

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

PANEL:		Genevieve Boudreau, Chairperson Rosemary Hnatiuk, Member Shelley Burns, Member George Tardik, Member
BETWEEN:		
COLLEGE OF NATUROPATHS OF ONTARIO	)	BONNI ELLIS for the
	)	College of Naturopaths of Ontario
- and -	)	
	)	MICHAEL MANDARINO for
	)	ROBERT ALLAN PRICE
ROBERT ALLAN PRICE	)	
Reg. No. 0934	)	
	)	Heard: April 1, 2016
	)	

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on April 1, 2016 at the College of Naturopaths of Ontario (“the College”) at Toronto.

Publication Ban

At the outset of the hearing, the College sought an order for a partial publication and broadcasting ban prohibiting the publication or disclosure of the name of the patient referred to during the hearing or in documents filed at the hearing, or any information that would disclose the identity of the patient, other than to refer to the patient as a relative of Robert Allan Price (the “Member”).

The Member did not oppose the request. The Panel agreed that a partial publication and broadcasting ban was appropriate in the circumstances and made the order accordingly.

These Decision and Reasons are subject to the publication ban order which continues to remain in force.

The Allegations

The allegations against the Member as stated in the Notice of Hearing dated September 10, 2015, 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 ("the Board") in that, you contravened standards of practice or guidelines of practice set by the Board and, in particular, in or around June 2013:

- a) you contravened the Board's Standards of Practice, Guide to the Ethical Conduct of Naturopathic Doctors and/or Guidelines on Conflict of Interest when you treated B.G. in circumstances where your relationship as B.G.'s [REDACTED] could influence your professional judgment and your duty to act in B.G.'s best interests;
- b) you contravened the Board's Standards of Practice, Guide to the Ethical Conduct of Naturopathic Doctors and/or Standards of Practice and Performance Expectations for Consent when you failed to obtain valid consent from B.G., and/or R.G., B.G.'s sole custodial parent, prior to administering an injection to B.G.; and/or
- c) you contravened the Board's Standards of Practice and/or Record Keeping Standards of Practice for Naturopathic Doctors when you failed to create a patient record documenting your treatment of B.G.

2. You have committed an act of misconduct as provided by subsection 30(1) of Ontario Regulation 278, R.R.O. 1990, as amended, and as defined in paragraph 2(r) of the definition of Professional Misconduct/Incompetence established by the Board of Drugless of 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 and, in particular, in or around June 2013:

- a) you administered an injection to [REDACTED], B.G., contrary to her stated wishes;
- b) *allegation withdrawn*;
- c) you failed to advise [REDACTED], B.G. what substance you administered to her before and/or after the administration;
- d) you failed to advise R.G., B.G.'s sole custodial parent, what substance you had administered to B.G. when R.G. asked you for this information;
- e) you treated B.G. in circumstances where your relationship as B.G.'s [REDACTED] could influence your professional judgment and your duty to act in B.G.'s best interests;
- f) you failed to obtain valid consent from B.G., and/or R.G., B.G.'s sole custodial parent, prior to administering an injection to B.G.; and/or

g) you failed to document your treatment of B.G.

Member's Plea

The Member admitted the allegations set out in paragraphs numbered 1(a)-(c) and 2(a), (c)-(g) in the Notice of Hearing.

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

The parties sought leave to withdraw the allegation at paragraph 2(b). The Panel granted the request.

The Evidence

The Panel was advised that the parties had reached an agreement on the facts of this case. The College filed an Agreed Statement of Facts, which the Panel marked as Exhibit #2.

In brief, the Agreed Statement of Facts confirmed that the Member administered an injection to B.G. contrary to her stated wishes and without advising her custodial parent.

The parties further agreed to the following:

THE BOARD'S STANDARDS, POLICIES AND GUIDELINES

Conflict of Interest

1. The Board's *Guidelines on Conflict of Interest* ("the Conflict Guideline"), which were in place at the time of the incidents in question, identify a conflict to occur,
when a Registrant engages in a relationship or arrangement that could result in the Registrant's personal interests influencing his/her professional judgment, resulting in a conflict with his/her duty to act in the best interest of patients.
2. The Conflict Guideline identifies "dual relationships", such as those that exist when a patient is also a relative, as an example where a conflict situation may arise:
A conflict of interest may exist when there is a dual relationship between a Registrant and a patient. A dual relationship may create a power differential or bring a competing interest that may compromise, or be perceived to compromise, the Registrant's professional judgment.

Consent

3. Section 1.0 of the Board's *Standards of Practice and Performance Expectations for Consent* ("the Consent Standard"), which was in place at the time the conduct occurred makes it clear that "consent is required for all interventions", subject to limited exceptions that would not apply here.
4. Further, the Consent Standard sets out four criteria that must be met in order for the consent to be valid. It must (i) relate to the proposed intervention, (ii) be informed, (iii) be voluntary, and (iv) not be obtained through fear, misrepresentation or fraud.

Record Keeping

5. Paragraph 3.0 of the Board's *Record Keeping Standard of Practice for Naturopathic Doctors* ("the Record Keeping Standard"), which was in place at the time the incidents occurred, 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.
6. With respect to the content of patient records, Appendix I sets the expectation that the following details (among others) will be included:
 - record of consent; and
 - identity of other healthcare providers involved in assessment or treatment.
7. 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).

THE MEMBER'S ADMISSIONS/ACKNOWLEDGEMENTS

8. The Member acknowledges and agrees that the following Board standards and guidelines were in place at the time of the conduct described above and reflect the standards expected of a naturopathic doctor at that time:
 - *Guidelines on Conflict of Interest;*
 - *Standards of Practice and Performance Expectations for Consent;*
 - *Record Keeping Standard of Practice for Naturopathic Doctors;* and
 - *Guide to Ethical Conduct of Naturopathic Doctors.*

9. The Member admits that he engaged in an act or acts of misconduct as set out in paragraph 1 of the Notice of Hearing and specifically, that, in or around June 2013, he contravened:
 - a. the Board's *Guidelines on Conflict of Interest* when he treated B.G. in circumstances where his relationship with B.G. influenced his professional judgment and his duties to her as a patient;
 - b. the Board's *Standards of Practice and Performance Expectations for Consent and Guide to Ethical Conduct of Naturopathic Doctors* when he failed to obtain valid consent from B.G. [REDACTED] and/or R.G., B.G.'s sole custodial parent, prior to administering an injection to B.G.; and/or
 - c. the Board's *Record Keeping Standard of Practice for Naturopathic Doctors* when he failed to create a patient record documenting his treatment of B.G.
10. The Member admits that he engaged in 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, as set out in paragraph 2 of the Notice of Hearing, when, in or around June 2013, he:
 - a. administered an injection to [REDACTED] B.G., contrary to her stated wishes;
 - b. withdrawn;
 - c. failed to advise [REDACTED], B.G., what substance he administered to her before and/or after the administration;
 - d. failed to advise R.G., B.G.'s sole custodial parent, what substance he had administered to B.G. when R.G. asked him for this information;
 - e. treated B.G. in circumstances where his relationship with B.G. influenced his professional judgment and his duties to her as a patient;
 - f. failed to obtain valid consent from B.G. and/or R.G., as B.G.'s sole custodial parent, prior to administering an injection to B.G.; and/or
 - g. failed to document his treatment of B.G.

Decision

The Panel considered the Agreed Statement of Facts and finds that the facts support a finding of professional misconduct and, in particular, finds that the Member committed an act of professional misconduct as alleged in paragraphs numbered 1(a)-(c) and 2(a), (c)-(g) of the Notice of Hearing in that the Member administered an injection to B.G., and failed to provide full disclosure or obtain a valid consent from B.G. or R.G., the custodial parent, before

administering the injection. Further, he took no steps to properly document his treatment of B.G.

Reasons for Decision

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that the facts of this case and the expert evidence described in the Agreed Statement of Facts support findings of professional misconduct as alleged in the Notice of Hearing.

The Member failed to realize that his dual relationship with B.G. impacted his judgment as a Naturopath and that by administering an injection to B.G. he contravened the Conflict Guidelines. The Member also contravened the Board standards and guidelines when he failed to obtain B.G.'s and/or R.G.'s, the sole custodian of B.G., written or verbal consent before administering the treatment. Furthermore, the Member contravened the Record Keeping Standard when he failed to create any patient records relating to the treatment of B.G.

The Panel agrees with the Agreed Statement of Facts, accepts the Member's plea and finds the Member guilty of professional misconduct.

Penalty

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

1. Directing the Registrar to suspend the Member's Certificate of Registration for a period of four (4) weeks, with two (2) weeks of the suspension remitted on condition that the Member successfully completes the remedial components set out in paragraphs four (4) to nine (9) of the Undertaking.ⁱ The suspension shall commence on the date of the Panel's Order and shall continue for two weeks, uninterrupted. If the balance of the suspension is required to be served by the Member because he fails to complete any of the remedial components of the Undertaking, as described above, the balance of the suspension shall commence one year following the date of the Panel's Order and shall continue for two weeks, uninterrupted.
2. Requiring the Member to pay costs to the College either:
 - a. in the amount of \$5,000, in which case the Member shall provide the College with a certified cheque or money order within thirty (30) days of the date of the Panel's Order; or
 - b. in the amount of \$6,250, in which case the Member shall provide the College with:

ⁱ The Panel also received a copy of the Undertaking, wherein the Member agreed to take a number of steps to remediate his practice. While the Panel cannot order that a Member enter into such an Undertaking, the fact that one was present in this case weighed heavily in favour of the Panel's decision to accept the Joint Submission.

- i. a certified cheque or money order in the amount of \$1,250 within thirty (30) days of the date of the Panel's Order; and
 - ii. a certified cheque or money order in the amount of \$1,000 every six months thereafter, over a period of thirty (30) months.
3. Clarity Note: The requirement for the Member to complete the remedial components set out in paragraphs four (4) to nine (9) of the Undertaking, cannot be relieved by serving the remitted portion of the suspension referred to in paragraph 1, above.

Penalty Decision

The Panel accepts the Joint Submission and accordingly orders:

1. The Registrar suspend the Member's Certificate of Registration for a period of four (4) weeks, with two (2) weeks of the suspension remitted on condition that the Member successfully completes the remedial components set out in paragraphs four (4) to nine (9) of the Undertaking. The suspension shall commence on the date of the Panel's Order and shall continue for two weeks, uninterrupted. If the balance of the suspension is required to be served by the Member because he fails to complete any of the remedial components of the Undertaking, as described above, the balance of the suspension shall commence one year following the date of the Panel's Order and shall continue for two weeks, uninterrupted.
2. The Member to pay costs to the College either:
 - a. in the amount of \$5,000, in which case the Member shall provide the College with a certified cheque or money order within thirty (30) days of the date of the Panel's Order; or
 - b. in the amount of \$6,250, in which case the Member shall provide the College with:
 - i. a certified cheque or money order in the amount of \$1,250 within thirty (30) days of the date of the Panel's Order; and
 - ii. a certified cheque or money order in the amount of \$1,000 every six months thereafter, over a period of thirty (30) months.
3. Clarity Note: The requirement for the Member to complete the remedial components set out in paragraphs four (4) to nine (9) of the Undertaking, cannot be relieved by serving the remitted portion of the suspension referred to in paragraph 1, above.

Reasons for Penalty Decision

The Panel took into consideration in making its penalty decision that its jurisdiction to order penalty is governed by the penalty provisions set out in the *Drugless Practitioners Act* and the regulations thereunder. This is because the conduct at issue occurred prior to the coming into force of the *Naturopathy Act, 2007* or the College itself. As such, the Panel was limited in what it could order by way of penalty.

The Panel also took into account the fact that the parties came before it with a joint proposal as to penalty. It is clear from the case law provided that the Panel should not interfere lightly with a joint submission on penalty and that unless the penalty proposed is contrary to the interests of justice and would bring this process into disrepute, the Panel ought not to interfere.

In its review of the Joint Submission and the Undertaking, the Panel was guided by the important objective of the protection of the public interest and the principles of general and specific deterrence. The Panel is satisfied that the proposed penalty, when considered in conjunction with the Undertaking, meets the objective of protecting the public and addresses these principles.

The Panel acknowledges the mitigating actions of the Member in that he admitted to the allegations, agreed to the Statements of Facts, alleviated the need for a full hearing, and accepted the undertakings. The Panel finds that the suspension, and the oral reprimand serves the principle of general and specific deterrence. Further, the Member was also deterred from future professional misconduct by the steps he has agreed to take as set out in the Undertaking; in particular the time and financial commitment to participate in an educational program. The Panel finds that the Undertaking also adheres to the principle of specific deterrence through a remediation process where it obliges the Member to follow an individualized educational program and requires that he be reviewed and counselled by an expert. The Panel is satisfied that the public interest is served by the Member's Undertakings and by the penalty order. Finally, the Panel was satisfied that the costs the Member has agreed to pay to the College are appropriate and reasonable in the circumstances.

Oral Reprimand

At the conclusion of the hearing, the Member confirmed that he was waiving his right to appeal the decision and so the Panel delivered its reprimand.

I, Genevieve Boudreau, 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

April 19, 2016

Date

Rosemary Hnatiuk
Shelley Burns
George Tardik