

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

B E T W E E N:

COLLEGE OF NATUROPATHS OF ONTARIO

and

ALLAN BORTNICK

AGREED AND UNCONTESTED STATEMENT OF FACTS

The parties hereby agree that the following facts and attachments may be accepted as true by the Discipline Committee of the College of Naturopaths of Ontario:

The Registrant

- 1) Allan Bortnick (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*. Attached as **Tab "A"** is a printout from the College's Naturopathic Doctor Register.
- 2) The Registrant was also a chiropractor registered with the College of Chiropractors of Ontario (CCO). He was registered as a chiropractor from approximately 1977 to 2022. Attached as **Tab "B"** is a printout from the CCO's Public Register.

Notices of Hearing

- 3) The College and the Registrant consent to the two Notices of Hearing dated December 10, 2020 to be heard together pursuant to s 9.1(1)(a) of the *Statutory Powers Procedure Act*.
- 4) The College and the Registrant agree that the following allegations and particulars should be withdrawn:
 - a) Patient 3 – Paragraphs 17 – 22;

- b) Patient 4 – Paragraphs 23-28; and
- c) Patient 5 – Paragraphs 29-35.

Patient 1

- 5) On or about December 9, 2014 Patient 1 visited the Registrant for allergy testing.
- 6) However, during the appointment, the Registrant told Patient 1 that something was wrong with her back. He asked Patient 1 to stand up in front of him.
- 7) When Patient 1 stood up to allow the Registrant to check out her back (as the Registrant expressed concern) the Registrant grazed her breasts. If the Registrant were to testify, he would deny grazing her breasts but would state that if it did occur, it was inadvertent. The Registrant agrees that during this procedure inadvertent touching can occur. The Registrant also admits that he never disclosed this to Patient 1 when seeking consent.
- 8) The Registrant then told Patient 1 that she required a bladder or abdominal lift and a diaphragm examination.
- 9) It is agreed that during the appointment, the Registrant performed a bladder lift and a diaphragm examination on Patient 1. He also assessed Patient 1 for orthotics.

Bladder/Abdominal Lift

- 10) The bladder lift required Patient 1 to lie face down on the treatment table. Patient 1 was fully dressed. The Registrant placed his right hand on her abdomen below her belly button. During the bladder lift, Patient 1 felt a sensation in her clitoral area. If he were to testify, the Registrant would advise the panel that any touching of this area was of a clinical and not a sexual nature and he did not touch the pubis or the clitoris during the bladder lift. However, he concedes that a patient may feel a tug at the pubic symphysis as this is where the rectus abdominus muscle attaches. If he were to testify, the Registrant would state that he advised Patient 1 that she may feel a “tug” sensation at the pubic symphysis. If Patient 1 were to testify, she would state that he never disclosed this to her when seeking consent.
- 11) If he were to testify, the Registrant would advise the panel that he believed that he had obtained informed consent from Patient 1. He now concedes that he did not as he did not provide the necessary information to Patient 1 to obtain informed consent. He also admits that he did not document any aspect of the consent in the patient record.

Diaphragm Examination

- 12) The Registrant concedes that this procedure may not have been required. However, if he were to testify, he would state he believed that it was warranted in light of his assessment of the patient’s symptoms.

- 13) The Registrant asked Patient 1 to sit down. He was behind her and reached around Patient 1 to examine her xiphoid area located where the lower ribs attach to the breastbone.
- 14) While doing so, Patient 1 states that the Registrant again grazed her breasts.
- 15) If he were to testify, the Registrant would advise the panel that he does not recall grazing her breasts. However, he concedes that grazing may occur in light of the fact that he was behind Patient 1 and placed his hands in the xiphoid area to determine if the joint was fixated or mobile. The Registrant admits that during the consent process, he did not disclose to Patient 1 that her breasts may be touched.
- 16) If he were to testify, the Registrant would advise the panel that he believed that he had obtained informed consent from Patient 1. He now concedes that he did not as he did not provide the necessary information to Patient 1 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

Orthotics

- 17) The Registrant was concerned about possible pelvis misalignment and asked Patient 1 to stand. Patient 1 stated that the Registrant then took both of his hands and rubbed them down her legs, cupping the underside of her buttocks as he passed that area. She stated that he repeated this movement and again cupped the underside of her buttocks. The Registrant denies cupping the underside of her buttocks.
- 18) The Registrant concedes that some touching may occur during the assessment and if it did, any touching of this area was not sexual in nature. The Registrant admits that he never disclosed to Patient 1 that he may touch the buttocks when assessing for orthotics.
- 19) Patient 1 was concerned that the Registrant recommended and ordered orthotics for her. If he were to testify, the Registrant would advise the panel that he did so as he believed it was warranted. However, he concedes that he did not conduct a proper foot/gait examination, did not palpate the region and did not obtain a proper medical history and that this should have occurred before any recommendation or ordering.
- 20) If he were to testify, the Registrant would advise the panel that he believed he had obtained informed consent from Patient 1. He now concedes that he did not as he did not provide the necessary information to Patient 1 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

Patient 2

- 21) On or about June 29, 2015, Patient 2 visited the Registrant for orthotics, spine curvature and clenching of the jaw.
- 22) It is agreed that the Registrant proposed and performed a bladder/abdominal lift and a spinal examination on Patient 2.

Spinal Examination/Jaw Assessment

- 23) It is agreed that during the spinal examination, the Registrant asked Patient 2 to stand. He tapped her body, including her buttocks. It is the position of the Registrant that this touching was of a clinical and not sexual nature. The Registrant admits that he never disclosed that he would palpate (or tap) her buttocks to Patient 2 when seeking informed consent.
- 24) It is also agreed that that in assessing her jaw, he palpated and touched the mouth and lips of Patient 2. If she were to testify, Patient 2 would state that he placed his hands in her mouth and on the wet part of her lips. If he were to testify he would deny touching any wet part of her lips. The Registrant admits that he never disclosed that he would palpate and touch her mouth and lips to Patient 2 when seeking informed consent.
- 25) The Registrant asked Patient 2 to sit down. He admits that he reached across Patient 2 to assess her diaphragm area. During this assessment, Patient 2 states that the Registrant moved both hands over her shoulders, down her chest, under her shirt and bra and cupped her breasts.
- 26) If he were to testify, the Registrant would advise the panel that he has no recollection of touching her breasts. He concedes that grazing of the breasts may occur in light of the fact that he was behind Patient 2 and placed his hands in the xiphoid area. The Registrant admits that he never disclosed this possibility to Patient 2 when seeking consent. The Registrant also admits that he did not alert Patient 2 that he would stand behind her and move his hands over her shoulders and down her chest when seeking informed consent.
- 27) If he were to testify, the Registrant would advise the panel that he believed he had obtained informed consent from Patient 2 to perform the spinal assessment. He now concedes that he did not as he did not provide the necessary information to Patient 2 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

Orthotics

- 28) It is agreed that the Registrant assessed and proposed and recommended new orthotics to Patient 2. If he were to testify, the Registrant would advise the panel he did so as he believed it was warranted. However, he concedes that he did not conduct a proper foot/gait examination, did not palpate the region and did not obtain a proper medical history and that this should have occurred before any recommendation or ordering.
- 29) If he were to testify, the Registrant would advise the panel that he believed he had obtained informed consent from Patient 2 to perform the orthotics assessment and the ordering thereof. However, he admits that he did not document any aspect of the consent in the patient record.

Patient 6

30) On or about April 7, 2013 the Registrant attended the home of Patient 6 as she wished to obtain naturopathic treatment and recommendations related to her falling.

31) It is agreed that the Registrant provided a naturopathic diagnosis and offered to provide treatment and provided treatment for an alleged fallen bladder and backed up kidneys.

32) It is agreed that the Registrant proposed and performed a bladder lift and a diaphragm examination.

Bladder Lift

33) At the outset of the bladder lift, the Registrant asked Patient 6 to lie down on the treatment table. Patient 6 was on her back and was fully clothed.

34) If she were to testify, Patient 6 would state the following:

a) The Registrant started massaging her head and then moved to her neck. He advised Patient 6 that he would use a laser to relax the muscles.

b) The Registrant then moved down to her breasts and massaged them. Patient 6 thought he was checking for lumps.

c) The Registrant then moved down her body but then moved up to her breasts again. He felt (cupped or held) them again.

d) The Registrant then went back up to her neck and massaged it.

e) The Registrant then returned to her breasts. He touched (cupped or held) them. At this point in time, Patient 6 asked the Registrant what he was doing.

35) If he were to testify, the Registrant would advise the panel that he has no recollection of touching her breasts. He concedes that grazing of the breasts may occur during this procedure. The Registrant admits that he never disclosed this possibility to Patient 6 when seeking informed consent.

36) If he were to testify, the Registrant would advise the panel that he believed he had obtained informed consent from Patient 6 to perform the bladder lift and any touching of this area was of a clinical and not sexual nature. He now concedes that he did not as he did not provide the necessary information to Patient 6 to obtain informed consent. He admits that he did not document any aspect of the consent in the patient record.

Orthotics

37) It is also agreed that during this appointment, the Registrant recommended orthotics to Patient 6. Patient 6 had not requested orthotics. Despite this, the Registrant proceeded to assess,

recommend and order orthotics for Patient 6. It is agreed that orthotics were not warranted for Patient 6.

Touching of Sensitive Body Parts and Sexual Impropriety

- 38) If he were to testify, the Registrant would acknowledge that any touching of the breasts or buttocks, inadvertent or not, can be stressful for patients. The Registrant would agree that registrants need to reassure patients that they will always be mindful of boundary concerns and that this includes avoiding any unnecessary touching of sensitive body parts. Further, the Registrant admits that if any inadvertent touching of any sensitive body parts (including but not limited to the breasts, buttocks, vulva or vagina) may occur, it is important to alert the patient in advance and ensure that this is acceptable to the patient before any treatment occurs. This ensures that the care is patient centred and does not cause any unnecessary stress or discomfort to the patient. It also ensures that patients have all relevant information before deciding to consent to a treatment.
- 39) The Registrant admits that if the recollections of Patient 1, 2 and/or 6 are correct with regard to touching of their breasts, it would constitute misconduct and pleads no contest to the allegations of sexual impropriety.

Standards and Guidelines of the Board

- 40) During the relevant periods of time, it is agreed that the following written standards and guidelines applied to the Registrant (all of which are attached at **Tab "C"**):
- a) General Standards of Practice
 - b) Consent to Treatment Standard;
 - c) Ethical Conduct Standard; and
 - d) Record Keeping Standard.

Admissions of misconduct

- 41) The College and the Registrant agree that the above 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(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

- 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) 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;
- iv) Consent to Treatment Standard;
- v) Ethical Conduct Standard; and
- vi) Record Keeping Standard.

No Contest

42) The Registrant pleads no contest (i.e., he neither admits nor denies) to the particulars and allegations of sexual impropriety. The Discipline Committee has sufficient evidence to make this finding of misconduct to subsection of 30(1) of Ontario Regulation 278, R.R.O. 1990, paragraph 2(h) as defined in Professional Misconduct/Incompetence established by the Board.

Acknowledgement

43) By this document, the Registrant states that:

- a) He understands fully the nature of the allegations made against him;
- b) He has no questions with respect to the allegations against him;
- c) He admits to the truth of the facts contained in this document and that the facts constitute professional misconduct;
- d) He understands that by signing this document he is consenting to the evidence as set out in this document being presented to the Discipline Committee;

- e) He understands that by admitting to certain allegations and not contesting the allegations of sexual impropriety, he is waiving his right to require the College to prove the allegations against him at a contested hearing;
- f) He understands that the decision of the Committee and a summary of its reasons, including reference to his name, will be published in the College's annual report and any other publication or website of the College;
- g) He understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
- h) He understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, and free of bribe and that he has been advised of his right to seek legal advice.

All of which is respectfully submitted:

Signed this 13 day of April, 2022



Allan Bortnick
Registrant

Signed this 28 day of April, 2022



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