

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

PANEL: Dr. Jordan Sokoloski, ND, Chair
Dr. Denis Marier, ND
Ms. Lisa Fenton, Public Member

BETWEEN:

COLLEGE OF NATUROPATHS OF ONTARIO) REBECCA DURCAN and
) JUSTINE WONG for the College of
) Naturopaths of Ontario
- and -)
)
MICHAEL UM) URI KOGAN for the Member
)
)
) LUISA RITACCA, Independent
) Legal Counsel
)
) Heard: January 22, 25, 26, 2024,
) March 26, 27, 28, September 4, 5,
) 16, 2024

DECISION AND REASONS

This matter came on for hearing before a Panel of the Discipline Committee on January 22, 2024, and proceeded over the course of eight non-consecutive dates throughout 2024. The Panel received the parties’ final submissions on September 16, 2024. The hearing was conducted by way of video conference.

Overview

The Registrant was initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the “Board”) in 2002. He became a member of 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*. The Registrant has met the Standards of Practice for Prescribing and Intravenous Infusion Therapy.

The Registrant works at the Nature Medicine Clinic, in St. Catharines, Ontario (the “Clinic”). In addition to practising as a naturopath, the Registrant has been a member of the Pastoral Medical Association (“PMA”) since approximately 2015. It is the Registrant’s position that membership in the PMA authorizes him to administer treatments and/or perform controlled acts that he is not otherwise authorized to provide as a naturopath in Ontario.

At the time of this hearing, the Registrant had interim terms, conditions and limitations on his certificate of registration, which were imposed by the ICRC as an interim order, which requires the Registrant to adhere to the College’s General Regulation.

The College alleges that the Registrant has regularly and willfully contravened the standards of the College and the law that regulates the profession, by, among other things, offering treatment outside of the scope of practice of the profession, engaging in controlled acts that were not authorized to the profession, advertising that he could treat cancer and/or kill cancer cells, and representing to parties who also became members of the PMA that they would be subject to different rules regarding their records than Ontario patients.

While the Registrant denies having engaged in any professional misconduct, he admitted to most of the conduct set out in the Notice of Hearing, including having provided treatments not authorized to a naturopath in Ontario.

The Registrant’s Motions

At the outset of the hearing, the Panel was advised that the Registrant intended to bring several motions, including Charter motions, to be dealt with after all the evidence was presented. In brief, the Registrant argues that the College breached his rights under sections 7, 8 and 11 of the Charter and further, the Appointment of Investigator, dated October 7, 2019, was “*ultra vires*”.

The Allegations

The allegations against Dr. Michael Um, ND (the “Registrant”) as stated in the Notice of Hearing dated September 7, 2022, are as follows:

19-032R**The Registrant**

1. Dr. Michael Um, ND (the “Registrant”) initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the “Board”) in or about 2002. 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.
2. The Registrant has met the Standards of Practice for Prescribing and the Intravenous Infusion Therapy (IVIT).
3. The Registrant works at the Nature Medicine Clinic in St. Catharines, Ontario (the “Clinic”).
4. The Registrant claims that they have been a member of the Pastoral Medical Association (PMA) since approximately 2015. The Registrant claims that their membership authorizes them to administer treatments and/or controlled acts that they are not authorized to provide as a naturopath. The PMA is not a health regulatory college in Ontario and does not regulate naturopaths in Ontario.

Unauthorized treatments and advertising

5. It is alleged that the Registrant engaged in the following since July 1, 2015:
 - a. Advertised on the Clinic website that:
 - i. They were authorized to provide controlled acts despite not being authorized to do so;
 - ii. They were authorized to provide treatment outside of the scope of practice of the profession including but not limited to oncothermia, photodynamic therapy (for cancer), UV Light Therapy (for cancer), bio-oxidative intravenous therapies, IV chelation, prolotherapy, trigger point injection therapy (using lidocaine and/or procaine), mesotherapy (using procaine, homeopathics and/or Vitamin B), and/or platelet rich plasma therapy;
 - iii. Patients who also became members of the PMA would be subject to different rules than Ontario patients; and/or
 - iv. The practitioners at the Clinic could treat cancer and/or HIV and/or AIDS and/or cure cancer and/or kill cancer cells and /or achieve “complete cancer resolution”;
 - b. Failed to refer patients to and/or advise patients that they ought to consult a physician, nurse practitioner and/or other regulated health professional when they sought treatment outside of naturopathic scope of practice;
 - c. Engaged in controlled acts that they were not authorized to do including but not limited to:
 - i. Prescribing unauthorized drugs, including but not limited to T3 (Liothyronine);
 - ii. Injecting unauthorized substances including but not limited to blood, oxygen, and/or ozone;

- iii. Injecting Vitamin B in a manner that did not conform with Regulation 168/15;
 - iv. Injecting drugs including but not limited to procaine, and/or EDTA; and/or
 - v. Compounding unauthorized drugs including but not limited to EDTA;
 - d. Engaged in treatment outside the scope of the profession including but not limited to oncothermia, photodynamic therapy (for cancer), UV Light Therapy (for cancer), bio-oxidative intravenous therapies, IV chelation, prolotherapy, trigger point injection therapy (using lidocaine and/or procaine), mesotherapy (using procaine, homeopathics and/or Vitamin B), and/or platelet rich plasma therapy;
 - e. Advised patients that if they became members of the PMA the Registrant could provide treatment outside their scope of practice (including but not limited to compounding an unauthorized drug and/or administering an unauthorized substance) as a naturopath in Ontario;
 - f. Advised an undercover investigator that they could provide IV Chelation to the undercover investigator;
 - g. Failed to ensure that patient records were accurate and complete; and/or
 - h. Failed to ensure that invoices indicated they were the treating naturopath;
6. It is alleged that since approximately July 1, 2015 the Registrant:
- a. Did not have the knowledge, skill or judgement to provide treatment outside the scope of practice of the profession yet proceeded to do so;
 - b. Knowingly compounded drugs and/or substances that were not identified in Regulation 168/15.
7. It is alleged that:
- a. The treatment of cancer is beyond the scope of the profession; and/or
 - b. The Registrant recommended and/or provided cancer treatment to their patients that they knew and/or ought to have known was unnecessary and/or ineffective.

Allegations of Professional Misconduct

8. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
- a. **Para 1** - Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession including but not limited to:
 - i. Advertising Standard of Practice;
 - ii. Compounding Standard of Practice;
 - iii. Injection Standard of Practice;
 - iv. IVIT Standard of Practice;
 - v. Performing Authorized Acts Standard of Practice;

- vi. Prescribing Standard of Practice;
 - vii. Record Keeping Standard of Practice;
 - viii. Scope of Practice Standard of Practice; and/or
 - ix. Sections 3(1) and/or 13(3) of Regulation 168/15;
- b. **Para 7-** Recommending or providing treatment that the member knows or ought to know is unnecessary or ineffective;
 - c. **Para 8 -** Providing or attempting to provide services or treatment that the member knows or ought to know to be beyond the member’s knowledge, skill or judgment.
 - d. **Para 9 -** Failing to advise a patient or the patient’s authorized representative to consult another member of a health profession within the meaning of the *Regulated Health Professions Act, 1991*, when the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skill or judgment to offer or is beyond his or her scope of practice;
 - e. **Para 10 -** Performing a controlled act that the member is not authorized to perform;
 - f. **Para 14 -** Prescribing, dispensing, compounding or selling a drug or a substance for an improper purpose;
 - g. **Para 15 -** Administering a substance by injection or inhalation to a patient for an improper purpose.
 - h. **Para 23 -** Failing to keep records in accordance with the standards of the profession;
 - i. **Para 26 -** Making a claim respecting a drug, substance, remedy, treatment, device or procedure other than a claim that can be supported as reasonable professional opinion;
 - j. **Para 27 -** Permitting the advertising of the member or his or her practice in a manner that is false or misleading or that includes statements that are not factual and verifiable;
 - k. **Para 36 -** Contravening, by act or omission, a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts including but not limited to:
 - i. Section 4(3) of the Act; and/or
 - ii. Sections 2(1), and/or 5(1) of Regulation 168/15; and/or
9. **Para 46 -** Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

20-024R

The Registrant

- 1. Dr. Michael Um, ND (the “Registrant”) initially registered with the Board of Directors of Drugless Therapy – Naturopathy (the “Board”) in or about 2002. 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.

2. The Registrant works at the Nature Medicine Clinic in St. Catharines, Ontario (the “Clinic”).
3. The Registrant claims that he has been a member of the Pastoral Medical Association (PMA) since approximately 2015. The Registrant claims that his membership authorizes him to administer treatments and/or controlled acts that he is not authorized to provide as a naturopath. The PMA is not a regulated health college in Ontario and does not regulate naturopaths in Ontario.

Refusal to co-operate with investigator

4. On or about August 6, 2020, an investigator attended at the Clinic in order to obtain records relevant to the investigation. It is alleged that the Registrant did not meet with the investigator to accept the appointment and the summons. The summons identified various records that were relevant to the investigation and that were to be produced by the Registrant.
5. It is alleged that the appointment and summons were provided to their colleague and that the colleague provided the appointment and the summons to the Registrant.
6. It is alleged that despite receiving the appointment and the summons, the Registrant refused to provide the requested records.
7. It is alleged that the investigator needed to obtain a search warrant in order to obtain records relevant to the investigation.
8. It is alleged that the search warrant was executed on or about August 19, 2020. It is alleged that the Registrant did not provide all of the records requested by the investigator and/or required by the search warrant and/or requested by the ICRC including but not limited to the complete copy of the PMA agreement.

Allegations of Professional Misconduct

9. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 17/14 made under the *Naturopathy Act, 2007*:
 - a. **Para 36** - Contravening, by act or omission, a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts including but not limited to section 76 of the Code;
 - b. **Para 46** - Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and/or
 - c. **Para 47** - Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.

Registrant’s Plea

The Registrant denied the allegations as set out in the Notice of Hearing.

Structure of the Decision

These reasons are divided into four parts. In part I, the Panel sets out the relevant legislation and regulations it considered in reaching its decision. In part II, the Panel summarizes the evidence presented and provides its factual findings. In part III, we address the Registrant's motions and in part IV we set out our findings on the allegations set out in the Notice of Hearing.

Part I – The Legislation

RHPA and Naturopathy Act

The *Regulated Health Professions Act* (“RHPA”) identifies fourteen treatments as “controlled acts” that can only be performed by authorized practitioners or via delegation. Section 4 of the *Naturopathy Act* identifies seven of the controlled acts that naturopaths in Ontario can provide, subject to adherence to the General Regulation.

Section 27(1) of the RHPA provides that in certain circumstances, a person can perform a controlled act even if they are not authorized or have not been delegated the controlled act, where, among other reasons, that person performs the controlled act in the course of treating a person by prayer or spiritual means in accordance with the tenets of the religion of the person giving the treatment.

There was no evidence presented to the Panel that the Registrant engaged in performing controlled acts that were delegated to him by an authorized person and further no evidence that the Registrant performed controlled acts in the course of treating a person by prayer or spiritual means. While there was some information provided to suggest that the PMA is a Christian organization, there was no evidence that any treatment was provided by prayer or involved any spiritual elements.

Schedule II to the RHPA is the Health Professions Procedural Code (“Code”). Section 2(1) of the *Naturopathy Act* confirms that the Code is deemed to be part of the Act. There is no other legislation that governs the profession of naturopathy in Ontario.

The General Regulation

Ontario Regulation 168/15 as promulgated under the *Naturopathy Act*, provides specific standards and requirements for each authorized controlled act. Section 3(1), paragraph 6 of the General Regulation, which applies to several of the authorized controlled acts, provides that in order to perform any such act, the naturopath must have the knowledge, skill and judgment to do so safely and ethically, and to determine whether the patient's condition warrants the performance of such act.

Section 5 of the General Regulation provides that if a registrant wishes to perform the controlled act of administering a substance by injection, the registrant must abide by the following:

- They can only administer a substance specified in Table 2.
- They can only administer it via the route of administration specified in Table 2.
- If a registrant reconstitutes, dilutes, mixes, prepares, packages or labels two or more substances specified in Table 2 for the purpose of administering a customized therapeutic product to a patient by injection, the registrant must comply with all the standards of practice set out in subsection 11(2) with any necessary modifications.
- They can only perform this controlled act if they completed a prescribing course and examination. Further, if they wish to administer a prescribed substance via IVIT they need to complete an additional prescribing course and examination.

Section 13(3) of the General Regulation provides that it is a standard of the profession that if a patient's condition is beyond the scope of the profession, the registrant is to refer the patient to a physician or another specified regulated health professional.

Tables 2, 3, and 5

Table 2 of the General Regulation sets out the prescribed substances that may be administered by injection. Table 2 identifies the substances that can be administered by naturopaths by injection, its route (IVIT or intramuscular) and any limitations. If a drug or substance is not listed in Table 2, it cannot be administered by injection by a naturopath in Ontario. Table 2 does not include ozone, blood, plasma, EDTA/salts of EDTA, or oxygen.

Table 3 of the General Regulation sets out the drugs that naturopaths in Ontario are authorized to prescribe and any limitations, their routes of administration and dosages.

Table 5 of the General Regulation sets out the drugs that naturopaths in the province are authorized to compound and any limitations, their routes of administration and dosages. Registrants cannot compound drugs or substances for injection unless the substance is listed in Table 5. Table 5 does not include ozone, blood, plasma, EDTA/salts of EDTA, or oxygen.

Standards of Practice of the Profession

In addition to the statutory standards as set out in the General Regulation, the College has issued several non-statutory standards of practice, including the following:

- Standard of Practice Infusion Therapy
- Standard of Practice Injection
- Standard of Practice Performing Authorized Acts
- Standard of Practice Prescribing
- Standard of Practice Scope of Practice
- Standard of Practice Advertising
- Standard of Practice Record Keeping

Part II – Evidence and Factual Findings

The College called five witnesses and provided the Panel with documents which were made exhibits throughout the course of the hearing. In response, the Registrant called a total of two witnesses, including himself, and also provided the Panel with several documents. It is important to note that it appears that much of the evidence was called to support or respond to the Registrant's motions. With respect to the allegations in the Notice of Hearing, the evidence was brief and the Panel found that much of it was not controversial.

Credibility of the Witnesses

In weighing the evidence presented, the Panel considered both the reliability and credibility of the witnesses who testified, including the Registrant. The Panel assessed the credibility on a principled basis. We considered the following factors in our assessment:

1. Did the witness seem honest?
2. Did the witness have an interest in the outcome of the case, or any reason to give evidence that was more favourable to one side than to the other?

3. Did the witness seem able to make accurate and complete observations about the event?
4. Did he or she have a good opportunity to make those observations? What were the circumstances in which those observations were made? What was the condition of the witness at that time? Was the event that was observed or witnessed unusual or routine?
5. Did the witness seem to have a good memory? Did the witness have any reason to remember the things about which he or she testified?
6. Did any inability or difficulty that the witness had in remembering events seem genuine, or did it seem made up as an excuse to avoid answering questions?
7. Did the witness' testimony seem reasonable and consistent as they gave it? Was it similar to or different from what other witnesses said about the same events? Did the witness say or do something different on an earlier occasion?
8. Did any inconsistencies in the witness' evidence make the main points of the testimony more or less believable and reliable? Was the inconsistency about something important, or a minor detail? Did it seem like an honest mistake? Was it a deliberate lie? Was the inconsistency because the witness said something different, or because he or she failed to mention something? Was there any explanation for it? Did the explanation make sense?

The Undercover Appointment

On October 7, 2019, Benard and Associates received an Appointment of Investigator and related memo appointing them to investigate concerns raised by the CEO about the Registrant's practice. The Panel heard from three investigators from Benard and Associates who were involved in the investigation. Stefanie Blacker, an investigator with Benard and Associates, attended an undercover appointment at the Clinic with the Registrant on March 3, 2020. She used the alias Stefanie Barrett. She attended the Clinic that day with her colleague, Ziggy Bardel, posing as husband and wife. During her appointment, which she audio recorded, Ms. Blacker testified that she told the Registrant that she was looking into IV therapy to deal with general malaise. When asked about IV chelation specifically, the Registrant told Ms. Blacker that he offers it and recommends it to all of his patients for optimal health. He said that it was something they could consider at the end of her treatment plan. Ms. Blacker asked about platelet rich plasma (PRP) for wrinkles around her eyes. The Registrant told her that PRP could help. He also told her that

with respect to prolotherapy, he recommended starting first with trigger point injections and that he would also recommend B12 injections. The Registrant told Ms. Blacker that if prolotherapy was needed, he would have his colleague, Dr. Prytula, ND perform the treatment. At no point during the appointment was Ms. Blacker advised by the Registrant that he was not authorized to provide chelation, PRP or trigger point injections. Ms. Blacker further testified that the Registrant did not advise her that she would need to become a member of the PMA in order to access the treatments discussed.

Clinic Visit – August 6, 2020

Dean Benard is the principal of Benard and Associates. Together with his colleagues, he took part in the investigation of this matter, pursuant to the October 2019 Appointment of Investigator. Mr. Benard has worked for several regulatory bodies to assist in the conduct of investigations. He explained to the Panel that his role is to obtain the proper material as requested and to provide that information to the decision maker.

Mr. Benard testified that he attended the clinic on August 6th, 2020, to obtain the medical records as mentioned in the Appointment of Investigator. Mr. Benard explained that he brought the Appointment of Investigator, as well as two summonses for the Registrant and two summonses for his colleague, Dr. Prytula, ND. The summons required the Registrant to produce the documents for the specific treatments listed, as well as the patient records for the undercover appointments at the Clinic. Mr. Benard also told the Panel that he brought blank summons' with him so that he could issue one to Clinic staff if neither the Registrant nor his colleague was available.

It is not disputed that during this visit to the Clinic on August 6, 2020, Mr. Benard did not interact with the Registrant. Mr. Benard interacted with the Clinic's front staff and with Dr. Prytula, ND. He had no direct discussions with the Registrant. There is also no dispute that Dr. Prytula, ND did not provide Mr. Benard with all the records requested. Specifically, Dr. Prytula, ND refused to provide treatment records for PMA members, as he argued that those records were distinct from patient treatment records. Mr. Benard testified that Dr. Prytula, ND made several heated comments about the College and its ability to regulate him and the Clinic. He said that Mr. Benard's effort to obtain the records was a violation of the PMA members' constitutional

rights. When he testified, Dr. Prytula, ND did not dispute that he was frustrated during his exchange with Mr. Benard.

Mr. Benard testified that he understood that the Registrant was present at the Clinic on August 6th but that he did not make himself available. During his examination, the Registrant admitted that he was present, seeing patients. The Registrant said that he did not understand the need for him to speak with Mr. Benard at that time and that he trusted his colleague to handle the interaction appropriately. Mr. Benard told the Panel that he left the Registrant's summons with Dr. Prytula, who agreed to give them to the Registrant. As discussed below, Dr. Prytula, ND denied receiving the Registrant's summons and the Registrant testified that he first saw them some months prior to the start of this hearing.

Execution of Search Warrant on Clinic – August 19, 2020

Mr. Benard testified that because he was unable to obtain all the documents as set out in the Appointment of Investigator, he applied for a search warrant by completing an Information to Obtain Search Warrant, dated August 11, 2020 ("ITO"). Mr. Benard explained that as is the usual process, the Justice of the Peace reviewed his application and granted him the warrant.

Contrary to the suggestion made to him in cross-examination, Mr. Benard confirmed that he followed the standard and legal process to obtain the search warrant. Mr. Benard confirmed that the ITO he prepared is a prescribed form under the *Courts of Justice Act*. Pursuant to his authority as an Investigator for the College, the *Provincial Offences Act* provides him with the authority to seek a search warrant. Mr. Benard conceded that the template language set out in the ITO and application documents do not fit squarely with the language used under the RHPA, but that he does not have any ability to depart from the court form.

Mr. Benard denied misleading the Justice of the Peace. He provided the Justice of the Peace with confirmation that he (Mr. Benard) was an investigator appointed under section 75 of the Code and further provided him with information regarding the documents sought and his involvement with the Registrant's colleague on August 6th. Mr. Benard specifically included in his application Dr. Prytula, ND's position that PMA member files are not "patient" files and therefore beyond the reach of the College. There was no reason for Mr. Benard to believe that

the Registrant had a different view from his colleague, as he had not heard from him since his attendance on August 6th and importantly, he had not received any further documents. Mr. Benard emphasized to the Panel that he obtained the search warrant, on instructions from the ICRC, as all other options (being the Appointment of Investigator and summons) were exhausted.

The search warrant was executed at the Clinic on August 19th, 2020. Mr. Benard explained that he attended the Clinic with Ziggy Bardel, IT specialists Matthew and Thomas Musters, as well as two police officers, who were present to keep the peace. Mr. Benard confirmed that the Registrant was not present when his group first arrived at the Clinic and did not attend at any time during the search.

Dr. Prytula, ND was outside of the Clinic gardening upon Mr. Benard's arrival. Mr. Benard testified that he approached Dr. Prytula, ND alone and he requested access to the documents inside of the Clinic. Dr. Prytula, ND initially resisted the request. He argued with Mr. Benard that the search was not proper and that there was no right to conduct it. Mr. Benard testified that he explained to Dr. Prytula, ND that if he did not cooperate to allow his team access, he would call a locksmith to gain entry. Eventually, Dr. Prytula, ND unlocked the door. Mr. Benard denied that he threatened Dr. Prytula, ND with violence or arrest during this interaction or at all.

Both Mr. Benard, Ziggy Bardel and Matthew Musters confirmed that once inside the Clinic, the execution of the search warrant proceeded smoothly. At one point, Dr. Prytula, ND had to call his employee, Elizabeth to attend at the Clinic to help access the computer records. Mr. Musters testified that Elizabeth was helpful and that their interaction was pleasant and professional. Mr. Benard testified that once they were inside the Clinic and the team was working to secure the documents, he told the police officers that they could leave as there was no safety concern.

Mr. Benard and Mr. Bardel confirmed that once Mr. Musters and his brother completed their computer search of the records, the team left the Clinic. There were no harsh words or threats spoken by anyone either before or after they entered the Clinic. The Registrant was not present at any point during the execution of the search warrant.

Request for Missing Records

On November 20, 2020, Mr. Bardel wrote to the Registrant asking him to provide missing records that had been identified as such by the ICRC after they had reviewed the records collected on August 6 and August 19, 2020. Mr. Bardel asked the Registrant to provide the missing documents by December 7, 2020.

Mr. Bardel testified that he did not receive a response to his letter from the Registrant, but did receive a response from Dr. Prytula, ND, who wrote that due to staff issues, they would not be able to provide the requested records within the time frame requested. Mr. Bardel agreed with Dr. Prytula, ND for the documents to be delivered to him by December 22, 2020. The Registrant ultimately provided the requested records on December 21, 2020.

Interview with Registrant, February 24, 2021

Mr. Bardel testified that he reached out to the Registrant and Dr. Prytula, ND via email to schedule separate interviews with them to discuss the allegations. Dr. Prytula, ND expressed some concern about the interview not being reported accurately. Mr. Bardel explained to the Panel that he agreed to record both interviews, to provide the recordings to the ICRC and to provide each of the Registrant and Dr. Prytula, ND with their respective interview summaries, which they could correct as needed.

Mr. Bardel interviewed the Registrant on February 24, 2021. The interview took place over the phone and as he had promised, Mr. Bardel recorded the conversation. As a result of delays on his end, Mr. Bardel did not provide the Registrant with a summary of the interview until September 2021. The Registrant made a handful of minor corrections and returned the summary to Mr. Bardel on October 7, 2021. Mr. Bardel included the Registrant's corrected summary in his final report to the College.

Second Appointment of Investigator – August 10, 2020

Mr. Bardel testified that as a result of the Registrant failing to make himself available on August 6th and his failure to provide the records requested, a Second Appointment of Investigator was issued on August 10, 2020. Mr. Bardel interviewed the Registrant regarding this second matter by phone in December 2020. Mr. Bardel testified that during his interview, the Registrant confirmed that he was at the Clinic on August 6th, 2020, but that he was busy with a patient. The

Registrant further confirmed to Mr. Bardel that he received a copy of the summons on August 6th.

Evidence of Andrew Parr

Mr. Parr is the CEO of the College. He has been the CEO (previously known as the Registrar) since the formation of the College on July 1, 2015. Prior to that time, he was the Registrar of the transitional Council of the College from 2010. In addition to hearing from Mr. Parr directly, his testimony from Dr. Prytula, ND's hearing was made available for the Panel's review.

Mr. Parr testified that the current matter arose from a complaint the College received about vaccine information on the Clinic's website. During the course of investigating that complaint, the ICRC identified several concerns about the Clinic website. The ICRC alerted the professional misconduct staff of the concerns, who in turn alerted Mr. Parr. Mr. Parr explained that he directed staff to collect screenshots of the Clinic website, which he reviewed. Mr. Parr concluded that the information on the Clinic website gave him reasonable grounds to seek the appointment of an investigator.

Mr. Parr testified that he prepared a memo to the ICRC dated September 23, 2019, wherein he set out why he had reasonable and probable grounds to seek the appointment of an investigator under the Code. Mr. Parr confirmed that he used the words "alleged misconduct" in his memo because none of the issues he raised therein had been proven and that only the Discipline Committee could make findings that misconduct in fact occurred.

With respect to the Clinic's website, Mr. Parr explained that it appeared that the Clinic was publishing misleading information. For example, Mr. Parr testified that the Clinic website directed PMA members to submit any complaints about the Registrant's services to the PMA and not the College. Mr. Parr confirmed that those receiving treatment from naturopaths in Ontario should be directed to file any complaints with the College and not the PMA.

Mr. Parr testified further that advertising for ozone therapy and chelation therapy on the Clinic website constituted promoting a demand for unnecessary services. He was particularly concerned about the section on the website which suggested these services for those wanting to "prevent against cancer". Mr. Parr testified that such statements play on people's fears and

encourage people to get treatment without a confirmed diagnosis of cancer. Similarly, Mr. Parr testified that the statement of the website suggesting that PMA members' medical records would be protected from "prying government eyes" suggested to him that the Registrant may not be maintaining records as required under College standards.

With respect to the College's standards of practice, Mr. Parr testified that the standards are available to everyone on the College website. He explained that before a standard is finalised, the College undertakes an extensive review process. Mr. Parr further testified about the College's guidance document from Fall 2017 regarding online advertising. He explained that in accordance with the guidance document, advertisements by registrants must be verifiable and accurate. Mr. Parr confirmed that naturopaths are not permitted to treat cancer and should not advertise as such. While adjunctive care to alleviate cancer treatment on the body is permitted, it is important for registrants to be clear with their patients.

In cross-examination, Mr. Parr explained that it is a relevant consideration to the allegation of knowingly providing unnecessary treatment to consider whether that treatment is outside of the scope of the profession. The question is not simply whether the treatment might be effective, but whether it is treatment that registrants are allowed to provide.

Evidence of Dr. Prytula, ND

In response to the College's evidence, the Registrant called Dr. Prytula, ND to provide evidence. Dr. Prytula, ND and the Registrant have worked at the Clinic together since 2002. Dr. Prytula, ND also worked with Mr. Parr as part of the Board's transitional Council.

Dr. Prytula, ND, admitted that he performed chelation and ozone therapy in Ontario. He testified, however, that the Registrant did not. Dr. Prytula, ND asserted that the College was aware of his practices for years and did nothing to stop him until 2022, when the ICRC imposed an interim order. Dr. Prytula, ND insisted that the College did not challenge him earlier because it knew he was providing these services to PMA members, pursuant to a private contract and that as such his naturopathic license in Ontario was not involved.

Dr. Prytula, ND admitted that both he and the Registrant provided services beyond the naturopathic scope of practice in Ontario to their PMA members. Further, he admitted that he

and the Registrant use the same billing system and that where a record identifies the Registrant as the treating practitioner, it could actually mean his own name and vice versa.

With respect to his interactions with Mr. Benard, as described above, Dr. Prytula, ND alleged that Mr. Benard was “belligerent” and “bullying” during the August 6th visit, did not practise social distancing and failed to wear a mask¹. He admitted, however, that Mr. Benard provided him with the summonses addressed to him and that he was shown a copy of the October 2019 Appointment of Investigator. He denies having been provided with any summonses addressed to the Registrant and further denies that Mr. Benard asked him to provide the summonses or anything else to the Registrant. Dr. Prytula, ND did acknowledge, however, that he shared the summonses issued to him with the Registrant “right away”. Dr. Prytula, ND also admitted that he gave Mr. Benard the records from the undercover appointment that took place between Ms. Blacker and the Registrant. He would have had no reason to provide those records if he was not aware of the summons to the Registrant.

Further, Dr. Prytula, ND acknowledged that he did not comply with the summonses as it was his view that the request for PMA members’ files was an example of “government overreach”.

With respect to the execution of the search warrant on August 19, 2020, contrary to the evidence of Mr. Benard, Mr. Bardel and Mr. Musters, Dr. Prytula, ND testified that he was threatened with arrest by Mr. Benard, who was being aggressive.

Under cross-examination, Dr. Prytula, ND conceded that he has been frustrated by the fact that the transitional Council and the Ontario government did not approve Ontario naturopaths having more access to drugs and substances. He complained it was a “joke” for naturopaths in other jurisdictions to have more access to drugs and substances than naturopaths in Ontario. While Dr. Prytula, ND agreed that the College regulates naturopaths in Ontario, he argued that the College does not regulate the activities of those who are members of the PMA.

With respect to the Clinic’s website, Dr. Prytula, ND acknowledged the following:

¹ The Panel received photos of the search that occurred two weeks later where everyone in attendance was wearing a mask except for Dr. Prytula, ND.

- He and the Registrant gathered information together to put on the Clinic website. The Registrant was aware of what was posted on the Clinic website.
- The Registrant provided IV chelation and administered EDTA salts and its derivatives.
- Dr. Prytula, ND admitted that the Registrant provided oncotherapy, UV Light Therapy for cancer, and photodynamic therapy for cancer.
- He and the Registrant provided mesotherapy using B vitamins.
- Dr. Prytula, ND admitted that neither he nor the Registrant referred patients to appropriate regulated health professionals for services they were not authorized to perform as naturopaths in Ontario. Dr. Prytula, ND explained that these unauthorized services were provided by him and the Registrant to PMA “private members” and not to “patients”. He admitted that he and the Registrant encouraged clients to become PMA members.

Evidence of the Registrant

The Registrant testified that he is a member of the PMA and that he advertises the PMA and its services to his clients. He explained to the Panel that it is his belief that PMA membership authorizes him to administer treatments and controlled acts that are not authorized to naturopaths in Ontario, and that membership would provide his clients with protection against the Ministry of Health or the College being able to access their health records.² The Registrant nonetheless conceded that the PMA is not a health regulatory college in Ontario and that it does not regulate naturopaths in Ontario. He also confirmed that he understands that using the naturopath and doctor title is authorized pursuant to the *Naturopathy Act* and the RHPA.

The Registrant testified that he understood that there are seven authorized or controlled acts that naturopaths can perform and that naturopaths can only perform these acts in accordance with the regulations. Despite this, the Registrant acknowledged that he did not refer patients to a physician or other regulated health professional when they sought IV chelation and that he provided the treatment instead. He further admitted that he prescribed T3 liothyronine to patients and that he was not authorized as a naturopath in Ontario to do so.

² The Panel understands that the PMA is a voluntary organization based in Texas.

With respect to administering injections, the Registrant admitted to injecting several unauthorized substances including oxygen, ozone, Procaine, and salts of EDTA. He also admitted to injecting vitamin B1 and B6 intramuscularly when this is not permitted. Further, he admitted that he compounded oxygen and ozone, contrary to the regulations.

With respect to the various therapies he provided, the Registrant admitted to providing oncothermia, IV chelation, photodynamic therapy, UV light therapy, bio-oxidative intravenous therapies, trigger point injection therapy, 10-pass ozone therapy, and mesotherapy. The Registrant admitted to providing these therapies outside the scope of naturopathy in Ontario.

The Registrant conceded that naturopaths are “not allowed to treat cancer” because it is outside the scope of the profession. He agreed that naturopaths should not claim to diagnose or cure cancer but denied that any of the statements regarding “cancer treatment” and killing “cancer cells” as found on the Clinic’s website amounted to inappropriate claims. The Registrant would not agree that such statements were misleading or could confuse patients.

The Registrant was asked about his interaction with Ms. Blacker during her appointment. He acknowledged he spoke with her about IV chelation, but that he said nothing to her about the PMA or joining the PMA as a precondition to receiving the treatment.

Regarding Mr. Benard’s attendance at the Clinic on August 6th, 2020, the Registrant acknowledged that he was aware of Mr. Benard’s arrival and that he had asked to speak with him. The Registrant explained to the Panel that he was attending to patients and that he thought it was appropriate for Dr. Prytula, ND to speak with Mr. Benard on his behalf. The Registrant was aware following Mr. Benard’s attendance that he had been asking for his records, but he never followed up with Mr. Benard or anyone at the College to provide the records and ask for clarification. The Registrant denied receiving a copy of the summonses, which Mr. Benard said he left with Dr. Prytula, ND. The Registrant testified that he only ever saw the summonses in the months before the start of this hearing, when his legal representative asked College counsel to provide him with copies. While the Registrant insisted that he did not receive the summonses, he did acknowledge receiving the Investigation Report, which included specific reference to the fact that his summonses had been provided to Dr. Prytula, ND. The Report also included Mr. Bardel’s interview summary in which it is reported that the Registrant acknowledged receiving

the summonses and included Mr. Benard's memo which states that he provided the Registrant's summonses to Dr. Prytula, ND, who agreed to provide them to the Registrant.

Finally, the Registrant acknowledged that he was advised by the ICRC that records were still missing following the execution of the search warrant and that while the ICRC asked for a copy of the PMA agreement, he did not provide it.³

Part III - The Registrant's Motions

The Registrant brought four separate motions wherein he seeks a stay of proceedings and/or the exclusion of evidence, such that this Panel could not likely make any findings against him. The Panel approached each of the Registrant's motions separately, relying on the evidence presented and the parties' submissions to reach our decision.

Motion #1 – Section 8 Charter Challenge

The Registrant brings this motion to exclude evidence, namely the treatment records that the College obtained from the Clinic during the execution of the search warrant. The Registrant alleges that the search warrant was not properly or legally requested, was not properly issued, and was not properly executed, in breach of his right to be secure against unreasonable search or seizure as set out in section 8 of the Charter.

In order for a search or seizure to be unreasonable as contemplated under section 8 of the Charter, the Registrant must show that the search was not authorized by law; the law itself is unreasonable; and/or the manner in which the search was carried out was unreasonable. Here, there is no issue that section 77 of the Code explicitly allows for the College to obtain a search warrant and there is no issue that the law itself is reasonable. In order for the Registrant to succeed on this motion, he must satisfy the Panel that the manner in which the search and seizure was carried out was unreasonable.

The Registrant argues that upon filing his application for the search warrant, Mr. Benard failed to provide the Justice of the Peace with complete or accurate information to support his request. In

³ The PMA Agreement filed with the Panel was ultimately provided to the College by the Registrant's legal representative after the allegations had been referred to the Discipline Committee.

particular, the Registrant suggests that Mr. Benard failed to make clear in his application that the treatment records sought included medical records belonging to PMA members, as well as patients. The Panel does not accept this argument. Having reviewed the Information to Obtain and the application materials Mr. Benard filed with the Justice of the Peace, and having considered Mr. Benard's evidence, the Panel is satisfied that the search warrant was properly and legally requested. Further, the Panel is satisfied that the statutory authority to seek and obtain a search warrant in the course of an investigation is clearly laid out in the Code. There was no evidence before us to suggest that the process followed was inconsistent with or outside the authority of the Code. Finally, we note that the Registrant made much of the fact that Mr. Benard used court forms that are normally used in criminal cases in order to obtain the search warrant. As was explained by Mr. Benard, the court forms are prescribed by statute (the *Provincial Offences Act*) and as such he had no choice but to use the forms available. It is clear from our review of the materials that the Justice of the Peace was provided with information confirming that the search warrant was being requested pursuant to an investigation under the RHPA; that the documents sought related to medical treatment, and that Dr. Prytula, ND and the Registrant did not believe that the College was entitled to the documents at issue, and had refused to provide them prior to the execution of the search warrant.

With respect to the execution of the search warrant itself, the Panel heard from Mr. Benard, Mr. Bardel, Mr. Musters and Dr. Prytula, ND. The Panel also received an interview recording made by the Registrant's counsel with one of the police officers in attendance at the execution of the warrant on August 19th. In that recording, contrary to the evidence of Dr. Prytula, ND, the police officer confirmed that he did not recall any threat of arrest being made by Mr. Benard or anyone else toward Dr. Prytula, ND. This is consistent with Mr. Benard's evidence that he did not threaten or in any way try to intimidate Dr. Prytula, ND during the execution of the warrant. The Panel was not persuaded by Dr. Prytula, ND's evidence that Mr. Benard was threatening or acting outside of the scope of his authority as investigator. The Panel notes that even if we accept Dr. Prytula, ND's evidence that his interaction with Mr. Benard was intimidating, that does not mean that the search warrant was executed in an unreasonable manner. The search warrant authorized Mr. Benard and his team to gain access to the Clinic in order to retrieve the records with or without Dr. Prytula, ND's cooperation. The fact that Mr. Benard engaged with the Registrant's colleague in an effort to conduct the search cooperatively, speaks highly of Mr.

Benard's approach. Dr. Prytula, ND had been uncooperative on August 6th and was initially resistant to the search warrant on August 19th. The evidence before the Panel makes clear that the investigators approached the execution of the search warrant professionally and in a reasonable manner.

The Panel is satisfied that the search conducted on the Registrant's Clinic on August 19th, 2020 was reasonable and did not violate the Registrant's rights under section 8 of the Charter. The search warrant was properly obtained, under legal authority, and was executed in a reasonable manner. As such, the Panel denies the Registrant's motion to exclude the evidence collected on August 19th.

Motion #2 – “Lack of Authority” Motion

The Registrant brings this motion for a finding that the Appointment of Investigator, dated October 7, 2019, was “*ultra vires*” (i.e. beyond the jurisdiction of the ICRC). The Registrant makes this argument because he says that the Mr. Parr's request to the ICRC to approve the appointment of an investigator did not set out Mr. Parr's belief that the Registrant engaged in professional misconduct but only that he (as CEO of the College) “may” have believed that the Registrant engaged in professional misconduct. The Registrant submits that as a result of this language, the Appointment of Investigator should not have been issued as the request did not properly comply with the requirements set out in section 75(1)(a) of the Code. The Registrant argues that as a result the specified allegations set out in the Notice of Hearing which arose from the fruits of the investigation must be set aside by this Panel. In support of his position, the Registrant relies heavily on Mr. Parr's memo, which he prepared in support of his request for the appointment of investigator, as well as Mr. Parr's testimony at both this hearing and in parallel proceedings taking place against Dr. Prytula, ND. In both his memo and in his testimony, Mr. Parr used qualifying words like “may” and “may have” to describe his initial concerns regarding Dr. Um, ND's potential misconduct.

Section 75(1)(a) of the Code provides that the Registrar may appoint one or more investigators to determine whether a member has committed an act of professional misconduct, where the Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct and the ICRC approves the appointment. Here, the Panel reviewed Mr.

Parr's 94-page memo, dated September 23, 2019, which was prepared to support his request for the appointment of an investigator. In keeping with the requirements of the Code, Mr. Parr set out clearly, "I believe on reasonable and probable grounds that" the Registrant committed "the following acts of professional misconduct." Mr. Parr then set out in detail information he collected, including screenshots from the Clinic's website to support his belief that the Registrant committed professional misconduct. On the basis of his request and supporting memo, Mr. Parr received approval from the ICRC for the appointment of the investigators.

Contrary to the Registrant's argument, the Panel is not persuaded that the Registrar failed to meet the requirements to appoint an investigator, as set out in the Code. He made clear in his memo (and confirmed in his testimony) that he had reasonable and probable grounds to believe that the Registrant committed acts of professional misconduct, and the Registrar obtained the approval of the appointment of an investigator from the ICRC.

The evidence confirms that Mr. Parr formed his belief based on a review of the Clinic's website and in consideration of the relevant tables found in the General Regulation. In his supporting memo, Mr. Parr made clear that he believed that the conduct uncovered amounted to professional misconduct. As he emphasized in his testimony, it is not Mr. Parr's role to conclude whether a registrant has engaged in professional misconduct. It is the responsibility of the Discipline Committee to make such findings, on evidence presented during a hearing. It is for that reason Mr. Parr was careful in his memo and in his testimony to use words like "may" and "may have" so that there would be no suggestion that he was making findings against the Registrant and/or that he was attempting to usurp the role of the Discipline Committee. The Panel does not agree with the Registrant's suggestion that the use of qualifying terms made Mr. Parr's request for an investigator improper. Mr. Parr acted within his statutory authority to request the appointment of an investigator, given his concerns regarding the Registrant's conduct.

For the reasons set out above, the Panel dismisses the Registrant's motion for an order declaring that the appointment of investigator was "*ultra vires*".

Motion #3 – Section 11 Charter Challenge and Abuse of Process Motion

The Registrant brings this motion seeking an order staying the proceedings. He alleges that the College breached three sections of subsection 11 of the Charter. First, the Registrant alleges that contrary to the protection afforded by subsection 11(a), the College failed to notify him of the specific “offence” he was being “charged with” without unreasonable delay. Second, the Registrant alleges that the College delayed in proceeding with this matter, contrary to subsection 11(b); and third the Registrant alleges that because of illegal threats made against Dr. Prytula, ND during the execution of the search warrant, the Registrant’s right to be protected against testimonial compulsion was violated. The principal question before the Panel on this motion is whether section 11 of the Charter applies to discipline proceedings. The parties agree that section 11 only applies where a person falls within the meaning of the phrase, “any person charged with an offence”. Further, the parties agree that as set out by the Supreme Court of Canada in *R. v. Wigglesworth*, a person is charged with an offence if they are (1) subject to proceedings that are criminal in nature; or (2) potentially subject to “true penal consequences” in relation to the alleged offence.

The Registrant argues that section 11 applies because he is a person “charged with an offence”. In support of his position, the Registrant relies heavily on *R. v. Wigglesworth*. In that case, an RCMP officer was found to have engaged in a “major police service offence” under the *Royal Canadian Mounted Police Act*, which subjected him to up to one year in prison. The officer was also subject to parallel criminal proceedings for the same conduct. Both adjudicative routes led to imprisonment, but the Supreme Court found that the two proceedings were separate and distinct. The Court was not satisfied that the administrative proceeding was not “criminal in nature” as it is separate from criminal proceedings and because its purpose was meant for internal discipline of police force members. However, the Court concluded that section 11 applied to the discipline proceedings in that case because of the “true penal consequences” test. The fact that the police discipline tribunal could imprison the police officer meant that section 11 applied. In the present case, the Registrant argues that the fact that this Panel could, among other things, impose a fine of not more than \$35,000.00 to be paid to the Minister of Finance amounts to a “true penal consequence” and as such section 11 applies. He argues, specifically, that because the fine is payable to the Minister of Finance and not to the College or the Minister of Health, the purpose of its imposition must be to redress a wrong to society at large.

The Panel is not satisfied that section 11 applies to this discipline hearing. There was no case law before the Panel to support the Registrant's argument that section 11 applies to hearings under the RHPA. On the contrary, the case law that was presented made clear that section 11 of the Charter does not apply to discipline hearings. The Registrant has not been charged with an "offence" under section 11. He is not subject to proceedings that are criminal in nature and the potential penalties that this Panel might impose (including a fine) are not "true penal consequences". The purpose of the discipline proceeding, and the imposition of a fine, suspension and/or other penalty is to promote compliance among the membership and is limited to the sphere of activity which is the practice of naturopathy. The penalty is not intended to redress a wrong to society at large, but to ensure that members of the College abide by the legislation and the standards of practice. The fact that the Registrant may be "found guilty" of professional misconduct, does not mean that the nature of these proceedings are criminal or that the potential consequences for such a finding are truly "penal".

While the Panel has found that section 11 of the Charter does not apply to these proceedings, it has nonetheless considered the Registrant's arguments under each subsection of section 11. First, with respect to section 11(a), the Registrant argues that the Notice of Hearing includes vague allegations ("unnecessary treatment" and "including but not limited to") which makes it difficult to know what exactly the College is alleging. We do not accept this argument. The uncontroverted evidence presented to the Panel shows that in addition to what is set out in the Notice of Hearing, the Registrant (and his legal representative) received specific and detailed communications from the College about the treatments being provided that were of concern. The Registrant has admitted to much of the conduct during the course of this hearing and appears to have been clearly aware of the nature of the allegations being made.

With respect to section 11(b), the Registrant argues that the College delayed in the prosecution of this matter. We do not agree. The first Appointment of Investigator was signed in late 2019. Through the COVID-19 restrictions that were imposed at the time, the investigators took steps to collect records from the Registrant's Clinic. As described above, the Registrant's colleague did not cooperate with the collection and a search warrant was required. Further, the Registrant did not provide his complete records, including a copy of the PMA agreement until 2024. Under the circumstances, we are not satisfied that there has been delay in these proceedings. To the extent

that it took the College some time to process this matter, it is clear that much of the delay was because of the Registrant's failure to cooperate in the early stages of the investigation.

Finally, the Registrant voluntarily chose to testify, as did his colleague, Dr. Prytula, ND. Contrary to the Registrant's suggestion otherwise, he was not compelled to testify or provide evidence. In the circumstances, section 11(c) of the Charter does not apply.

Motion #4 – Section 7 Charter Challenge

Section 7 of the Charter provides that everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. Dr. Um, ND argues that his section 7 rights have been violated in several different ways. First, he argues that the College prosecutor was not impartial or objective. Second, he argues that two types of provisions set out in the Notice of Hearing are vague under section 7 and contrary to procedural fairness and as such should be struck.

The first type of provision he alleges is vague are those with the words “unnecessary treatment”, as found at paragraphs 7(b) and 8(b) of the Notice of Hearing. The second are those provisions with the words “including but not limited to” (paragraphs 5(a)(ii), 5(c)(i), (ii),(iv),(v), (d), and (e), paragraphs 9 and 10(a)) of the Notice of Hearing. The Registrant argues that the inclusions of these phrases leave him unclear as to what is being alleged. The only law referenced in the Notice of Hearing that contains the allegedly vague provisions is paragraph 7 of section 1 of the Professional Misconduct Regulation, which includes reference to “unnecessary treatment”.

Protection under section 7 interests arises in relation to the administration of justice which is defined as the “state's conduct of enforcing and securing compliance with the law” (*Gosselin v. Quebec (AG)*, 2002 SCC 84). That means that a section 7 breach can only be alleged in connection with a law and as such, the Registrant's suggestion that the language of the Notice of Hearing can be subject to section 7 is misplaced. The language used in the Notice of Hearing is not subject to section 7 compliance and in any event, the Panel is not satisfied that the language used was in any way vague or overly broad. The Notice of Hearing contains particulars which support each of the allegations. Upon reading the allegations together with the particulars, there is no doubt that the College's concern regarding “unnecessary treatment” related primarily to

treatment the Registrant advertised was available to his clients even though it was treatment outside of his scope of practice, including treatment for cancer and HIV. Similarly, it is clear from the Notice of Hearing that the phrase “including but not limited to” was used to provide the Registrant with examples of the Standards of Practice at issue.

Further, the Panel finds that there is nothing in the manner in which the Notice of Hearing is written or in the conduct of the College prosecutor to suggest that the Registrant’s life, liberty and/or security of the person was in peril. First, the right to life is engaged where the law at issue imposes death or an increased risk of death, directly or indirectly. This right does not apply to the circumstances here. Second, the right to physical liberty is engaged where imprisonment is a possible sanction for an offence. Imprisonment is not a penalty that this Panel can impose and as such, this right does not apply. Liberty as a right to protect personal autonomy goes to the core of what it means to enjoy individual independence and dignity; it does not protect an unbridled freedom to do whatever one pleases. The Panel was provided the decision of the Discipline Committee of the *College of Physicians and Surgeons of Ontario in Ontario (College of Physicians and Surgeons) v Mussani* 2000 ONCPSD, 22, wherein the panel concluded that the practice of medicine in Ontario is not a right, but a privilege that brings with it certain obligations to patients, the public, and other members of the profession. Nothing in the Notice of Hearing infringes on the Registrant’s personal life choices. The Registrant does not have unbridled freedom to engage in the practice of naturopathy without regulation. It is a privilege to be a member of a health profession in Ontario – it is not a right. Third, the right to security of the person is meant to protect a person’s freedom from the threat of physical punishment or suffering, or undue police force. None of these rights are engaged in the present circumstances.

For these reasons, the Panel denies the Registrant’s section 7 motion.

Part IV – The Panel’s Findings

As summarized above, the Registrant admitted most of the allegations as set out in the Notice of Hearing. The Registrant’s defence to the allegations was that he believed he was entitled to advertise and perform treatment he is not authorized to perform in Ontario by virtue of the private contract the PMA members signed. It was the Registrant’s belief that he could offer services outside of the purview of the College by simply arranging for his clients to become

members of the PMA. Despite the Registrant's stated beliefs, there is no support in law for this position. Membership in the PMA does not relieve the Registrant from complying with the law when offering naturopathic services in Ontario. The Registrant admitted that his clients received treatment he was not authorized to provide, including oncothermia, UV light therapy, and trigger point injection. It does not matter that some of these clients may have also been members of the PMA – the Registrant is bound by his obligations as a member of the College not to provide treatment outside of the scope of practice. The Registrant cannot circumvent the College's regulations or the professional standards by purporting to sign away those obligations via contract. That is simply not how professional regulation works in the province.

With respect to the allegations relating to the Clinic's advertising, the website excerpts provided to the Panel made clear that the Registrant and his colleague offered services outside of the scope of naturopaths in Ontario and – perhaps more troubling – made claims to be able to treat and essentially cure cancer, HIV and other diseases, which fell below the College's advertising standards. The Registrant and his colleague tried to suggest that the exact words used on the website did not promise “treatment” or a “cure” for cancer, but the Panel finds that the words that were used, including “killing cancer cells” were unclear and could be confusing and misleading to the public.

Finally, the Panel is satisfied that the Registrant failed to cooperate with the College's investigation. He failed to provide his records in a timely fashion, resulting in delay and a further referral. While much was made about whether the Registrant received the summonses left by Mr. Benard, the Panel is satisfied that whether the Registrant actually saw his summonses or not, there is no question that he was aware as of August 6th, 2020 of the College's request for information and records, that he engaged in a back and forth with the College's investigators about the records, and that he was aware on or shortly after August 19th, 2020, that the College investigators had returned to his Clinic with a search warrant to obtain the missing records. It is incumbent upon a member of a regulated health profession to seek clarification from their regulator when they become aware that information is being sought from them and are unsure about what is required. Further, the Panel does not believe that the Registrant's decision to defer so extensively to his colleague, Dr. Prytula, ND on these matters is a common or acceptable practice for a member of a regulated health profession.

Summary of findings

Based on the evidence presented and the Registrant's admissions, the Panel finds that the Registrant engaged in professional misconduct as set out in the Notice of Hearing. In brief, the Registrant failed to maintain the standards of practice of the profession, in providing treatment outside of the scope of the practice; in failing to maintain records which accurately indicated who provided treatment; in offering IVIT using substances not listed in the Tables of the General Regulation; and in performing acts not authorized to the profession in Ontario.

Further, the Registrant offered or provided treatment that he knew or ought to have known was unnecessary or ineffective. The Registrant offered treatment for cancer, which is outside of the scope of practice and therefore unnecessary and/or ineffective. While the Registrant may be trained to offer certain treatments for cancer in other jurisdictions, he is not allowed to do so in Ontario and therefore is not qualified here with the necessary skill or judgment. For this reason, the Panel finds that the Registrant provided or attempted to provide treatment beyond his knowledge, skill or judgment. The Registrant ought to have referred his patients elsewhere, when the Registrant believed that the patient required services beyond his scope of practice.

The Registrant admitted to performing controlled acts that he is not authorized to perform and further admitted to compounding blood/plasma, EDTA, oxygen, ozone and procaine, contrary to the General Regulation and the Tables set out therein. He further admitted to injecting blood/plasma, EDTA, oxygen, ozone, and procaine, contrary to the regulations.

The Registrant's conduct put his clients at risk, and misled members of the public who reviewed his website. His conduct would reasonably be regarded by other members of this profession as disgraceful, dishonourable and unprofessional, and would reasonably be regarded as conduct unbecoming a member of this College. Registrants of this College cannot offer services beyond what is allowed within the scope of practice. Such disregard for regulation puts patients at risk of harm. Self-regulation is a privilege that works only when registrants comply with the governing rules and standards. The Registrant offered and performed services for which the College has not confirmed the Registrant's knowledge or skill level. It is not enough for the Registrant to argue that he is allowed to perform the same services in another jurisdiction or that his PMA member-clients have signed a contract allowing him to perform the service. The

College is responsible for protecting the public in Ontario, and therefore must ensure the rules governing the competency and quality of naturopathic care in this province are followed. The Registrant's attempt to offer his services outside of the reach of his regulatory body is contrary to the governing law and incompatible with the health and safety of patients.

The Panel asks the parties to contact the Manager, Professional Conduct to arrange for a penalty hearing.

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:



November 14, 2024

Chairperson

Date

Dr. Denis Marier, ND

Ms. Lisa Fenton, Public Member