The Registrant's Response

39. The Registrant provided the following information regarding her role in Hemocode testing/system performed through Rexall pharmacies:
- she contacted the Board in 2010 to discuss this process and understood from that call that it complied with Board policies;
 - she provided comprehensive training to the individuals to whom she was assigning care, including a detailed seminar on Immuno Food Intolerances, which was approved for continuing education credits by the Canadian Council on Continuing Education in Pharmacy in 2011;
 - she personally reviews every file and every set of test results before they are delivered to the patient by a Rexall pharmacist or staff member;
 - she assigned the intake function of the Hemocode test/system to a trained licensed pharmacist, licensed pharmacy technician or other qualified health and wellness advisor who would: take a health history, advise on food intolerances, provide a thorough explanation of the food intolerance testing procedure and obtain informed consent;
 - she was practicing under a limited scope at Gemoscan, consulting only with patients interested in food intolerance testing; patients are provided with her contact information should they require additional support and patients needing/seeking comprehensive care are referred to a naturopath in the area;
 - unlike C.B. who obtained his Hemocode test/system directly through Gemoscan and for whom she was not acting as his naturopathic doctor, the individuals seeking the Hemocode test/system through Rexall are being provided limited scope naturopathic services and being billed as such.

The CRC's Investigation

(i) Undercover Investigation

40. After receiving the Registrant's response and as part of the CRC's investigation into Complaint #2, an Investigator contacted Gemoscan directly to make inquiries regarding the Hemocode test/system.
41. The Investigator was advised that the 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 the Registrant.
42. The Investigator subsequently attended a Rexall store on December 23, 2011, to inquire about and obtain Hemocode testing/system.
43. The Investigator, posing as "A.H." spoke to a Rexall pharmacist, who advised her of the following:
 - a. she could obtain a Hemocode test/system 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.
44. 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 "D").
45. Nowhere in the forms, in the pharmacy or during the Investigator's discussions with the Rexall pharmacist was she clearly advised that the Registrant was practising under a limited scope of practice in relation to the naturopathic services that the Investigator would receive.
46. 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.
47. 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 "E").
48. 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 the Registrant's name and four consultation dates totalling \$450.
49. 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 Registrant reviewing the results was the third consultation date and the Investigator returning to obtain the results from Rexall was the fourth consultation date.

50. 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 the Registrant indicating that she had reviewed the results and inviting the Investigator to contact her with any questions (Appendix “F”).
51. They also reviewed the Invoice and “Andrea” advised the Investigator that the cost of the Hemocode test/system was broken down into four dates because insurance companies pay a certain amount per visit (Appendix “G”).

(ii) Amanda Jones, GreenShield Canada

52. On January 16, 2012, the Investigator contacted Amanda Jones (“Ms. Jones”), Benefit Utilization Analyst at GreenShield Canada (GSC).
53. After speaking with Ms. Jones by phone, the Investigator sent her an email describing her attendance at Rexall for Hemocode testing/system and attaching copies of the invoices she and C.B.had received for their Hemocode tests/system through Gemoscan and Rexall, respectively. The Investigator asked Ms. Jones to comment on whether either receipt would be eligible for insurance coverage.
54. During their subsequent telephone call, Ms. Jones stated that GSC had received approximately 15-20 claims identifying the Registrant as the ND on invoices issued by Rexall.
55. Ms. Jones further indicated that they were denying claims from Rexall with the Hemocode logo and that GSC was conducting an investigation into the matter.
56. She also advised the Investigator that GSC may consider a Hemocode invoice identifying four dates for naturopathic services to be false and misleading.
57. 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.

COMPLAINT #3 – The Practice Standards Complaint #12-013

58. As part of its investigation into Complaint #1 and Complaint #2, the CRC obtained copies of the Registrant’s patient charts for C.B.(Appendix “H”) and for the Investigator (Appendix “I”).
59. Based on these and other documents obtained by the CRC during its investigation into the first two complaints, additional concerns outside the “four corners” of the Complaint #1 and Complaint #2 were identified regarding the Registrant’s practice.
60. These concerns then became the subject of a third, formal complaint against the Registrant, which was filed with the Board by the External Reviewer on October 23, 2012, and subsequently investigated by the CRC.

61. This complaint alleged that the Registrant had contravened various Board standards, policies and guidelines in relation to:
- maintaining records;
 - consent;
 - billing practices;
 - advertising; and
 - limited scope of practice.

The Board's Standards, Policies and Guidelines

(i) Policy for Limited Naturopathic Practice

62. The Board's *Policy for Limited Naturopathic Practice* (Appendix "J") 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 resulted when registrant limit their practice to one, or a few modalities.

63. The Policy goes on to provide the following requirements for NDs practicing 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

64. Paragraph 3.0 of the Board's *Record Keeping Standard of Practice for Naturopathic Doctors* (Appendix "K") 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.
65. 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.
66. 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).*
- (iii) *Advertising*
67. The Board’s Advertising Policy (Appendix “L”) confirms that advertisements may not contain the following:
- Testimonials; and
 - Public or written endorsement of a product or a line of products, or permitting her/his name to be associated with the advertisement of any product or services other than the Registrant’s naturopathic medical services.
68. Similarly, the Board’s Guide to the Ethical Conduct of Naturopathic Doctors (Appendix “M”) recognizes that as part of their responsibilities to the profession, NDs “will avoid advocacy of any product when identified as a member of the naturopathic medical profession”.

The Board’s Expert

69. The Board obtained an independent expert opinion from an ND regarding the standards issues raised by the External Reviewer in relation to Complaint #3.
70. In his opinion, the expert came to the following conclusions:
- a. the Registrant was practicing naturopathic medicine in relation to Rexall and Rexall clients such as the Investigator;
 - b. the Registrant was practicing naturopathic medicine in relation to Gemoscan and Gemoscan clients such as C.B.;
 - c. the Registrant breached the Board’s *Record Keeping Standard* with respect to the Investigator’s patient chart and, specifically:
 - i. the manner in which the Hemocode test/system was billed to the Investigator as four different dates of naturopathic services without a fee listed for the test; and

- ii. the absence of initials or signatures for entries in the patient chart authored by various individuals;
- d. the Registrant breached paragraph 4.0 of the Board's *Standards of Practice* insofar as there were no naturopathic-specific consent forms;
- e. the Registrant breached the Board's *Policy for Limited Naturopathic Practice* with respect to:
 - i. her failure to specifically post/advise clients that she was practicing under a limited practice; and
 - ii. her failure to obtain informed consent specific to the limited nature of her naturopathic practice.

The Registrant's Further Response

- 71. The Registrant was given a further opportunity to provide the CRC with information after being provided with a copy of the documents obtained by the Investigator posing as Rexall client A.H.
- 72. In response, the Registrant stated the following:
 - Gemoscan is not charging for the Hemocode test/system, but rather, for the services and consultations associated with it.
 - The task of obtaining consent is assigned by her to the pharmacist, pharmacy technician or a Rexall "health and wellness advisor" who conducts the initial intake.
 - Because she is not the person actually administering the test, there is no requirement for her name to appear on the consent form.
 - Because the Hemocode test/system forms part of her naturopathic services, she is entitled to endorse it.
 - She expressed her willingness to remove the testimonials from Gemoscan materials, but noted that OAND had proposed in 2011 that the Board's restriction on testimonials is "outdated and should be removed" except in cases where patients feel coerced or pressured into providing testimonials, which would not apply to the Gemoscan patients, who provided their testimonials voluntarily.
 - She expressed her willingness to make the "consent to participate" forms more explicit regarding the limited nature of her naturopathic practice vis-à-vis Hemocode testing/system.

Admissions

73. Registrant admits that 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* in relation to patients who purchased Hemocode Food Intolerance testing/system through Gemoscan Canada Inc., and/or Rexall pharmacies, which was billed under her name and her Board registration number, including patients A.H. and C.B., when she failed to:
- a. ensure, prior to the commencement of care, they were advised she was practicing under a limited scope of practice; and
 - b. obtain their informed consent, prior to commencing treatment, with respect to her limited scope of practice.
74. The Registrant admits that she committed an act or acts of misconduct as set out in paragraphs 1(c)(i) and 1(c)(iii) of the Notice of Hearing when she contravened the Board's *Standards of Practice* in relation to patients who purchased Hemocode Food Intolerance testing/system through Gemoscan Canada Inc., and/or Rexall pharmacies, which was billed under her name and her Board registration number, including patients A.H. and C.B., when she failed to:
- a. obtain informed consent in relation to her provision of naturopathic services; and
 - b. post or otherwise appropriately advise patients of her limited scope of practice.
75. The Registrant admits that she committed an act or acts of misconduct as set out in paragraph 1(e) of the Notice of Hearing when she contravened the Board's *Record Keeping Standards of Practice* in relation to the clinical records kept for naturopathic services received by:
- a. patient A.H. for Hemocode Food Intolerance testing/system through Rexall pharmacies.
76. The Registrant admits that she committed an act or acts of misconduct as set out in paragraph 1(h) of the Notice of Hearing when she contravened the Board's *Advertising Policy* and/or *Guide to the Ethical Conduct of Naturopathic Doctors* by publicly endorsing and otherwise permitting her name and/or her credentials as a member of the profession to be associated with the advertisement of Hemocode Food Intolerance test(s)/testing/system.
77. The Registrant admits that she committed an act or acts of misconduct as set out in paragraph 2(a) of the Notice of Hearing when she permitted directly or indirectly the publishing, display, distribution or use of an advertisement(s) relating to the practice of naturopathic medicine, which uses testimonials.
78. The Registrant admits that 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(f) of the Notice of hearing when she:

- a. allowed her name and/or registration number with the Board to appear as the provider of naturopathic services on invoices issued by Gemoscan Canada Inc., to clients purchasing a Hemocode Food Intolerance testing/system in circumstances where she ought to have known that the invoices were misleading and might be submitted for reimbursement to insurance companies;
- b. allowed her name and/or registration number with the Board to appear as the provider of naturopathic services on invoices issued by Rexall Canada Inc., to clients purchasing a Hemocode Food Intolerance testing/system in circumstances where she ought to have known that the invoices were misleading and might be submitted for reimbursement to insurance companies; and
- c. publicly endorsed and otherwise permitted her name and credentials as a member of the profession to be associated with the advertisement of Hemocode Food Intolerance test(s)/testing/system.

Decision

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

Reasons for Decision

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

The facts in this case support the allegations that Ms. Jiwa 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 ;
- contravened the Board's Advertising Policy and/or Guidelines to the Ethical Conduct of Naturopathic Doctors by publicly endorsing or allowing her name and credentials to be associated with Hemocode testing;
- permitted the publishing, display, distribution or use of an advertisement relating to the practice of naturopathic medicine which uses testimonials;
- 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 one (1) month. The suspension shall commence on August 20, 2014 and run, uninterrupted, until 11:59 pm on September 19, 2014; and
2. That the Registrant shall pay to the Board, by certified cheque, on August 18, 2014, the sum of \$2,000.00, 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. Jiwa presented with a Joint Submission on Order and Costs and the admission itself is seen as an expression of remorse,
- the undertaking contains significant remediation to be completed by Ms. Jiwa at her own expense,
- she has agreed voluntarily to be in compliance in future with all standards,
- Ms. Jiwa sought clarification from the Board on guidelines that were not understood to be clear, and
- Ms. Jiwa'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 advertising for the testing was comprehensive, used multiple types of media and was widely endorsed by Ms. Jiwa using her ND credentials,
- 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 on Order and accordingly orders:

1. That the Registrant's certificate of registration be suspended for a period of one (1) month. The suspension shall commence on August 20, 2014 and run, uninterrupted, until 11:59 pm on September 19, 2014; and
2. That the Registrant shall pay to the Board, by certified cheque, on August 18, 2014, the sum of \$2,000.00, representing partial reimbursement of the legal costs and expenses incurred by the Board in relation to this matter.

Reasons for Penalty Decision

The panel understood 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 one month suspension which send a message to the rest of the profession, the public and insurers that this behavior is not to be tolerated;
- a \$2000 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. Jiwa has signed an undertaking with the Board which requires that she complete a number of remedial activities including, meeting with a practice Expert and attending a comprehensive course on ethics and boundaries in healthcare. 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:

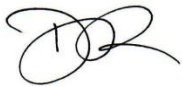
- The undertaking Ms. Jiwa has agreed to which provides multiple avenues for remediation and rehabilitation. She has agreed to take the ProBE course which focuses on professional ethics and boundaries in the healthcare setting with individualized attention paid to the specific needs of each attendee. Ms. Jiwa 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. Jiwa has agreed to incur the costs for these meetings.

Overall the public is protected because Ms. Jiwa 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.

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

September 25, 2014

Date

Belinda Clarke

Sheila Jaggard

Oral Reprimand

Ms. Jiwa 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, advertising 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 decade 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 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.