

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

PANEL:

Dr. Jordan Sokoloski, ND– Chair,
Dr. Danielle O’Connor, ND
Dr. Rick Olazabal, ND
Dean Catherwood
Lisa Fenton

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

DR. HELEN COHEN

) REBECCA DURCAN
) for the
) College of Naturopaths of Ontario
)
)
) No one appearing for the Registrant,
) HELEN COHEN
)
) LUISA RITACCA, Independent
Legal Counsel
)
) Heard: September 28, 2020

**DECISION AND REASONS
(DC-19-03)**

This matter came on for hearing before a panel of the Discipline Committee on September 28, 2020. The matter was heard by video conference.

Another matter involving Dr. Cohen, ND was heard by this same panel immediately following this hearing. As set out below, Dr. Cohen received a reprimand as part of her penalty for both matters. The reprimand is reproduced at the end of both this decision and reasons, as well as the decision and reasons prepared for matter DC19-04.

The Allegations

The allegations against Helen Cohen (the “Registrant¹”) as stated in the Notice of Hearing dated July 10, 2019 are as follows:

1. Dr. Helen Cohen, ND (“Dr. Cohen, ND”) was initially registered with the Board of Directors of Drugless Therapy – Naturopathy on or about January 1, 1991. Dr. Cohen, ND became a member of the College of Naturopaths of Ontario (the “College”) in the General class of registration on or about July 1, 2015 as a result of the proclamation of the Naturopathy Act, 2007.
2. At the relevant times the Member’s private clinic was Woman & Child Naturopathic Clinic Inc.
3. On or about October 17, 2017 the College received a complaint from an insurer alleging that the Member submitted and/or issued false claims. The complaint and its investigation included the following concerns:
 - a. The insurer received claims for sixteen naturopathic treatments allegedly provided by the Member between 2013 and 2014 at MedEllixCare;
 - b. The Member confirmed to the insurer in April 2015 that she provided the naturopathic treatments described in paragraph 3a;
 - c. The Member provided the treatment notes and assessment notes for the naturopathic treatments described in paragraph 3a to the insurer in or around September 2017;
 - d. The Member confirmed to the insurer in or around September 2017 that the treatment notes and assessment notes for the naturopathic treatments described in paragraph 3a were written by the Member;
 - e. The treatment notes and/or assessment notes indicated they were from Woman & Child Naturopathic Clinic Inc.; and/or
 - f. MedEllixCare closed in or around 2013.
4. It is alleged that between approximately 2013 and 2017 the Member:
 - a. Did not provide the naturopathic treatments described in paragraph 3a;
 - b. Provided false or misleading information to the insurer in 2015 and/or 2017; and/or created false or misleading treatment notes and/or assessment notes.

Allegations of professional misconduct as a Registrant of the Board

5. It is alleged that the conduct which occurred from 2013 to June 30, 2015 constitutes misconduct pursuant to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, as defined in Professional Misconduct/Incompetence established by the Board:
 - a. *Allegation withdrawn*

¹ The Council of the College of Naturopaths of Ontario has directed that the College refer to individuals registered with the College as “Registrants”. “Registrant”, as it is used in this Decision and Reasons has the same meaning as “member” as defined in section 1(1) of the *Health Professions Procedural Code* (the Code).

- b. Paragraph 2(r) – 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/or
- c. Paragraph 2(w) - Contravening standards of practice or guidelines of practice set by the Board, specifically:
 - i. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information.

Allegations of professional misconduct as a Member of the College

- 6. 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. *Allegations withdrawn.*

Registrant's Plea

The Registrant admitted the allegations set out in the Notice of Hearing at paragraphs 5(b) and (c).

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

The College sought to withdraw the remaining allegations, with the consent of the Registrant. The panel agreed to allow the withdrawal of paragraphs 5(a) and paragraph 6 of the Notice of Hearing.

Agreed Statement of Facts (Exhibit #2)

BACKGROUND

The Member

- 1. Dr. Helen Cohen, ND (the "Member") was initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the "Board") on January 1, 1991. The Member became a member of the College in the General class of registration on July 1, 2015, as a result of the proclamation of the Naturopathy Act, 2007. Attached as Tab "A" is a printout from the College Naturopathic Doctor Register.
- 2. At the relevant times, the Member's private clinic was Woman & Child Naturopathic Clinic Inc.

Complaint

- 3. On October 17, 2017, the College received a complaint from an insurer alleging that the Member submitted and issued false claims. Attached as

Tab “B” is a copy of the complaint. The complaint and its investigation included the following concerns:

- a. The insurer received claims for sixteen naturopathic treatments allegedly provided by the Member between 2013 and 2014 at MedEllixCare;
- b. The Member confirmed to the insurer in April 2015 that she provided the naturopathic treatments described in paragraph 3a;
- c. The Insurer obtained the treatment notes and assessment notes for the naturopathic treatments described in paragraph 3a in September 2017;
- d. The Member confirmed to the insurer in September 2017 that the treatment notes and assessment notes for the naturopathic treatments described in paragraph 3c were likely written by the Member as the handwriting was her own.

Position of Parties

4. The Member denies that she herself intentionally submitted or issued false claims or was engaged in any such scheme.
5. The Member cannot remember providing the services described in paragraph 3a.
6. The Member concedes that when she was asked by the insurer if she provided the naturopathic treatments, as set out in paragraph 3b, she did not take the necessary time to ensure that her answer was accurate and informed.
7. The Member did tell the insurer that the treatment notes appeared to be in her handwriting. If the Member were to testify, she would state that she does not believe that she herself provided the treatment notes to the insurer.
8. The Member is aware that it is imperative that any and all information provided to an insurer must be accurate and informed. Despite the fact that the Member was experiencing significant stresses in her life, she acknowledges that this is not an excuse and that she ought to have taken the time to verify the appointments. The Member concedes that failing to do so resulted in the Member providing misleading information to the insurer.
9. It is agreed that it is a standard of the profession to refrain from giving any false, incomplete or misleading information to insurers and that the Member breached this standard.

Admissions of Professional Misconduct as a Registrant of the Board

10. It is agreed that the conduct that occurred between 2013 and June 30, 2015 constitutes misconduct pursuant to subsection 30(1) of Ontario Regulation 278 made under the Drugless Practitioners Act, and as defined in the following paragraphs of the Professional Misconduct and/or Incompetence standards established by the Board (attached as Tab “C”):
 - a. Paragraph 2(r) (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); and

- b. Paragraph 2(w) (Contravening standards of practice or guidelines of practice set by the Board, in particular Standard 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any misleading information (attached as Tab “D”).

Acknowledgement

- 11. By this document, the Member states that:
 - a. She understands fully the nature of the allegations made against her;
 - b. She has no questions with respect to the allegations against her;
 - c. She admits to the truth of the facts contained in this Agreed Statement of Facts and that the admitted facts constitute professional misconduct;
 - d. She understands that by signing this document she is consenting to the evidence as set out in the Agreed Statement of Facts being presented to the Discipline Committee;
 - e. She understands that by admitting the allegations, she is waiving her right to require the College to prove the allegations against her at a contested hearing;
 - f. She understands that the decision of the Committee and a summary of its reasons, including reference to her name, will be published in the College’s annual report and any other publication or website of the College;
 - g. She understands that any agreement between her and the College with respect to the penalty proposed does not bind the Discipline Committee; and
 - h. She understands and acknowledges that she is executing this document voluntarily, unequivocally, free of duress, and free of bribe and that she has been advised of her right to seek legal advice.

Decision

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

Reasons for Decision

In coming to its decision, the Panel considered the Registrant’s admission of professional misconduct, the Agreed Statement of Facts, and the parties’ submissions.

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

1. The Registrant did not verify information requested by an insurer, which resulted in providing information that was false. Although the Registrant was experiencing significant stress at the time the request was made, this does not excuse her behaviour. Ultimately, this failing could undermine the credibility of the profession with insurers.
2. The above conduct would reasonably be regarded by members of the profession as dishonourable and unprofessional.

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:

The College of Naturopaths of Ontario and Dr. Helen Cohen (the “Registrant”) agree and jointly submit that the Discipline Committee make an order:

1. Requiring the Member to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member’s certificate of registration for a period of four (4) months, on a schedule to be set by the Registrar.
3. Directing the Registrar to impose the following specified terms, conditions and limitations on the Member’s certificate of registration:
 - a. Requiring that the Member unconditionally pass the PROBE ethics course, which is to be taken at her own expense, by a date selected by the Registrar;
 - b. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, the College’s Medical Records course by a date selected by the Registrar;
 - c. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar, no later than a date selected by the Registrar;
 - d. 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 in completing the PROBE course and medical records course; and
 - ii. The methods she will incorporate into her practice to ensure proper record-keeping practices and her obligations as a member of the College.
 - e. Requiring the Member to submit to, and at her own expense, a practice inspection to be completed within six (6) months following her return to practice.

4. Requiring the Member to pay a fine of not more than \$350 to the Minister of Finance within two (2) months of the date of the hearing of this matter.
5. The Member shall pay the College's costs fixed in the amount of \$3,500, payable on a schedule to be set by the Registrar.
6. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.

Penalty and Costs Decision

The panel accepts the Joint Submission and accordingly orders:

1. The Registrant shall appear before the panel to be reprimanded immediately following the hearing of this matter.
2. The Chief Executive Officer² (CEO) is directed to suspend the Registrant's certificate of registration for a period of four (4) months, on a schedule to be set by the CEO.
3. The CEO is directed to impose the following specified terms, conditions and limitations on the Registrant's certificate of registration:
 - a. Requiring that the Registrant unconditionally pass the PROBE ethics course, which is to be taken at her own expense, by a date selected by the CEO;
 - b. Requiring that the Registrant successfully complete, to the satisfaction of the CEO and at her own expense, the College's Medical Records course by a date selected by the CEO;
 - c. Requiring that the Registrant write an essay between 1000 and 1500 words in length, and provide it to the CEO, no later than a date selected by the CEO that shall be published by the College at a time and in a format determined by the CEO, on the following issues:
 - i. The lessons she learned in completing the PROBE course and medical records course; and
 - ii. The methods she will incorporate into her practice to ensure proper record-keeping practices and her obligations as a registrant of the College.
 - d. Requiring the Registrant to submit to, and at her own expense, a practice inspection to be completed within six (6) months following her return to practice.
4. The Registrant to pay a fine of \$350 to the Minister of Finance within two (2) months of the date of the hearing of this matter.
5. The Registrant shall pay the College's costs fixed in the amount of \$3,500, payable on a schedule to be set by the CEO.

² The Chief Executive Officer has been appointed by the Council to oversee operations and perform the duties of the Registrar as set out in and defined in section 1(1) of the Code.

Reasons for Penalty Decision

The Panel considered the Joint Submissions as to Penalty and Costs, as well as submissions from College counsel. The Panel recognized that the penalty should take into account principles of both specific and general deterrence as well as provide the Registrant with remedial opportunities. Above all, it must preserve public confidence in the ability of the College to regulate its Registrants and protect the public. The Panel is aware that a Joint Submission as to Penalty and Costs should be accepted unless they are convinced that doing so would bring the discipline process of this College into disrepute and be contrary to the public interest. In the circumstances of this case, the penalty proposed by the parties is reasonable and so ordered by the Panel.

The Panel considered the mitigating factors, including the Registrant's cooperation with the discipline process and prompt entry into and acceptance of the Agreed Statement of Facts. The Panel also considered the aggravating factors, including the behaviour itself. The Panel noted that this was not the first time that the Registrant has appeared before a Panel of the Discipline Committee, (although it was acknowledged that the conduct involved in the matters heard today occurred prior to the conduct heard before a Panel previously). The Panel considered the Brief of Authorities submitted by the College and is confident that the penalty is reasonable and appropriate given previous penalties for matters with similarities to this one.

The penalty order is both a specific deterrent to the Registrant and a general deterrent to the profession at large. The length of the suspension sends a message that this type of professional misconduct will result in a serious disruption to practice; the fine is an acknowledgment of the cost and privilege of self-regulation; the reprimand allows the Panel to make clear to the Registrant and to the profession that they will be held to a high standard in keeping with the College's goal of public protection and accountability; and finally, the remedial terms will help to ensure that the Registrant learns from her misconduct and can return to practice better prepared to conduct herself professionally and responsibly.

For these reasons, the penalty order meets the requirement to preserve public confidence in the profession to properly regulate its Registrants to serve and protect the public interest.

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

I, Dr. Jordan Sokoloski, 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:



October 27, 2020

Chairperson

Date

Names of panel members

Dr. Danielle O'Connor, ND

Dr. Rick Olazabal, ND

Dean Catherwood

Lisa Fenton

REPRIMAND

Dr. Cohen, you have been found to have engaged in professional misconduct by this Discipline Panel on two separate matters, both of which have been addressed today. As part of the penalty ordered in both matters, you are now before the panel to be reprimanded. You agreed to this term of order in both matters.

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

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

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

- A) You contravened the standards of practice in place at the time you were a member of the Board of Drugless Practitioners. The contravention included behaving in an unprofessional manner and dealing dishonestly in your communications with an insurer.
- B) You failed to comply with an order of a panel of the ICRC.
- C) You engaged in conduct which would reasonably be regarded by other Registrants of the profession as dishonourable and unprofessional.

It is a matter of profound concern to this Panel that you have engaged in these forms of professional misconduct. Moreover, the result of your misconduct is that you have let down the public, the profession, and yourself. We need to make it clear to you that your conduct is unacceptable.

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

1. A failure to properly respond to inquiries by an insurance company, which undermines the credibility of the profession and could affect patients' ability to access naturopathic care;
2. A failure to comply with an order of a panel of the College, which calls into question your governability;
3. A disregard for the authority of the regulatory body, the College of Naturopaths of Ontario, which not only puts the public at risk, but is disrespectful to both the public and your fellow Registrants.

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

We also want to make it clear to you that while the penalty that this Panel has imposed upon you is a fair penalty, this is the third time you have appeared before a panel of the Discipline Committee. We expect you will take this opportunity to significantly improve your conduct and that you will never again appear before a panel of this Committee.

As I have already stated, this is not an opportunity for you to review the decisions or debate their correctness, which in any event, were agreed to by you. However if you wish to make a comment, you may do so now.

Thank you for attending today. We are adjourned.