

DISCIPLINE COMMITTEE OF
THE COLLEGE OF NATUROPATHS OF ONTARIO

B E T W E E N :

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

ALLAN BORTNICK

NOTICE OF HEARING

The Inquiries, Complaints and Reports Committee of the College of Naturopaths of Ontario (the “College”) has referred specified allegations against you to the Discipline Committee of the College. The allegations were referred in accordance with section 26 of the *Health Professions Procedural Code* which is Schedule II to the *Regulated Health Professions Act, 1991*. The statement of specified allegations is attached to this notice of hearing. A discipline panel will hold a hearing under the authority of sections 38 to 56 of the *Health Professions Procedural Code*, as amended, for the purposes of deciding whether the allegations are true. A **pre-hearing conference** will be held at a date and location to be set by the Presiding Officer. A discipline panel will convene at the offices of the College at 150 John Street, 10th Floor, Toronto, Ontario at **9:30 a.m. on a date to be set by the Chief Executive Officer**¹, or as soon thereafter as the panel can be convened, for the purposes of conducting the **discipline hearing**.

IF YOU DO NOT ATTEND ON THE DATE FOR THE HEARING IN ACCORDANCE WITH THE PRECEDING PARAGRAPH, THE DISCIPLINE PANEL

¹ 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 *Health Professions Procedural Code* (the Code).

MAY PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDINGS.

If the discipline panel finds that you have engaged in professional misconduct, it may make one or more of the following orders:

1. Direct the Chief Executive Officer (CEO) to revoke your certificate of registration.
2. Direct the CEO to suspend your certificate of registration for a specified period of time.
3. Direct the CEO to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time.
4. Require you to appear before the panel to be reprimanded.
5. Require you to pay a fine of not more than \$35,000 to the Minister of Finance.
6. If the act of professional misconduct was the sexual abuse of a patient, require you to reimburse the College for funding provided for that patient under the program required under section 85.7 of the *Health Professions Procedural Code*.
7. If the panel makes an order under paragraph 6, require you to post security acceptable to the College to guarantee the payment of any amounts the Registrant² may be required to reimburse under the order under paragraph 6.

The discipline panel may, in an appropriate case, make an order requiring you to pay all or part of the College's costs and expenses pursuant to section 53.1 of the *Health Professions Procedural Code*.

² 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 Notice of Hearing has the same meaning as "member" as defined in section 1(1) of the Code.

You are entitled to disclosure of the evidence against you in accordance with section 42(1) of the *Health Professions Procedural Code* and Rules 17-20 of the *Rules of Procedure of the Discipline Committee of the College of Naturopaths of Ontario*.

You, or your representative, may contact the solicitor for the College, Rebecca Durcan, in this matter:

Steinecke Maciura LeBlanc
Barristers & Solicitors
401 Bay Street
Suite 2308, P.O. Box 23
Toronto, ON M5H 2Y4

Telephone: (416) 644-4783
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Note that, Rules 17-20 of the *Rules of Procedure of the Discipline Committee of the College of Naturopaths of Ontario* also apply to you. Rules 18-20 state as follows:

RULE 18. Documentary Disclosure

- 18.1 Each Party to a Proceeding shall deliver to every other Party (a) a list of, and (b) if not previously produced, copies of, all documents and things that the Party intends to produce or enter as evidence at the Discipline Hearing, in the case of the College, as soon as is reasonably practicable after the Notice of Hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case at least ten (10) days before the commencement of the Pre-Hearing Conference.
- 18.2 A Party who does not disclose a document or thing in compliance with sub-rule 18.1 may not refer to the document or thing or introduce it in evidence at the Discipline Hearing without leave of the Panel, which may be on any conditions that the Panel considers just.

- 18.3 Where a party discovers a document or thing that it will refer to or give in evidence at the hearing after the disclosure date specified in subrule 18.1, the party shall make the disclosure immediately after the discovery.

RULE 19. Fact Witness Disclosure

- 19.1 A Party to a Proceeding shall serve every other Party a list of the witnesses the Party intends to call to testify on the Party's behalf at the Discipline Hearing, in the case of the College, as soon as is reasonably practicable after the Notice of Hearing is served, and in the case of any other Party, at least ten (10) days before the commencement of the Pre-Hearing Conference.
- 19.2 If no affidavit has been served in accordance with Rule 45 (Evidence by Affidavit), and material matters to which a witness is to testify have not otherwise been disclosed, a Party to a Proceeding shall provide to every other Party a summary of the evidence that the witness is expected to give at the Discipline Hearing on the merits, in the case of the College, as soon as reasonably practicable after the Notice of Hearing is served, and in the case of any other party, as soon as is reasonably practicable after disclosure by the College under this Rule, but in any case at least ten (10) days before the commencement of the Discipline Hearing.
- 19.3 The disclosure obligations set out in Rule 19.2 shall not apply to witnesses called in Reply that the College had no reasonable expectation of calling in-chief.
- 19.4 A witness summary shall contain:
- (a) the substance of the evidence of the witness;
 - (b) reference to any documents to which that witness will refer; and
 - (c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.
- 19.5 A Party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with

these rules may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.

- 19.6 A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

RULE 20. Expert Opinion Disclosure

- 20.1 A Party who intends to call an expert to give expert opinion evidence at a Hearing shall:
- (a) inform the other Parties of the intent to call the expert;
 - (b) identify the expert and the issue(s) on which the expert's opinion will be tendered;
 - (c) serve the other Parties with a copy of the expert's written report or, if there is no written report, an affidavit in accordance with RULE 45 (Evidence by Affidavit), or a witness summary in accordance with sub-rule 19.3; and
 - (d) file an "Acknowledgement Form – Expert's Duty" signed by the expert, in the form appended to these rules.
- 20.2 The College shall serve any expert report or affidavit or witness summary upon which the College intends to rely at the Hearing at least sixty (60) days before the commencement of the Hearing.
- 20.3 The Member shall serve any expert report upon which he or she intends to rely at least thirty (30) days before the commencement of the Hearing.
- 20.4 The College may serve a reply expert report at least fifteen (15) days before the commencement of the Hearing.
- 20.5 Where an expert report is filed, it shall at a minimum include the following information:
- (a) qualifications of the expert;
 - (b) the instructions provided to the expert;
 - (c) the nature of the opinion being sought;
 - (d) the factual assumptions upon which the opinion is based; and
 - (e) a list of documents reviewed by the expert.

20.6 A Party who fails to comply with sub-rule 20.1 may not call the expert as a witness or file the expert's report or affidavit without leave of the Panel, which may be on any conditions that the Panel considers just.

December 10, 2020

Date: _____



Andrew Parr, CAE
Chief Executive Officer
College of Naturopaths of Ontario

TO: ALLAN BORTNICK
1061 Eglinton Avenue West
Toronto, ON M6C 2C9

c/o **GARY SREBROLOW**
Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, Ontario M5C 3G5
gsrebrolow@blaney.com

STATEMENT OF SPECIFIED ALLEGATIONS

1. Dr. Allan Bortnick, ND (the "Registrant") initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the "Board") on or about June 14, 1978. The Registrant became a registrant 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*.

Patient 1

2. On or about December 9, 2014 Patient 1 visited the Registrant for allergy testing.
3. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a diaphragm examination on Patient 1.
4. It is alleged that a diaphragm examination was not warranted for Patient 1.
5. It is alleged that the Registrant assessed and/or recommended orthotics that were not warranted for Patient 1.
6. It is alleged that the Registrant failed to do the following:
 - a. Disclose all relevant information prior to assessments, treatments, examinations and/or recommendations;
 - b. Obtain informed consent for the assessment and/or recommendations of orthotics;
 - c. Obtain informed consent for the bladder lift and/or diaphragm examination, including but not limited to the following:
 - i. The Registrant failed to alert Patient 1 about the nature of the assessment, treatment, and/or examination, including but not limited to the following:
 1. She would or may feel sensations in her clitoral area and/or the Registrant would or may apply pressure to her clitoral area;
 2. The Registrant would or may graze and/or touch her breasts; and/or
 3. The Registrant would or may graze and/or touch her buttocks;
 - d. Document the informed consent of Patient 1; and/or
 - e. Document the appointment in accordance with Board requirements.

7. It is alleged that the Registrant did the following during the bladder lift and/or diaphragm examination without clinical rationale:
 - a. Grazed, cupped and/or held the breasts of Patient 1; and/or
 - b. Grazed, and/or cupped the buttocks of Patient 1.
8. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

Allegations of professional misconduct as a Registrant of the Board

9. It is alleged that the above noted conduct 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. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
 - b. **Paragraph 2(h)** – Sexual impropriety with a patient;
 - c. **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;
 - d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment; and/or
 - e. **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;
 - ii. 4.6 – Implement the plan of treatment with informed consent;
 - iii. Consent to Treatment Standard;
 - iv. Ethical Conduct Standard; and/or
 - v. Record Keeping Standard.

Patient 2

10. On or about June 29, 2015, Patient 2 visited the Registrant for orthotics, spine curvature and/or clenching of the jaw.
11. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a spinal examination on Patient 2.

12. It is alleged that the Registrant assessed and/or proposed and/or recommended new orthotics to Patient 2.

13. It is alleged that the Registrant failed to do the following:

- a. Disclose all relevant information prior to assessments, treatments, examinations and/or recommendations;
- b. Assess Patient 2 for orthotics in accordance with standards of the profession;
- c. Obtain informed consent for assessing and/or recommending orthotics;
- d. Obtain informed consent for the bladder lift including but not limited to the following:
 - i. The Registrant failed to alert Patient 2 about the nature of the treatment, including but not limited to the following:
 1. The Registrant would or may graze and/or touch her breasts;
- e. Obtain informed consent for the spinal examination including but not limited to the following:
 - i. The Registrant failed to alert Patient 2 about the nature of the examination, including but not limited to the following:
 1. The Registrant would or may stand behind her and/or move his hands over her shoulders and/or down her chest and/or under her shirt;
 2. The Registrant would or may graze and/or touch her breasts;
 3. The Registrant would or may graze and/or touch her buttocks; and/or
 4. The Registrant would or may touch her lips;
- f. Document the informed consent of Patient 2; and/or
- g. Document the appointment in accordance with Board requirements.

14. It is alleged that the Registrant did the following during the bladder lift and/or spinal examination without clinical rationale:

- a. Grazed, cupped and/or held the breasts of Patient 2.

15. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

Allegations of professional misconduct as a Registrant of the Board

16. It is alleged that the above noted conduct 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. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
- b. **Paragraph 2(h)** – Sexual impropriety with a patient;
- c. **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;
- d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment; and/or
- e. **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;
 - ii. 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
 - iii. 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
 - iv. 4.6 – Implement the plan of treatment with informed consent;
 - v. Consent to Treatment Standard;
 - vi. Ethical Conduct Standard; and/or
 - vii. Record Keeping Standard.

Patient 3

17. In or about March 2011, Patient 3 visited the Registrant for low back pain.

18. It is alleged that the Registrant provided treatment to Patient 3 including an abdominal examination and/or abdominal lift.

19. It is alleged that the Registrant failed to do the following:

- a. Disclose all relevant information prior to assessments, treatments, and/or examinations;
- b. Obtain informed consent for an examination and/or treatment including but not limited to the following:
 - i. The Registrant failed to alert Patient 3 about the nature of the examination and/or treatment, including but not limited to the following:
 1. The Registrant would or may touch her in the public region and/or may apply pressure;
- b. Document the informed consent of Patient 3; and/or
- c. Document the appointment in accordance with Board requirements.

20. It is alleged that the Registrant did the following during the abdominal examination and/or bladder lift without clinical rationale:

- a. Touch Patient 3 in the public region and/or apply pressure to the public region.

21. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

Allegations of professional misconduct as a Registrant of the Board

22. It is alleged that the above noted conduct 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. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
- b. **Paragraph 2(h)** – Sexual impropriety with a patient;
- c. **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;
- d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment; and/or
- e. **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;
- ii. 4.6 – Implement the plan of treatment with informed consent;
- iii. Consent to Treatment Standard;
- iv. Ethical Conduct Standard; and/or
- v. Record Keeping Standard.

Patient 4

23. In or about 2007, Patient 4 visited the Registrant for lower back pain. It is alleged that Patient 4 had 2-3 appointments with the Registrant.

24. It is alleged that during the appointments, the Registrant would treat, assess and/or examine Patient 4 by massaging her breasts, touching her breasts, squeezing her buttocks and/or massaging her buttocks.

25. It is alleged that the Registrant failed to do the following:

- a. Disclose all relevant information prior to assessments, treatments, and/or examinations;
- b. Obtain informed consent for the treatments, assessments and/or examinations including but not limited to the following:
 - i. The Registrant failed to alert Patient 4 about the nature of the treatment, including but not limited to the following:
 - 1. The Registrant would or may graze and/or touch her breasts; and/or
 - 2. The Registrant would or may graze and/or touch her buttocks.

26. It is alleged that the Registrant did the following during the treatment without clinical rationale:

- a. Massage the breasts, touch the breasts, squeeze the buttocks and/or massage the buttocks of Patient 4.

27. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

Allegations of professional misconduct as a Registrant of the Board

28. It is alleged that the above noted conduct 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. **Paragraph 2(h)** – Sexual impropriety with a patient;
- 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;
- c. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
- d. **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;
 - ii. 4.6 – Implement the plan of treatment with informed consent; and/or
 - iii. Ethical Conduct Standard.

Patient 5

29. In or about 2003, Patient 5 visited the Registrant for lower back pain.

30. It is alleged that during the appointment, the Registrant performed a diaphragm/xiphoid examination on Patient 5 and grazed and/or touched her breasts.

31. It is alleged that the Registrant assessed and/or proposed and/or recommended orthotics to Patient 5.

32. It is alleged that the Registrant failed to do the following:

- a. Disclose all relevant information prior to assessments, treatments, examinations and/or recommendations;
- b. Assess and/or propose and/or recommend orthotics for Patient 5 in accordance with standards of the profession;
- c. Obtain informed consent for proposing, and/or recommending orthotics;
- d. Obtain informed consent for the examination including but not limited to the following:

- i. The Registrant failed to alert Patient 5 about the nature of the examination and/or treatment, including but not limited to the following:

1. The Registrant would or may graze and/or touch her breasts.

33. It is alleged that the Registrant did the following during the examination and/or treatment without clinical rationale:

- a. Grazed and/or touched the breasts of Patient 5.

34. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

Allegations of professional misconduct as a Registrant of the Board

35. It is alleged that the above noted conduct 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. **Paragraph 2(h)** – Sexual impropriety with a patient;
- 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;
- c. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
- d. **Paragraph 2(w)** - Contravening standards of practice or guidelines of practice set by the Board, specifically:
 - ii. 2.6 – Deal honestly with all patients, colleagues, public institutions and legal bodies, and refrain from giving any false, incomplete or misleading information;
 - iii. 2.9 – Formulate an assessment/diagnosis to a level consistent with the patient based on knowledge, training and expertise of the naturopathic doctor and the technology and tools available to the professions;
 - iv. 2.10 – Communicate the appropriate assessment to the patient and only communicate a diagnosis to the patient which has been conclusively determined using the training and tools available to the naturopathic profession;
 - v. 4.6 – Implement the plan of treatment with informed consent; and/or

vi. Ethical Conduct Standard.

Patient 6

36. On or about April 7, 2013 the Registrant attended the home of Patient 6 to provide treatment and/or recommendations related to her falling.
37. It is alleged that the Registrant provided a naturopathic diagnosis and/or offered to provide treatment and/or provided treatment for an alleged fallen bladder and/or backed up kidneys.
38. It is alleged that the Registrant proposed and/or performed a bladder lift and/or a diaphragm examination.
39. It is alleged that the Registrant failed to do the following:
- a. Disclose all relevant information prior to treatments;
 - b. Obtain informed consent for a bladder lift and/or diaphragm examination, including but not limited to the following:
 - i. The Registrant failed to alert Patient 6 about the nature of the examination and/or treatment, including but not limited to the following:
 - 1. The Registrant would or may graze and/or touch her breasts; and/or
 - 2. The Registrant would or may graze and/or touch her buttocks;
 - c. Document the informed consent of Patient 6; and/or
 - e. Document the appointment in accordance with Board requirements.
40. It is alleged that the Registrant did the following during the bladder lift and/or diaphragm examination, without any clinical rationale:
- a. Grazed, cupped and/or held the breasts of Patient 6.
41. It is alleged that the Registrant did not perform the above in accordance with the standards of practice of the Board.

Allegations of professional misconduct as a Registrant of the Board

42. It is alleged that the conduct which occurred in 2013 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. **Paragraph 2(a)** - Failure to maintain adequate records in accordance with Board policy;
- b. **Paragraph 2(h)** – Sexual impropriety with a patient;
- c. **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;
- d. **Paragraph 2(u)** - Failure to obtain informed consent for diagnostic or treatment procedures or plan of treatment and/or
- e. **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;
 - ii. 4.6 – Implement the plan of treatment with informed consent;
 - iii. Consent to Treatment Standard;
 - iv. Ethical Conduct Standard; and/or
 - v. Record Keeping Standard.

APPENDIX

1. The documents to be tendered in evidence at the hearing have been sent with this Notice of Hearing.
2. The *Rules of Procedure of the Discipline Committee* have been sent with this Notice of Hearing.
3. Take notice that the documents that have been and may later be disclosed to you will be tendered as business documents pursuant to the *Evidence Act* of Ontario.
4. All documents that are disclosed to you in this matter are disclosed on the basis that they are to be used solely for the purpose of this proceeding and for no other purpose.

COLLEGE OF NATUROPATHS OF ONTARIO

- and -

ALLAN BORTNICK

DISCIPLINE COMMITTEE
OF THE COLLEGE OF
NATUROPATHS OF ONTARIO

NOTICE OF HEARING

STEINECKE MACIURA LEBLANC

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Rebecca Durcan

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Naturopaths of Ontario