

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

PANEL:

Shelley Burns, Chair  
Dianne Delany  
Madeline Elton

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO	)	REBECCA DURCAN for the
	)	College of Naturopaths of Ontario
- and -	)	
	)	GARY SREBRELOW for
SALFE ANNE ELIZALDE	)	Salfe Anne Elizalde
	)	
	)	LUISA RITACCA ,
	)	Independent Legal Counsel
	)	
	)	Heard: November 6, 2019
	)	

**DECISION AND REASONS**

This matter came on for hearing before a panel of the Discipline Committee on November 6, 2019, at the College of Naturopaths of Ontario (the “College”) at Toronto.

**The Allegations**

The allegations against Salve Anne Elizalde (the “Member”) as stated in the Notice of Hearing dated May 22, 2019, (Exhibit #1) are as follows:

1. Dr. Salfe Anne Elizalde, ND (the "Member") registered with the College of Naturopaths of Ontario (the "College") on or about November 10, 2015.
2. The Member works at a clinic and at all relevant times was responsible for submitting claims to the insurer electronic system.

**Complaint**

3. On or about May 17, 2018 the College received a complaint from an insurer alleging that the Member submitted and/or issued false claims. The complaint included the following concerns:
4. The Member billed the insurer three separate charges per day for the same patient (i.e. \$120.00 service fee billed as 3 individual \$40.00 service fees, including naturopathic or massage services). This billing pattern was consistent for one particular policy as this policy's coverage allowance only permits a maximum of \$40 per visit for paramedical services;
5. After concerns were noted by the insurer, the Member's access to the insurer electronic system was restricted. The Member then began accessing the insurer electronic system and issued claims using an alternate address (her home address as opposed to the clinic address);
6. In or around September 2017, Patient A received osteopathy and naturopathy services but the Member only indicated naturopathy services had been provided on the claim issued to the insurer. Osteopathy services are ineligible for reimbursement by this insurer; and/or
7. The Member would sign and/or issue a document or documents indicating that she had treated certain patients when the patients had received treatment from someone other than the Member.
8. It is alleged that Member modified her billing pattern to circumvent the insurer's coverage allowance.
9. It is alleged that the Member accessed the insurer electronic system issue using a false or misleading address.
10. It is alleged that the Member's husband treated, or performed some of the osteopathic treatment, on Patient A.
11. It is alleged that the Member did not document her husband's involvement in the osteopathic treatment of Patient A in the patient record and/or the claim issued to the insurer.
12. It is alleged that the Member issued invoices for services she did not provide.

#### **Further Record Keeping Concerns**

13. It is alleged that the Member did not maintain an appointment record.
14. It is alleged that the Member failed to maintain financial records in accordance with the standards of the profession.
15. It is alleged that the Member was unable to provide requested patient records to the College investigator upon request.
16. It is alleged that the Member failed to maintain a separate patient record for each patient and/or ensure that patient records can be easily identified or retrieved.
17. It is alleged that the Member failed to maintain patient charts that are accurate, legible and comprehensive.

#### **Allegations of professional misconduct**

18. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions*

*Act*, 1991 (the "Code") as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act*, 2007:

- a. Paragraph 1 (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
- b. Paragraph 18 (Issuing an invoice, bill or receipt that the member knows or ought to know is false or misleading);
- c. Paragraph 23 (Failing to keep records in accordance with the standards of the profession);
- d. Paragraph 24 (Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement); and/or
- e. Paragraph 46 (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional).

### **Member's Plea**

The Member admitted the allegations set out in the Notice of Hearing, as modified above and in the Agreed Statement of Facts set out below.

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

### **Agreed Statement of Facts (Exhibit #2)**

The parties tendered as an exhibit an Agreed Statement of Facts, which provided as follows (attachments omitted):

#### **The Member**

1. Dr. Salfe Anne Elizalde, ND (the "Member") registered with the College of Naturopaths of Ontario (the "College") on November 10, 2015.
2. The Member owns or co-owns her clinic and at all relevant times was responsible for submitting claims to the insurer electronic system.
3. This is the first time the Member has been referred to the Discipline Committee. The Member made efforts to resolve this matter soon after the Inquiries, Complaints and Reports Committee referred specified allegations of professional misconduct to the

Discipline Committee. The Member is apologetic for, and regrets, her actions.

### **Complaint**

4. On May 17, 2018, the College received a complaint from an insurer alleging that the Member submitted and issued false claims. The complaint included the following concerns:
  - a. The Member billed the insurer three separate \$40.00 charges per day for the same patient (i.e. \$120.00 service fee billed as 3 individual \$40.00 service fees, including naturopathic or massage services). This billing pattern was consistent for one particular policy, as this policy's coverage allowance only permits a maximum of \$40.00 per visit for paramedical services.
  - b. After concerns were noted by the insurer, the Member's access to the insurer's electronic system was restricted by the insurer. The Member then began accessing the insurer's electronic system by using an alternate address (her home address as opposed to her clinic address).
  - c. In September 2017, Patient A allegedly received osteopathy and naturopathy services from the Member. However, the Member only indicated naturopathy services had been provided on the claim issued to the insurer. Osteopathy services are ineligible for reimbursement by this insurer.
  - d. The Member would sign and/or issue a document or documents indicating that she had treated certain patients when the patients had received treatment from someone other than the Member.

### **Modifying Billing Pattern**

5. It is agreed that the Member modified her billing pattern to circumvent the insurer's coverage allowance of \$40.00 per visit. The Member admits that her usual service fee for naturopathic services was \$120.00 an hour. The Member would break down her billing practice for patients on a certain policy so that they would be charged \$40.00 per service (e.g. naturopathic, massage) as opposed to \$120.00 an hour. The Member admits that she ought to have alerted patients on this specific policy and advised them that their insurance might only pay \$40.00 per visit and that if they wished a full hour of services they would need to pay the \$80.00 differential. The Member admits that she should not have charged the insurer three separate \$40.00 charges for one visit, so that she could collect her regular fee of \$120.00.
6. The Member did reach out to the insurer and sought clarification on the billing practices. However, she now admits that she was unclear as to how the insurer expected services to be billed.
7. It is agreed that it is a standard of the profession to submit and issue accurate and truthful documents to insurers.
8. It is agreed that it is a standard of the profession to clarify and confirm billing practices before proceeding to do so. As set out in the *Fees and Billing* standard of the College, members are accountable for any fee, billing or account that uses their name.

9. It is agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
- a. **Paragraph 1** (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
  - b. **Paragraph 18** (Issuing an invoice, bill or receipt that the member knows or ought to know is false or misleading);
  - c. **Paragraph 24** (Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement); and
  - d. **Paragraph 46** (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as dishonourable or unprofessional).

#### **Accessing the insurer system with a false and misleading address**

10. It is agreed that the Member issued claims using her home address and that this was false and misleading. To be clear, the Member never provided services at her home address. All services were provided at the clinic. However, the Member was insistent on collecting her fees so she used her home address as the address where services were provided when billing the insurer with the specific intent of circumventing the restriction imposed by the insurer.
11. It is agreed that it is a standard of the profession to submit and issue accurate and truthful documents to insurers.
12. It is agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
- a. **Paragraph 1** (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
  - b. **Paragraph 18** (Issuing an invoice, bill or receipt that the member knows or ought to know is false or misleading);
  - c. **Paragraph 24** (Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement); and
  - d. **Paragraph 46** (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably

be regarded by members as dishonourable or unprofessional).

**Alleging naturopathy services had been provided instead of osteopathy services by the Member**

13. It is agreed that Patient A received osteopathy services – as opposed to naturopathy services - but not from the Member. The Member's spouse treated and performed the osteopathic treatment on Patient A.
14. It is agreed that having the Member's spouse provide the treatment could only occur if there were an assignment of care or a referral, both of which would require documentation in the patient record.
15. It is agreed that the involvement of the Member's spouse was not indicated in the patient record of Patient A or on the claim issued to the insurer. This is in contravention of the following standards of practice of the profession set out in the College's published standards and the Assignment of Care Guideline:
  - a. A member must ensure that all records contain relevant referral and consultation information and an indication of who made each entry (*Record Keeping Standard of Practice* of the College).
  - b. It is expected that assignment will only occur with certain processes in place, including documentation/references for performance of procedures (*Assignment of Care Guideline*).
16. It is agreed that the Member issued invoices for services that she herself did not provide but rather her spouse provided.
17. The Member believed that she could refer or assign this service to her spouse, still have it considered a naturopathic service and bill it as such. The Member agrees that she was wrong to do so. The Member now realizes that if any service is referred or assigned to another provider, the patient must consent, the referral must be recorded in accordance with College requirements, and the invoice must indicate that another service provider provided the service. This is confirmed in the Referral and Consultation Guideline of the College and the Fees and Billing Standard of the College:
  - a. Prior to requesting a consultation or referral, a naturopath must discuss the purpose with the patient and that the patient agrees to the release of information and the choice of health professional (*Referrals and Consultations Guidelines*).
  - b. Receipts are clearly itemized. (*Fees and Billing Standard*).
18. The Member recognizes that osteopathy was ineligible for reimbursement from this insurer and that billing the service as naturopathic was misleading and false. The claim to the insurer indicated that she provided this service. She did not.
19. It is agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:

- a. **Paragraph 1** (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
- b. **Paragraph 18** (Issuing an invoice, bill or receipt that the member knows or ought to know is false or misleading);
- c. **Paragraph 23** (Failing to keep records in accordance with the standards of the profession);
- d. **Paragraph 24** (Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement); and
- e. **Paragraph 46** (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as dishonourable or unprofessional)

### Further Record Keeping Concerns

- 20. It is agreed that the Member failed to maintain appointment records, financial records and patient charts in accordance with the following standards of practice of the profession set out in the College's published standards:
  - a. A member must ensure that appointment records, financial records and patient charts are accurate legible and comprehensive (*Record Keeping Standard of Practice* of the College).
- 21. It is agreed that the Member was unable to provide requested patient records to the College investigator upon request.
- 22. It is agreed that the Member failed to maintain a separate patient record for each patient and ensure that patient records can be easily identified or retrieved.
- 23. It is agreed that the above conduct constitutes professional misconduct pursuant to subsection 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
  - a. **Paragraph 1** (Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession);
  - b. **Paragraph 23** (Failing to keep records in accordance with the standards of the profession); and
  - c. **Paragraph 46** (Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as dishonourable or unprofessional).
- 24. By this document, the Member admits to the truth of the facts referred to in paragraphs 1 to 22 above (the "Agreed Facts").
- 25. 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 Admission of Professional Misconduct 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 and Admission of Professional Misconduct 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, free of bribe, and that she has been advised of her right to seek legal advice.

26. In light of the Agreed Facts and Admission of Professional Misconduct, the College and the Member submit that the Discipline Committee should find that the Member has committed professional misconduct.

## **Decision**

Based on the Member's admissions and the facts agreed upon by the parties, the Panel found that the Member engaged in professional misconduct as alleged.

## **Reasons for Decision**

It was clear from the agreed facts that the Member's conduct fell below the standards expected of naturopaths in the province. The Panel was satisfied that its findings were supported by the facts in the Agreed Statement of Facts, as follows:

Allegation 14(a)	Paragraphs 7,8,11, 17, 20 and 22 of ASF
Allegation 14(b)	Paragraphs 5, 10, 16 and 18 of ASF
Allegation 14(c)	Paragraphs 15, 20 and 22 of ASF
Allegation 14(d)	Paragraphs 5, 10, 16, 18 of ASF
Allegation 14(e)	Paragraphs 5, 7, 8, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21 and 22 of ASF

## **Penalty Submissions**

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

1. Requiring the Member to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Registrar to suspend the Member's certificate of registration for a period of five months, on a schedule to be set by the Registrar, two months of which shall be remitted if the Member completes the provisions of paragraph 3(a) through 3(d) no later than January 31, 2020.
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, no later than February 29, 2020.
  - b. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, the College Jurisprudence Course no later than February 29, 2020;
  - c. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, a medical records course, approved by the Registrar, no later than February 29, 2020;
  - d. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar no later than February 29, 2020, that shall be published by the College at a time and in a format determined by the Registrar, on the following issue:
    - i. The lessons she learned in completing the PROBE, College Jurisprudence and medical records courses.
4. Requiring the Member to pay a fine of not more than \$350 to the Minister of Finance within one (1) month of the date of the Order.
5. The Member shall pay the College's costs fixed in the amount of \$4,000 payable within thirty days of the date of the hearing or on schedule set by the Registrar.
6. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
7. The Member 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.

## **Penalty and Costs Decision**

The Panel accepts the Joint Submission and accordingly makes an order:

1. The Member is required to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. The Registrar is to suspend the Member's certificate of registration for a period of five months, on a schedule to be set by the Registrar, two months of which shall be remitted if the Member completes the provisions of paragraph 3(a) through 3(d) no later than January 31, 2020.
3. The Registrar is 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, no later than February 29, 2020.
  - b. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, the College Jurisprudence Course no later than February 29, 2020;
  - c. Requiring that the Member successfully complete, to the satisfaction of the Registrar and at her own expense, a medical records course, approved by the Registrar, no later than February 29, 2020;
  - d. Requiring that the Member write an essay between 1000 and 1500 words in length, and provide it to the Registrar no later than February 29, 2020, that shall be published by the College at a time and in a format determined by the Registrar, on the following issue:
    - i. The lessons she learned in completing the PROBE, College Jurisprudence and medical records courses.
4. The Member is required to pay a fine of not more than \$350 to the Minister of Finance within one (1) month of the date of the Order.
5. The Member shall pay the College's costs fixed in the amount of \$4,000 payable within thirty days of the date of the hearing or on schedule set by the Registrar.
6. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
7. The Member 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.

## **Reasons for Penalty Decision**

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

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

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

The aggravating factors in this case include the nature of the conduct itself, in that the Member failed to maintain the standards of practice by issuing receipts that were misleading, failing to keep records in accordance to the standards of the profession and signed a document she knew contained misleading information. The mitigating factors include the fact that the Member readily admitted her misconduct and was prompt in engaging in settlement resolution of this matter and the Member showed remorse when discussing the allegations with the Registrar. The Panel also considered it a mitigating factor that this was the first time the Member was appearing before the Discipline Committee.

The penalty order meets the requirement of being both a specific deterrent to the Member, and a general deterrent to the profession for the following reasons. The length of the suspension sends a message to both the Member and the membership at large that this kind of professional misconduct will result in a serious disruption to a person's practice. Similarly, the fine, while not oppressively high, is an acknowledgment of the cost of regulation for the Province. The oral reprimand is an opportunity to make clear to the Member and the profession that members must be held to a high standard in keeping with the College's goal of public protection and accountability. Finally, the remedial terms will help to ensure that the Member learn from her misconduct and is able to return to practice safer and better equipped to treat her patients competently and safely.

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

While the costs ordered are not part of the penalty *per se*, they are reasonable in all of the circumstances. The College and its membership should not bear the full responsibility for the costs of the discipline process. It is fair to ask that the Member who has been found to have engaged in professional misconduct to share in a portion of the costs incurred in connection to the discipline hearing.

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

I, Shelley Burns, sign this decision and reasons for the decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Dr. S. Burns, ND  
Chairperson

Thursday, November 14th, 2019  
Date

Panel Members:

Dianne Delany  
Madeleine Elton