

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

PANEL: Dr. Jordan Sokoloski, ND – Chair,  
Dr. Laure Sbeit ND  
Lisa Fenton  
Samuel Laldin

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO ) REBECCA DURCAN and  
) ANDREW PARR for the  
) College of Naturopaths of Ontario  
)  
)  
- and - ) BRIAN WHITWHAM for  
) Dr. Taras Rodak, ND  
)  
DR. TARAS RODAK, ND )  
) ANDREA GONSALVES,  
) Independent Legal Counsel  
)  
) Heard: May 18, 2021

**DECISION AND REASONS ON PENALTY  
(DC-18-01)**

[1] On February 19, 2021, this panel of the Discipline Committee released its decision and reasons finding that Dr. Taras Rodak, ND (the “Registrant”) had engaged in certain acts of professional misconduct set out in a Notice of Hearing dated June 21, 2018. On May 18, 2021, the panel reconvened the hearing for argument on the issue of penalty. The matter was heard electronically.

**The Findings**

[2] The misconduct findings of the panel and the reasons for those findings are set out in the panel’s written reasons of February 19, 2021. The Registrant had admitted to some of the

allegations of professional misconduct in the Notice of Hearing, and contested others. The panel made findings on some, but not all, of the allegations in the Notice of Hearing. In sum, the panel found that the Registrant engaged in professional misconduct as follows:

1. The Registrant contravened a standard of practice of the profession by failing to obtain informed consent to perform Bowen therapy on his Patient and not adequately responding to the Patient's questions about Bowen therapy. This conduct would reasonably be regarded by other registrants of the profession as dishonourable and unprofessional. This conduct was contrary to paragraphs 1 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*.
2. The Registrant failed to provide the Patient with (a) the nature of the Bowen therapy treatment, (b) the expected benefits of the Bowen therapy treatment, (c) the material risks of the Bowen therapy treatment, (d) the material side effects of the Bowen therapy treatment, (e) alternative courses of action to the Bowen therapy treatment, and (f) the likely consequences of not having the Bowen therapy treatment. This was a breach of the requirement to obtain informed consent prior to doing anything to a Patient for a therapeutic, preventative or other health-related purpose, and would reasonably be regarded by other members of the profession as dishonourable and unprofessional, contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*.
3. The Registrant failed to confirm at the outset of the appointment if the Patient wanted a person present during the appointment. This conduct would reasonably be regarded by other members of the profession as unprofessional, contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*.
4. In addition, the Registrant asked the Patient if he could conduct a breast exam and asked the Patient to sign a consent form after the appointment indicating that she had been provided with the option to have a person present during the appointment. This conduct would reasonably be regarded by other members of the profession as dishonourable and unprofessional, contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*.

[3] A copy of the panel's decision and reasons regarding the misconduct findings is attached as Appendix "A" to these reasons.

### **Penalty Submissions**

[4] The parties presented the panel with a Joint Submission as to Penalty and Costs (Exhibit 14). The Joint Submission provides as follows:

The College of Naturopaths of Ontario and Dr. Taras Rodak, ND (the "Registrant") agree and jointly submit that the Discipline Committee make an order:

1. Requiring the Registrant to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the CEO to suspend the Registrant's certificate of registration for a period of four months, on a schedule to be set by the CEO, two (2) months of which shall be remitted if the Registrant complies with the provisions of paragraph 3(a) through 3(c) no later than August 30, 2021.
3. Directing the CEO to impose the following specified terms, conditions and limitations on the Registrant's certificate of registration, to be fulfilled at the Registrant's expense, to the satisfaction of the CEO, prior to October 31, 2021:
  - a. Requirement that the Registrant unconditionally pass the PROBE ethics course;
  - b. Requirement that the Registrant successfully complete the College's jurisprudence course;
  - c. Requirement that the Registrant successfully complete a naturopathic medicine records course approved by the CEO;
  - d. Requirement that the Registrant complete one meeting that is at least four hours in length with a Regulatory Expert, to be identified by the CEO, to review the issues that arose in this case, and up to two additional meetings of equal duration, the necessity of which will be determined by the Regulatory Expert; and
  - e. Requirement that the Registrant write an essay between 1,000 and 1,500 words in length, that is acceptable to the CEO, and provide it to the CEO, no later than one month from the date of the last meeting with the Regulatory Expert, that shall be published by the College at a time and in a format determined by the CEO, outlining what the Registrant learned as a result of his meeting(s) with the Regulatory

Expert, and his unconditional pass/successful completion of the PROBE ethics, jurisprudence and naturopathic medicine courses.

4. For greater certainty, the Registrant's obligation to comply with the proposed terms, conditions and limitations on his certificate of registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
5. The Registrant shall pay a fine of \$350 to the Minister of Finance within two months of the hearing of this matter.
6. The Registrant shall pay the College's costs fixed in the amount of \$5,000 payable on a schedule determined by the CEO.
7. The Registrant acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
8. The Registrant acknowledges and understands that he is executing this document voluntarily, unequivocally, free of duress, free of bribe, and that he has been advised of his right to seek legal advice.

[5] The parties both submitted and discussed a Brief of Authorities which summarized a number of cases from other regulatory health colleges that encompassed some similar themes to this matter. This gave the panel confidence that the penalty was reasonable and proportionate to the circumstances of the misconduct.

### **Penalty and Costs Decision**

[6] The panel accepts the Joint Submission and accordingly makes an order:

1. Requiring the Registrant to appear before the panel to be reprimanded immediately following the hearing of this matter.
2. Directing the Chief Executive Officer (CEO) to suspend the Registrant's certificate of registration for a period of four months, on a schedule to be set by the CEO, two (2) months of which shall be remitted if the Registrant complies with the provisions of paragraph 3(a) through 3(c) no later than August 30, 2021.
3. Directing the CEO to impose the following specified terms, conditions and limitations on the Registrant's certificate of registration, to be fulfilled at the Registrant's expense, to the satisfaction of the CEO, prior to October 31, 2021:
  - a. Requirement that the Registrant unconditionally pass the PROBE ethics course;
  - b. Requirement that the Registrant successfully complete the College's jurisprudence course;

- c. Requirement that the Registrant successfully complete a naturopathic medicine records course approved by the CEO;
  - d. Requirement that the Registrant complete one meeting that is at least four hours in length with a Regulatory Expert, to be identified by the CEO, to review the issues that arose in this case, and up to two additional meetings of equal duration, the necessity of which will be determined by the Regulatory Expert; and
  - e. Requirement that the Registrant write an essay between 1,000 and 1,500 words in length, that is acceptable to the CEO, and provide it to the CEO, no later than one month from the date of the last meeting with the Regulatory Expert, that shall be published by the College at a time and in a format determined by the CEO, outlining what the Registrant learned as a result of his meeting(s) with the Regulatory Expert, and his unconditional pass/successful completion of the PROBE ethics, jurisprudence and naturopathic medicine courses.
4. For greater certainty, the Registrant's obligation to comply with the proposed terms, conditions and limitations on his certificate of registration contained in paragraph 3 is not relieved by serving the entire suspension referred to in paragraph 2 above.
  5. The Registrant shall pay a fine of \$350 to the Minister of Finance within two months of the hearing of this matter.
  6. The Registrant shall pay the College's costs fixed in the amount of \$5,000 payable on a schedule determined by the CEO.

### **Reasons for Penalty Decision**

[7] The panel recognized that the penalty should consider 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 it concludes that doing so would bring the discipline process of this College into disrepute or be otherwise contrary to the public interest. After considering the submissions of the parties and reviewing the cases provided by the parties in the Brief of Authorities, the panel was satisfied that the jointly proposed penalty is reasonable and proportionate and meets the objectives of penalty. The panel therefore made an order in accordance with the Joint Submission.

[8] The panel considered the mitigating factors, including the Registrant's admission to some of the allegations made against him, as well as his willingness to work with the College to arrive at the Joint Submission. The panel also considered the aggravating factors, including the conduct at issue.

[9] The terms of the penalty order serve as both a specific deterrent to the Registrant and a general deterrent to the profession at large. The length of the suspension (four months, with the potential for two months to be remitted) sends a message that professional misconduct will result in a serious disruption to a registrant's practice. The fine is an acknowledgment of the cost to the Province for the privilege of self-regulation. The reprimand allows the panel to make clear to the Registrant and other registrants of the profession that they will be held to a high standard in keeping with the College's mandate of public protection and accountability. Finally, the remedial terms will help to ensure that the Registrant learns from his misconduct and can return to practice prepared to conduct himself more responsibly and with the professionalism and sensitivity required when dealing with issues of the kind that were involved in this case. The panel was pleased to hear that the Registrant has already taken steps to complete a number of the remedial terms, conditions and limitations imposed upon him and believes this initiative demonstrates a desire to avoid a repeat of the circumstances that led to the misconduct.

[10] For these reasons, the penalty order meets the requirement to preserve public confidence in the College's ability to properly regulate its Registrants in the public interest. It is significant but proportionate and demonstrates that the College takes professional misconduct of this nature seriously.

[11] At the conclusion of the hearing, having confirmed that the Registrant waived any right to appeal, the panel delivered its reprimand. A copy of the reprimand is attached to these reasons.

I, Dr. Jordan Sokoloski, ND 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:



June 21, 2021

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Chairperson

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Date

Names of panel members

Dr. Laure Sbeit ND  
Lisa Fenton  
Samuel Laldin

## REPRIMAND

**Dr. Rodak**, you have been found to have engaged in professional misconduct by this Discipline Panel. As part of the penalty ordered, you are now before the panel to be reprimanded. You agreed to this term of order as part of the joint submission proposed.

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 College standards of practice relating to informed consent.
- B) And 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 that your professional misconduct resulted in the Patient's significant distress and loss of trust in the integrity of the therapeutic relationship. 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, we expect you will use these remedial activities to significantly improve your conduct.

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



# Appendix A

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

PANEL: Dr. Jordan Sokoloski, ND – Chair  
Dr. Laure Sbeit, ND  
Lisa Fenton  
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BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO ) REBECCA DURCAN and  
) ANDREW PARR for the  
) College of Naturopaths of Ontario

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TARAS RODAK ) BRIAN WHITWHAM  
) for the Registrant  
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)  
) LUISA RITACCA, Independent  
Legal Counsel  
)  
) Heard:  
) October 5, 6, 7, November 16, 2020  
)

**DECISION AND REASONS**

1. This matter came on for hearing before a panel of the Discipline Committee on October 5, 6 and 7 and November 16, 2020. The matter was heard by way of videoconferencing.

**The Allegations**

2. The allegations against Dr. Taras Rodak (the “Registrant”) as stated in the Notice of Hearing dated June 21, 2018 are as follows:

1. At all relevant times, Dr. Taras Rodak (“the Registrant”) has been a member of the College.
2. On or about October 2, 2017 the Patient attended the Registrant’s clinic in Etobicoke, Ontario. The Patient was seeking assistance related to low energy and leg cramps related to her marathon training.

***Standards of the Profession***

3. It is alleged that during the appointment, the Registrant:
  - a. [REDACTED]
  - b. [REDACTED]
  - c. [REDACTED]
  - d. Did not obtain informed consent to perform Bowen therapy on the patient;
  - e. Did not adequately respond to the Patient’s questions about Bowen therapy;
  - f. [REDACTED]
  - g. *Allegation withdrawn.*
4. It is alleged that the above conduct constitutes professional misconduct pursuant to s. 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); and/or
  - b. 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 [REDACTED], dishonourable or unprofessional).

***Informed Consent***

5. It is alleged that during the appointment, the Registrant failed to:

- a. Provide the Patient with the nature of the Bowen therapy treatment;
  - b. Provide the Patient with the expected benefits of the Bowen therapy treatment;
  - c. Provide the Patient with the material risks of the Bowen therapy treatment;
  - d. Provide the Patient with the material side effects of the Bowen therapy treatment;
  - e. Provide the Patient with alternative courses of action to Bowen therapy treatment; and/or
  - f. Provide the Patient with the likely consequences of not having the Bowen therapy treatment.
6. It is alleged that the above conduct constitutes professional misconduct pursuant to s. 51(1)(c) of 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 3 (Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic or other health-related purpose except, i. with the informed consent of the patient or the patient's authorized representative, or ii. as required or authorized by law); and/or
  - b. 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 [REDACTED], dishonourable or unprofessional).

[REDACTED]

7. *Allegation Withdrawn.*

8. *Allegation Withdrawn.*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## Registrant's Plea

3. At the outset of the hearing, the Registrant made a number of admissions with respect to certain facts and certain of the allegations. In particular, the Registrant admitted the following factual allegations: 3(a), (b), (c), (d), (e), and (f); 5(a), (b), (c), (d), (e) and (f).
4. In light of the admissions regarding the factual allegations set out above, Dr. Rodak admitted that he thereby engaged in professional misconduct as follows:
  - a. With respect to the factual allegations at paragraphs 3(d) and (e), the Registrant admits that the conduct amounted to a contravention of a standard of practice of the profession, and that the conduct would reasonably be regarded by other members of the profession as “unprofessional,” (contrary to paragraphs 1 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*)
  - b. With respect to the factual allegations at paragraphs 5(a), (b), (e) and (f), the Registrant admits that the conduct amounted to a breach of the requirement to obtain informed consent prior to doing anything to a Patient for a therapeutic, preventative or other health-related purpose, and that the conduct would reasonably be regarded by other members of the profession as “unprofessional”. (contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*)
5. Dr. Rodak denied that the other facts admitted amounted to professional misconduct.

[REDACTED]

[REDACTED]

## Overview

6. At all material times, Dr. Rodak was a registrant of the College. The allegations relate to Dr. Rodak's interactions with one patient on the evening of October 2, 2017 (the “Patient”). It is agreed that on that day, the Patient attended the Registrant's clinic in Etobicoke, looking to [REDACTED] [REDACTED]

[REDACTED]

7. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
8. Further, the College alleges that the Registrant engaged in professional misconduct in his failure to provide informed consent to the Patient with respect to the Bowen therapy performed.
9. Dr. Rodak acknowledges that he engaged in professional misconduct in failing to obtain informed consent from the Patient with regard to the Bowen therapy provided, as is set out in more detail above.
10. The Registrant denies any of the other misconduct alleged [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Decision**

11. In light of the Registrant’s admissions, the Panel finds that Dr. Rodak engaged in professional misconduct as follows:
  - a. With respect to the factual allegations at paragraphs 3(d) and (e), the Registrant admits that the conduct amounted to a contravention of a standard of practice of the profession, and that the conduct would reasonably be regarded by other registrants of the profession as “unprofessional,” (contrary to paragraphs 1 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*). In addition to “unprofessional,” the Panel also finds the Registrant’s conduct to be “dishonourable.”

b. With respect to the factual allegations at paragraphs 5(a), (b), (e) and (f), the Registrant admits that the conduct amounted to a breach of the requirement to obtain informed consent prior to doing anything to a Patient for a therapeutic, preventative or other health-related purpose, and that the conduct would reasonably be regarded by other members of the profession as “unprofessional,” (contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*). In addition to “unprofessional,” the Panel also finds the Registrant’s conduct to be “dishonourable.”

12. With respect to the balance of the allegations, beginning with the allegations made at paragraphs 3(a), (b), (c), and (f), the Panel finds that the College did not establish on a balance of probabilities that the conduct of the Registrant was in contravention of any standards of practice of the profession. However, the Panel found that the conduct pertaining to 3(b) would reasonably be regarded by other members of the profession as “unprofessional,” (contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*) and that the conduct pertaining to 3(c) and (f) would reasonably be regarded by other members of the profession as “unprofessional and dishonourable.”

13. With respect to the allegations made at paragraphs 5(c) and (d), the Panel finds that the College has established on a balance of probabilities that the conduct amounted to a breach of the requirement to obtain informed consent prior to doing anything to a Patient for a therapeutic, preventative or other health-related purpose, and that the conduct would reasonably be regarded by other members of the profession as “dishonourable and unprofessional,” (contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*).

14. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

15. The Panel's reasons for decision are set out below.

**Information Considered**

16. The Panel carefully considered the testimony of both the Patient and the Registrant, as well as the expert witnesses called by both the College and the Defense. During deliberations, the exhibits were reviewed and the Closing Submissions from both parties carefully considered.

**Issues to be Determined**

17. [REDACTED]

18. With respect to the remaining allegations, the Panel identified the following issues for consideration:

[REDACTED]



d. Did the Registrant engage in professional misconduct in failing to provide the Patient with the material risks and/or the material side effects of the Bowen therapy treatment? (*allegations 5(c), (d), 6(a), (b)*)

19. The Panel also considered whether any of the conduct described above, amounts to conduct which would reasonably be regarded by members of the profession as disgraceful, dishonourable or unprofessional.

### **Evidence**

20. During the hearing, the Panel heard from the Patient, the Registrant and two expert witnesses.

### ***Evidence of the Patient and Registrant***

21. Generally, there was little disagreement in the factual evidence the Panel heard from the Patient and the Registrant. With regard to the factual issues to be determined by the Panel, both the Patient and the Registrant agreed that: [REDACTED]

[REDACTED] (iii)  
the Patient was asked to sign a new consent form at the end of her appointment; and [REDACTED]  
[REDACTED]  
[REDACTED]

22. The Panel noted that there was some factual evidence that was disputed. When relevant, a determination was made by the Panel and the reasons for the determination stated.

### ***Evidence of the Interaction between the Patient and Registrant***

23. The Patient lived in Toronto at the time of her appointment with the Registrant. She contacted the Registrant's clinic to arrange an appointment by phone and email. An appointment was scheduled with the Registrant on 2 October 2017 at 6:30 pm.

24. The Patient arrived early to complete the necessary forms. She was provided these forms by a person at the front desk. Both the Registrant and the Patient agree that the appointment started at least 15 minutes late. The Registrant apologized for being late. The Patient advised the Registrant that she needed to leave by 7:30 pm.

25. Both testified that they proceeded to the Registrant's office for a consultation. The Registrant then asked the Patient many questions about her health and took notes. [REDACTED]  
[REDACTED]  
[REDACTED] The Patient testified that she was asked a series of questions in rapid fashion. The Registrant acknowledged that he asked the Patient many questions during the consultation process.

26. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

27. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

28. The Registrant testified that he did not notice that the Patient was anxious during the appointment. [REDACTED]  
[REDACTED] [REDACTED]  
[REDACTED]

29. The Registrant then proposed Bowen therapy. There was no discussion about the nature of the therapy, the expected benefits, material risks or side effects, alternative courses of

action, or the likely consequences of not having the therapy. The Registrant told the Patient that the treatment was developed in Australia and that Australian sports teams use it. The Registrant testified that he showed the Patient the Bowen manual that he keeps on his desk in his office. The Patient was not asked about this on cross-examination, but did testify that she received virtually no information regarding the therapy, other than that it was developed in Australia.

30. Dr. Rodak's notes in this regard are sparse and given his admissions regarding the lack of informed consent for the Bowen treatment, it is unlikely that he had any significant discussion with the Patient about the treatment and also unlikely that he reviewed the manual with her in any meaningful manner.

31. [REDACTED]

32. After the treatment, the Registrant left the room and the Patient got dressed. The Registrant then explained that leaving the room during Bowen therapy is an important part of the technique.

33. The Patient testified that the treatment left her feeling anxious and uncomfortable. The Registrant denied noticing that the Patient was uncomfortable, however he did acknowledge that she asked him why he kept leaving the room.

34. Following the Bowen therapy, the Registrant recommended a bottle of digestive enzymes to the Patient and she agreed to purchase it.

35. Before the Patient left, the Registrant advised her that she had signed the incorrect consent form prior to the appointment. The two consent forms are identical except for one paragraph asking if a female patient would like to have another person present in the room during the consultation or treatment. The Patient was provided with this new consent form to sign. She signed it and checked the box that said “no” when given the option to have another person present during the appointment. The consent form originally signed by the Patient was shredded.

36. The Patient testified that she found the whole appointment “very weird.” [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] During the Bowen treatment, she testified that she was physically uncomfortable on the table and that she was confused about why the Registrant was leaving the room periodically. When asked about a follow up appointment, she testified that she thought, “That won’t be happening.” After the appointment, she said that she told her husband about it and about how she was feeling. A few days later, she told her osteopath about it and was encouraged to make a complaint.

[REDACTED]

[REDACTED]

37. The Panel accepted the Patient’s evidence of her feelings of unease during and after the appointment. When considering all of the circumstances, it was clear to the Panel that the Patient had reason to feel anxious and uncomfortable about the situation. Further, providing the new consent form to the Patient after the appointment when it was too late to change how the appointment unfolded demonstrated to the Panel that the Registrant may have been aware of some of the Patient’s unease despite his testimony to the contrary.

***Expert Evidence***

38. In addition to the fact witnesses called at the hearing, the Panel heard from two expert witnesses – Dr. Prousky, ND and Dr. Saunders, ND on the issue of the standards of

practice of the profession [REDACTED]  
[REDACTED]

39. Both experts were qualified to provide the same opinion evidence. There was no opposition by either party to one or the other expert being called.

40. The Panel carefully considered the testimony provided by both expert witnesses. The College's expert Dr. Prousky, ND testified that based on [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] He presented a recommendation from the *Canadian Task Force on Preventive Health Care (CTFPHC)* that was used to formulate his opinion, although he conceded the recommendations were controversial among medical professionals. Dr. Prousky also said that since 2012, interns at the Canadian College of Naturopathic Medicine (CCNM) have been taught to only offer hypothesis-driven physical assessments. He acknowledged that even though the educational college has adopted this policy, it does not create the standards for the profession at large. Later, Dr. Prousky emphasized the importance of shared-decision making in patient interactions as an important component of obtaining informed consent before performing any assessment or therapeutic procedure on a patient.

41. On cross-examination, Dr. Prousky was shown several articles that questioned the recommendations of the CTFPHC [REDACTED] The consent form from the CCNM's teaching clinic was also introduced as evidence and presented to Dr. Prousky. This form states that interns at the teaching clinic will perform a physical examination, [REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

42. The Registrant's expert Dr. Saunders, ND testified that a hypothesis-driven approach to physical assessment was not consistent with the standard of the profession and that this practice would mean that naturopaths may miss relevant information about a patient's health. [REDACTED]

[REDACTED] For this reason, he acknowledged that in his role instructing naturopathic interns at the CCNM, he does not teach a hypothesis-driven approach to physical assessment despite Dr. Prousky's assertion that this is a policy at the CCNM. [REDACTED]

[REDACTED]

Similar to Dr. Prousky, Dr. Saunders emphasized the importance of communication and providing rationale to the patient prior to performing the exam or any assessment or therapeutic procedure on a patient.

43. While the Panel gave significant emphasis to the expertise of both Dr. Prousky and Dr. Saunders, the Panel ultimately favoured the testimony of Dr. Saunders. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Although the Panel does not dispute the value of the hypothesis-driven approach advocated by Dr. Prousky in certain situations, the Panel also acknowledged the evidence presented showing the degree of controversy [REDACTED]

[REDACTED] and concluded it would not be unreasonable or a breach of the standard of practice of the profession for a naturopath [REDACTED]

[REDACTED] at an initial visit provided the patient had been informed about the procedure and had provided their consent. It was the failure of the Registrant to properly communicate with the Patient [REDACTED] and to provide rationale for the exam that was ultimately problematic for the Panel.

## Analysis

[REDACTED]

44. [REDACTED]

[REDACTED]

[REDACTED]

45. [REDACTED]

46. However, the Panel acknowledged that in this instance, the Registrant failed to properly discuss his intention with the Patient and to provide her with the appropriate rationale for making a recommendation [REDACTED] and to document this discussion. This is a critical part of any patient interaction that was absent that day, and according to the Patient’s testimony, left her feeling anxious and uncomfortable about the situation. The Panel heard several possible reasons as to why this explanation was absent. However, the Panel wishes to be clear that none of these reasons is an acceptable explanation for the omission of the informed consent dialogue and documentation, and it is for this reason that the Panel finds that the Registrant has engaged in behaviour that would reasonably be regarded by other members of the profession as “unprofessional and dishonourable.”

[REDACTED]

48. [REDACTED]

49. [REDACTED]

*Regarding the Consent Form and the Failure to Determine if the Patient Wanted Another Person Present During the Appointment*

50. The Panel considered the allegation that the Patient was asked to sign a consent form before the Registrant had an opportunity to discuss it with her and whether or not this amounted to a breach of the standard of practice. The Panel concluded that this conduct is not in breach of a standard of practice.



51. [REDACTED]

[REDACTED] Regardless of whether or not a form is used, a discussion around informed consent must take place so that the patient understands the decisions they are making with regard to their treatment and care. A form does not replace this discussion and the discussion needs to be documented clearly in the patient record. Critically, despite having the Patient sign a consent form before meeting with him, the Registrant admits that he did not take the time to ensure that he obtained the Patient’s informed consent. He has also admitted to allegations involving informed consent (in paragraph 5 of the Notice of Hearing). These admissions demonstrate to the Panel that the Registrant understands informed consent and what it entails.

52. [REDACTED]

53. With regard to the Registrant failing to inform the Patient that she could have another person in the room with her during her appointment, the Panel finds that this is not in breach of a standard of practice of the profession. However, the Panel finds that the conduct would reasonably be regarded by other members of the profession as “unprofessional.” While the College has no standard of practice requiring a Registrant to provide the option to have another person present during an appointment, presumably the Registrant had included this paragraph in his consent form to protect himself. By not advising his Patient of this option, the Registrant failed to mitigate a circumstance that

surely contributed to a complaint being made against him. Further, as the College has stated, if the Registrant had taken the time to thoroughly review his informed consent form with the Patient, he would have realized before the conclusion of the appointment that he had failed to give her the option of having another person present during the appointment. For these reasons, the Panel concluded that the conduct would reasonably be regarded by members of the profession as unprofessional.

54. Similarly, the Panel determined that it was not a breach of the standard of practice of the profession to ask the Patient to sign a new consent form at the end of her appointment. However, the Panel finds this conduct would reasonably be regarded by members of the profession as both dishonourable and unprofessional. During its deliberations, the Panel noted that mistakes can happen with paperwork and in such cases, it behooves Registrants to correct errors honestly and transparently. In this case, the Panel found the Registrant's request that the Patient sign a new form after the appointment had already concluded to be perplexing. The only difference between the two forms is the paragraph asking if a patient would prefer to have another person present in the room with them, and therefore providing this form after the appointment had concluded could not influence what would occur during the appointment. Furthermore, the Registrant made no record of his error in the patient file. These factors led the Panel to conclude that the Registrant may have been aware of some of the Patient's unease despite his testimony to the contrary. Regardless, the Patient was misled and asked to sign a form stating that she had been given an option in advance of her appointment when in reality she had not been given that option. The Panel noted again that if the Registrant had thoroughly reviewed the consent form with the Patient, he may have caught his error and been able to provide the correct form before it was too late to do so. For these reasons the Panel finds that the Registrant's conduct would reasonably be regarded as dishonourable and unprofessional.

### ***Regarding Informed Consent and Bowen Therapy***

55. Finally, the Panel considered whether or not the Registrant engaged in professional misconduct by failing to provide the Patient with the material risks and/or the material side effects of the Bowen therapy treatment. In this case, the Panel found that the College

proved that the conduct amounted to a breach of the requirement to obtain informed consent prior to doing anything to a Patient for a therapeutic, preventative or other health-related purpose, and that the conduct would reasonably be regarded by other members of the profession as “unprofessional and dishonourable,” (contrary to paragraphs 3 and 46 of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*).

56. The College did not present evidence showing that pain or bruising are material risks or side effects of Bowen therapy and therefore the Panel could not make a determination on this matter. However, a discussion of material risks and side effects is an important aspect of informed consent. Regardless of whether or not pain or bruising are risks of Bowen treatment, the Panel concluded that the material risks and side effects component of consent needed to be addressed along with the other aspects of consent contained in the standard of practice. If the Registrant believed that there are no material risks or side effects to Bowen treatment, then this needed to be disclosed to the Patient in order to obtain her fully informed consent. It is not the responsibility of a patient to insist on an explanation about a therapy from a Registrant before receiving the therapy. It is the Registrant’s responsibility to disclose all relevant information about the therapy, including a statement about material risks and side effects even if the Registrant believes there are none. The patient should not be unclear or left wondering about this component of informed consent, especially if a therapy with which they are unfamiliar is recommended to them.

57. Therefore, the Panel finds that this conduct would reasonably be regarded by members of the profession as dishonourable and unprofessional. The discussion around informed consent is a critical component of any patient interaction and the failure to obtain informed consent not only brings the Registrant into disrepute, but also reflects poorly on the profession at large.

***Regarding the Factual Allegations Admitted by the Registrant***

58. The Panel agrees that the factual allegations made in paragraphs 3(d) and (e) amount to a breach of standards of practice of the profession and constitute professional misconduct.
59. The Panel also agrees that the factual allegations made in paragraphs 5(a), (b), (e) and (f) amount to a breach of the requirement to obtain informed consent prior to doing anything to a Patient for a therapeutic, preventative or other health-related purpose.
60. In addition to unprofessional, the Panel also finds that the Registrant's conduct would reasonably be regarded by members of the profession as dishonourable. As stated above, informed consent is a central component to any patient interaction and the Registrant's failure to obtain it is perhaps the leading cause of the breakdown of the therapeutic relationship between himself and the Patient.

## **Conclusion**

61. The Panel concluded that the Registrant's conduct during the appointment resulted in the Patient's loss of trust in the integrity of the therapeutic relationship. While it was the Panel's view that not all of the Registrant's behaviour amounted to professional misconduct, it is not difficult to understand why the Patient felt anxious during the appointment with the Registrant and uncomfortable about the situation in the days following. The Panel wishes to make clear that it is the responsibility of the Registrant to maintain the integrity of the therapeutic relationship at all times, a major component of which involves transparent communication and obtaining proper informed consent. Failing to do so can be detrimental for all involved and for the profession at large.

62. It is for these reasons that the Panel makes the decision set out above.

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:



Chairperson  
Dr. Jordan Sokoloski, ND

February 19, 2021

Date

Names of panel members

Dr. Laure Sbeit, ND

Lisa Fenton

Samuel Laldin