

**IN THE MATTER OF AN APPEAL TO THE COUNCIL OF THE COLLEGE OF  
NATUROPATHIC DOCTORS OF ALBERTA BY THE COMPLAINTS DIRECTOR**

**PURSUANT TO SECTION 87 OF THE HEALTH PROFESSIONS ACT**

**FROM THE MERITS DECISION (APRIL 28, 2020) AND THE SANCTIONS  
DECISION (JUNE 26, 2020) OF THE HEARING TRIBUNAL OF THE COLLEGE OF  
NATUROPATHIC DOCTORS OF ALBERTA**

**DECISION OF THE APPEAL PANEL OF COUNCIL**

**Introduction**

1. The appeal hearing was held on November 16, 2020 via Zoom Meeting. This was an appeal by the Complaints Director from the decisions of a Hearing Tribunal of the College of Naturopathic Doctors of Alberta (the "CNDA") dated April 28, 2020 (the "Merits Decision") and June 26, 2020 (the "Sanctions Decision").

Present were:

Members of Council:

Ms. Elsy Gagné, Chair and Public Member

Dr. Joe Klassen, Member

Dr. Kin Leung, Member

("the Appeal Panel" or "the Panel")

Ms. C. Baruss, Complaints Director

Mr. G. Sim and Ms. E. Thorne, Legal Counsel for the Complaints Director

Dr. E. Muradov, Member

Mr. J. Rossall, Legal Counsel for Dr. Muradov

Ms. A. Chisholm, Independent Legal Counsel for the Appeal Panel

2. The Appeal Panel confirmed that prior to the hearing, it received the Notice of Appeal of the Complaints Director, the Record of the Hearing and Written Submissions and Authorities from the Complaints Director and Dr. Muradov.

3. Following the hearing, the Appeal Panel received additional submissions on alternative sanctions from the Complaints Director on November 18, 2020 and from Dr. Muradov on November 27, 2020.

### **Preliminary Matter**

4. On August 18, 2020, Mr. Rossall wrote to the Hearings Director to request a preliminary hearing on the jurisdiction of the Appeal Panel to hear the portion of the Complaints Director's appeal that concerned the Merits Decision.

5. The Appeal Panel declined to schedule a preliminary hearing and directed both parties to provide written submissions on the preliminary matter.

### Submissions of Dr. Muradov

6. Mr. Rossall submitted that the Complaints Director was time barred from appealing the Merits Decision because the Notice of Appeal was not brought within the 30 day period set out in section 87(2) of the *Health Professions Act* (the "Act"). The Complaints Director provided a Notice of Appeal of the Merits Decision and the Sanctions Decision on July 26, 2020. Mr. Rossall submitted that the Complaints Director was required to provide the Notice of Appeal of the Merits Decision within 30 days of April 30, 2020, which was the day Dr. Muradov was served with the Merits Decision.

7. Mr. Rossall submitted that it defied logic that the Merits Decision and the Sanctions Decision should be read together as one decision. He noted that the letter Dr. Muradov received from the Hearings Director serving the Merits Decision on him stated: "Pursuant to section 87(1) of the Act you may appeal this decision to the Council of the College within the timeframe outlined in section 87(2)." He referred to the fact that the Merits Decision was served on Dr. Muradov as the "Decision of the Hearing Tribunal of the [CNDA] (April 28, 2020)" and that the Merits Decision concluded a substantive hearing and indicated a second hearing would be held on sanctions. He pointed out similar distinguishing facts regarding the Sanctions Decision.

8. Mr. Rossall submitted that section 87(2) uses the imperative terminology of "must", which means it is a mandatory procedural provision.

9. He also submitted that the case law was not consistent on whether an appeal period begins to run on the date that the unprofessional conduct decision is made on or on the date a penalty is imposed. He cited decisions from courts across Canada that approached the issue with different outcomes.

10. Mr. Rossall cited the case of *Campkin v College of Social Workers of Alberta*, 2017 ABQB 358 in support of the position that the Courts have focused on avoiding interlocutory appeals, as opposed to appeals of final decisions. He submitted that in this

case, the Merits Decision was a final decision of the Hearing Tribunal and an appeal from it would not be interlocutory. The Hearing Tribunal made a decision to bifurcate the proceedings and essentially conduct two hearings, with two independent decisions; each of which triggered a separate appeal period.

11. Finally, Mr. Rossall submitted that the Merits Decision and the Sanctions Decision were the subject of separate and discrete proceedings and it is hard to understand why corresponding separate appeal periods would be necessarily inefficient. In this case, the conduct hearing was in person and the sanctions hearing proceeded by written submission; arguably a flexible and efficient process.

#### Submissions of the Complaints Director

12. Mr. Sim submitted that the Complaints Director's Notice of Appeal was properly filed in accordance with sections 83 and 87 of the Act.

13. Section 83 of the Act indicates that the Hearing Tribunal's written decision is not complete until it includes any orders it is going to make in respect to sanctions. Therefore, the Hearing Tribunal's decision was not complete until it issued the Sanctions Decision on June 26, 2020.

14. Mr. Sim submitted that the proper interpretation of section 87 of the Act is that the 30 day limitation period began to run on June 26, 2020 when the Hearing Tribunal's decision was complete.

15. Mr. Sim reviewed the Merits Decision and stated that, despite Mr. Rossall's arguments to the contrary, the Hearing Tribunal did not suggest it had completed one hearing when it requested submissions on sanction. At paragraph 102 of the Merits Decision, the Hearing Tribunal set out:

Having made its findings on unprofessional conduct, the Hearing Tribunal must now consider the appropriate orders for sanction. The Hearing Tribunal will receive submissions from the Complaints Director and Dr. Muradov with respect to sanction.

16. Mr. Sim noted that the Hearings Director's letter to Dr. Muradov did not state that Dr. Muradov could appeal the Merits Decision to the Council of the CNDA, but that he could appeal within the timeframe outlined in section 87(2) of the Act. Mr. Sim also suggested there was no separate hearing on sanctions.

17. Following receipt of the Sanctions Decision, the Hearings Director commenced an appeal pursuant to sections 83 and 87 of the Act.

18. Mr. Sim stated that there is nothing in the Act nor in any authority he is aware of that suggests that adjourning a hearing after findings are made and before sanctions are determined converts one hearing into two legally distinct hearings. He submitted that the Merits Decision and the Sanctions Decision deal with different issues but are both parts of the same, continuous administrative process that culminates in one decision of a Hearing Tribunal.

19. Mr. Sim then submitted that section 83 should be interpreted to mean that a Hearing Tribunal has not completed its "decision" until all three components are finalized in a written decision: (a) the findings made by it, (b) the reasons for each finding made by it, and (c) any orders made by it. The limitation period in section 87 of the Act references the "decision" of the Hearing Tribunal, which comprises all of the elements described in section 83.

20. He noted that the *Campkin* case cited by Mr. Rossall is the only case that offers a helpful interpretation of section 87 of the Act. The other cases cited by Mr. Rossall are from other jurisdictions and interpret different legislation.

21. In the *Campkin* case, the Alberta Court of Queen's Bench considered whether the right of appeal in section 87 of the Act was available from preliminary rulings or only from a Hearing Tribunal's final decision on all of the issues before it. The Court referred to a need to avoid fragmentation, delay and expense:

Additionally, the appeal which is provided in s 87(1) of the Act is from "the decision of the Hearing Tribunal" as opposed to "a" or "any" decision of the Hearing Tribunal. Given the decision in *Wasylyshen* and the warning in *Greater Moncton*, I interpret that provision in s 87 of the Act as applying to the final decision of the tribunal, such that there is only a single appeal to the Council, after completion of the decision-making process by the Hearing Tribunal. Even if the Hearing Tribunal provides a number of interlocutory decisions, those decisions may be subject to appeal to the Council given compliance with the limitation period set out in s 87(2) of the Act.

22. Mr. Sim suggested that although the *Campkin* case dealt with preliminary jurisdictional and fairness rulings of a Hearing Tribunal, there is no reason why the Court's analysis should not apply equally to the Hearing Tribunal's findings on the allegations.

23. Mr. Sim then cited case law from the Alberta Court of Appeal to support the position that an interlocutory appeal commenced before the Hearing Tribunal's decision was complete would be premature and inappropriate.

24. Finally, Mr. Sim submitted that the Appeal Panel should look at the wording of the Act and its context and purposes. He noted that the Alberta Court of Appeal has explained that statutes like the Act should be given a large, liberal interpretation consistent with their purposes.

25. The Act should be interpreted in accordance with its primary purpose to protect the public interest. When the record and proceedings are reviewed in context, there was no intention in this case to create a fork in the process or to suggest that an appeal from the Merits Decision must be filed immediately. The Act should not be interpreted to require parties to commence multiple, bifurcated appeals. Doing so would be extremely inefficient, costly and contrary to the public interest and the direction of the Alberta Courts.

#### Decision of the Appeal Panel on the Preliminary Matter

26. The Appeal Panel finds it is not time barred from hearing the Complaints Director's appeal in relation to the Merits Decision.

27. The Appeal Panel carefully considered the submissions from both parties as well as the letters provided by the Hearings Director to Dr. Muradov that accompanied the Merits Decision and the Sanctions Decision.

28. The Appeal Panel also considered the wording of sections 83 and 87 of the Act:

83 The hearing tribunal must, within a reasonable time after the conclusion of a hearing before it, make a written decision on the matter in which it

- (a) describes each finding made by it,
- (b) states the reasons for each finding made by it, and
- (c) states any order made under this Part.

87(1) An investigated person or the complaints director, on behalf of the college, may commence an appeal to the council of the decision of the hearing tribunal by a written notice of appeal that

- (a) identifies the appealed decision, and
- (b) states the reasons for the appeal.

(2) A notice of appeal must be given to the hearings director within 30 days after the date on which the decision of the hearing tribunal is given to the investigated person.

29. The Appeal Panel finds that when sections 83 and 87 are read together, keeping in mind the context and purpose of the Act, the right to appeal under section 87 only comes into effect once, when a Hearing Tribunal's decision is complete.

30. The Appeal Panel considered that section 83 of the Act expressly contemplates that a Hearing Tribunal will render a written decision, and that decision will include its findings in relation to the conduct of the member and the sanctions to be ordered. Therefore, the Appeal Panel finds that section 83 suggests all three elements (findings, reasons and orders) are required for a Hearing Tribunal's decision to be complete.

31. Next, the Appeal Panel considered whether, by bifurcating the hearing process, the Hearing Tribunal held two separate hearings and as a result, issued two decisions that could each be subject to separate appeals.

32. In the Appeal Panel's view, bifurcating the hearing process does not mean two separate hearings occurred. The Appeal Panel notes that in this case, there is no suggestion that a separate Notice of Hearing was generated for the sanctions portion of the hearing. Mr. Rossall indicated that the Hearing Tribunal itself directed the parties to provide it with submissions on sanctions. The Appeal Panel finds it would not be in keeping with the context of the Act to find it possible to hold two separate hearings under Part 4 of the Act without two separate Notices of Hearing.

33. The Appeal Panel further considered that when a hearing is contested, as Dr. Muradov's was, it is fair that both parties should have an opportunity to hear the Hearing Tribunal's reasons for its findings on the allegations in the Notice of Hearing before being required to make submissions on sanctions.

34. Bifurcating the hearing process to ensure both parties are given time to prepare and provide submissions on sanctions to a hearing tribunal should not, in the Appeal Panel's opinion, create an opportunity to appeal before a hearing tribunal has completed its decision under section 83 of the Act.

35. The Appeal Panel considered that this interpretation is consistent with the interpretation previously applied by the Alberta Court of Queen's Bench in the *Campkin* case cited by both parties. Although the Appeal Panel considered the additional cases put forward by Dr. Muradov, it finds the *Campkin* decision is a compelling precedent because it specifically considered an appeal under section 87 of the Act. The Appeal Panel also considers that its interpretation of sections 83 and 87 is supported by the Alberta Court of Appeal's decisions that discourage multiple appeals.

36. Although the Appeal Panel concedes that the language used by the Hearings Director in her service letters to Dr. Muradov may not have been clear, the Appeal Panel finds that the Hearings Director did not contradict the intention of the Act, which

is to provide an avenue of appeal for both the Complaints Director and Dr. Muradov once the Hearing Tribunal's decision was complete. Furthermore, a lack of clarity cannot justify the Appeal Panel applying what it believes would be an incorrect interpretation of the Act to this case.

37. For these reasons, the Appeal Panel finds the appeal period for the complete decision of the Hearing Tribunal, which included the Merits Decision and the Sanctions Decision, ran from the date the Sanctions Decision was served on Dr. Muradov (June 26, 2020). As a result, the Appeal Panel finds the Notice of Appeal was provided within the 30 day time limitation set out in section 87(2) of the Act and it is not time barred from hearing the Complaints Director's appeal in respect to the Merits Decision.

### **The Decisions Under Appeal**

38. This Appeal concerns the Merits Decision and the Sanctions Decision of a Hearing Tribunal of the CNDA. In the Merits Decision, the Hearing Tribunal considered the following allegations made in the Notice of Hearing:

It is alleged that Dr. Eric Muradov, while practicing as a Naturopathic Doctor engaged in unprofessional conduct by:

1. On or about September 21, 2017, failed to appropriately refer patient R.B. to another regulated health care professional upon determining that she would benefit from treatment beyond the scope of practice of naturopathic medicine in Alberta, particulars of which include one or more of the following:
  - a. Failing to refer R.B. to another regulated health professional for assessment and treatment by that regulated health professional;
  - b. Failing to provide clear communication to R.B. about the transfer of her care,

contrary to the CNDA Standards of Practice.

2. On or about September 21, 2017, prescribed or purported to prescribe one or more of the following Schedule 1 Drugs to patient R.B.:
  - a. Desiccated Thyroid;
  - b. Hydrocortisone;

contrary to the *Government Organization Act*, RSA 2000, c. G-10, Schedule 7.1, sections 2(1)(f) or (g) or 4, the *Naturopaths Profession Regulation*, AR 126/2012, the CNDA Code of Ethics or the CNDA Standards of Practice.

3. On or about September 21, 2017, requested or recommended that a prescription be issued to his patient, R.B. for one or more of the following Schedule 1 drugs:

- a. Desiccated Thyroid;
- b. Hydrocortisone;

contrary to the CNDA Standards of Practice.

4. On or about September 2017 to March 2018, supervised the use of, or adjusted the prescribed dosages of, one or more of the following Schedule 1 drugs for patient R.B.:

- a. Desiccated Thyroid;
- b. Hydrocortisone;

contrary to the CNDA Standards of Practice.

39. The Hearing Tribunal found that Allegation 1 a) and Allegation 4 were proven on a balance of probabilities and constituted unprofessional conduct. The Hearing Tribunal found that Allegation 1 b), Allegation 2 and Allegation 3 were not proven.

40. The Merits Decision summarized the evidence of R.B. and Dr. Muradov and the submissions made by legal counsel for the Complaints Director and legal counsel for Dr. Muradov. It then provided detailed reasons for each of the findings made by the Hearing Tribunal.

41. In the Sanctions Decision, the Hearing Tribunal considered the submissions of the parties and ordered the following sanctions:

- a. Dr. Muradov shall receive a reprimand with the written decision on penalty serving as the reprimand.
- b. Dr. Muradov shall pay a \$2,000.00 fine for each of the proven Allegations 1 a) and 4 for a total \$4,000.00 to be paid within 1 year of receipt of the Hearing Tribunal's decision.
- c. Dr. Muradov shall successfully complete at his own expense remedial training in the following areas on a schedule as agreed upon with the Complaints Director:
  - i. A course on record keeping and documentation; and



- ii. A course on collaboration and communication with other health care providers.
- d. Dr. Muradov shall complete at his own expense 3 annual reviews with a field officer of the College in matters relating to documentation, storage and retrieval policies and procedures and communication practices.
- e. Dr. Muradov shall pay costs of the investigation and hearing in this matter fixed in the amount of \$15,000.00, to be paid within 1 year of receipt of the Hearing Tribunal's decision or such other time period as may be agreed upon with the Complaints Director.
- f. The Hearing Tribunal will retain jurisdiction in the event that there is any dispute regarding the implementation of any of the orders referred to above.

42. The Sanctions Decision summarized the submissions of legal counsel for the Complaints Director and legal counsel for Dr. Muradov. The Hearing Tribunal then provided detailed reasons for its decision on the sanctions to be imposed.

### **The Grounds of Appeal**

43. In his written and oral submissions on behalf of the Complaints Director, Mr. Sim noted that the Complaints Director was appealing the Merits Decision and the Sanctions Decision on the grounds that the Hearing Tribunal:

1. Erred in fact, or in law, or both in failing to find that Dr. Muradov prescribed, or purported to prescribe drugs that he was not authorized to prescribe;
2. Erred in fact, or in law, or both in finding that the CNDA's Standards of Practice, Code of Ethics, or either of them lack clarity and treating this as a mitigating factor in relation to sanctions orders;
3. Imposed sanctions that were unreasonably lenient in all of the circumstances, and it erred in fact, or in law, or both in fettering its discretion to impose a suspension as a sanction; and
4. Breached the duty of procedural fairness owed to the parties by imposing sanctions orders that neither party had proposed, and without providing the parties with notice or an opportunity to make further submissions.

44. Mr. Sim requested that the Appeal Panel find Allegation 2 proven and quash the Hearing Tribunal's decision and finding on Allegation 1, and vary the Sanctions Decision to impose sanctions as proposed by the Complaints Director.

## **Decision on the Grounds of Appeal**

### Introduction

45. In considering the four grounds of appeal advanced by the Complaints Director, the Appeal Panel intends to use the following procedure:

- a. consider the ground of appeal related to the Merits Decision and set out the Appeal Panel's decision regarding the appeal of the Merits Decision; and then
- b. consider the grounds of appeal related to the Sanctions Decision and set out the Appeal Panel's decision regarding the grounds of appeal relating to the Sanctions Decision. In this case, the Appeal Panel determined it would provide its decision in respect to Grounds 3 and 4 together.

46. In respect to each ground of appeal, the Appeal Panel will summarize the oral and written arguments made on behalf of the Complaints Director and Dr. Muradov and then set out its decision relating to the ground of appeal.

47. The Appeal Panel will refer to the reasons of the Hearing Tribunal set out in the Merits Decision and the Sanctions Decision as necessary when considering each of the grounds of appeal. However, it does not intend to provide a detailed summary of either the Merits Decision or the Sanctions Decision, as this would unduly extend the length of this written decision and the relevant issues are well captured by the parties' submissions on the grounds of appeal.

### **Standard of Review**

48. In determining this appeal, the Appeal Panel is required to consider and apply the appropriate standard of review to the decision of the Hearing Tribunal. Each of the parties made submissions on the appropriate standard of review.

### Submissions from the Complaints Director

49. Mr. Sim submitted that there are two possible standards of review the Appeal Panel could apply: correctness and reasonableness.

50. He submitted that the Alberta Court of Appeal has directed that when an appeal panel of Council reviews decisions of a hearing tribunal about whether a member has engaged in unprofessional conduct or about the sanctions to be imposed, the question before the appeal panel is whether the hearing tribunal's decision was "reasonable." He noted that in this case, the reasonableness standard applies to the first three grounds of appeal.

51. Mr. Sim then referenced the decision of *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 for guidance on how the Appeal Panel should conduct a “reasonableness” review. He submitted that the guidance included that the Appeal Panel should look for “an internally coherent and rational chain of analysis” and a decision that is “justified in relation to the facts and the law” in outcome and in reason.

52. Further factors the Appeal Panel should consider included: whether the Hearing Tribunal fundamentally misapprehended or failed to account for evidence before it; whether the reasons of the Hearing Tribunal included a fundamental gap or unreasonable chain of analysis; whether the Hearing Tribunal’s reasons “added up”; and whether the Hearing Tribunal’s decision respected the statutory scheme.

53. Mr. Sim also referred to the recent decision of the Alberta Court of Appeal in *Yee v Chartered Professional Accountants of Alberta*, 2020 ABCA 98 and its discussion about how an appeal panel should approach a review of a decision of a hearing tribunal.

54. Mr. Sim submitted that in accordance with the Alberta Court of Appeal’s direction in paragraphs 33 to 35 of the *Yee* case, an appeal panel should “remain focused on whether the decision of the discipline tribunal is based on errors of law, errors of principle, or is not reasonably sustainable.” He then cited the following guidelines provided by the Court of Appeal:

- a. findings of fact, particularly those based on the credibility of witnesses should be afforded significant deference;
- b. inferences drawn from the facts should also be respected, unless the appeal panel is satisfied there is an articulable reason for disagreeing;
- c. for decisions on questions of law arising from the discipline tribunal’s home statute, the appeal panel is equally well-positioned to make the necessary findings. The appeal panel is entitled to independently examine the issue, to promote uniformity in interpretation, and to ensure that proper professional standards are maintained;
- d. for matters engaging the expertise of the profession, such as setting standards of conduct, the appeal panel is entitled to apply its own expertise and make findings about what constitutes professional misconduct. It should not disregard the views of the discipline tribunal, or proceed as if its findings were never made. However, where the appeal panel perceives unreasonableness, error of principle, potential injustice, or another sound basis for intervening, it is entitled to do so;

- e. appeal panels are also well-positioned to review the entire decision of the discipline tribunal for reasonableness, to ensure that, considered overall, it properly protects the public and the reputation of the profession; and
- f. the appeal panel may also intervene in cases of procedural unfairness, or where there is a reasonable apprehension of bias.

55. Mr. Sim also submitted that grounds of procedural fairness should be evaluated using an analysis of whether the procedures adopted by the Hearing Tribunal complied with the duty of fairness. He cited the case of *Visconti v College of Physicians and Surgeons of Alberta*, 2010 ABCA 250 in support of the submission that procedural fairness requires the parties to be given an opportunity to make further submissions when the Hearing Tribunal contemplates sanctions other than what the parties have proposed.

#### Submissions from Dr. Muradov

56. Mr. Rossall also referred to the *Yee* case in his submissions on the standard of review to be applied by the Appeal Panel and agreed that the reasonableness standard of review should be applied in this case. This meant the Hearing Tribunal's decision was subject to deference.

57. Mr. Rossall further submitted that in the present case, the Hearing Tribunal used its fact-finding expertise to conclude Dr. Muradov's conduct deserved sanction. He noted it was important that the reasons issued by the Hearing Tribunal reflect a careful, considered review of the evidence and submissions before it. He submitted the detail and depth of the Hearing Tribunal's reasons should be taken into account when the Appeal Panel assesses the reasonableness of the Hearing Tribunal's decision.

#### Decision of the Appeal Panel on the Standard of Review

58. The Appeal Panel accepts that it should apply the standard of review in accordance with the guidance given by the Alberta Court of Appeal. This starts with the Appeal Panel giving significant deference to findings of fact made by the Hearing Tribunal and inferences the Hearing Tribunal drew from fact. It also involves the Appeal Panel reviewing the entire decision and conclusions of the Hearing Tribunal for reasonableness to ensure that, considered overall, it properly protects the public and the reputation of the profession.

59. The Appeal Panel recognizes it has the right to intervene where it is satisfied that there is a reason for finding the Hearing Tribunal erred in finding fact or making an inference from that fact. The Appeal Panel also recognizes that when it considers the finding of the Hearing Tribunal on questions of law relating to the Act and the

Standards of Practice or the Code of Ethics, it has the right to intervene where it perceives unreasonableness, error of principle, potential injustice or another sound basis for intervening.

60. Finally, the Appeal Panel accepts that it should review grounds of procedural fairness, such as the fourth ground of appeal in this case, based on its analysis of whether the Hearing Tribunal's procedures complied with the duty of fairness.

### **Review of the Grounds of Appeal**

61. The Appeal Panel determined it would provide separate reasons for its decision on Grounds of Appeal 1 and 2 but that it would combine its reasons for decision on Grounds 3 and 4.

### **Ground of Appeal 1: The Hearing Tribunal erred in fact, or in law, or both, in failing to find that Dr. Muradov prescribed, or purported to prescribe, drugs that he was not authorized to prescribe.**

#### Submissions of the Complaints Director

62. On behalf of the Complaints Director, Mr. Sim submitted that the Hearing Tribunal made an unreasonable finding when it failed to find that Allegation 2 was proven.

63. Mr. Sim submitted that the Hearing Tribunal fundamentally misapprehended the evidence and followed an unreasonable chain of analysis to reach a decision on Allegation 2 that simply does not "add up." He stated that Dr. Muradov issued what were in substance prescriptions or purported prescriptions under the guise of a "request."

64. Mr. Sim submitted that Dr. Muradov's use of the word "referral" does not accurately reflect Dr. Muradov's actions. Regardless of word choice, Dr. Muradov's patient, R.B., was told that Dr. Muradov would contact a pharmacy in British Columbia to arrange for bioidenticals to address her concerns of fatigue and weight. When speaking to the pharmacy directly, R.B. provided her contact and payment information, but at no point was she provided with information from the pharmacy regarding her dosages, nor was she contacted to discuss the order.

65. Mr. Sim reviewed that the evidence before the Hearing Tribunal had been that upon receiving the medication in the mail, R.B. was told to keep in touch with Dr. Muradov regarding any side effects she may experience. The prescription bottles were labelled with the name "Dr. Asif Khan," a name R.B. could not recall ever hearing before. She took the medication as suggested by Dr. Muradov, and at no point did she

speak to another medical professional regarding the medication. Other than a second call to Kripp's Pharmacy to request "another order," she did not speak with anyone else.

66. Dr. Muradov testified that he spoke with Dr. Thorpe at the pharmacy, who informed him that the staff doctor, Dr. Khan, could prescribe medications for his patient. In the case of R.B., Dr. Muradov sent Kripps Pharmacy a covering email for a "referral," but attached a form labelled "pharmacist prescription request." The form contained no medical history or diagnostic information beyond stating that R.B. had "longstanding fatigue," but it did list directions for the pharmacy to dispense the type, quantity, dosage, and strength of the medication. Dr. Muradov admitted in his testimony that if taken out of context, this form could be seen as a prescription.

67. Mr. Sim submitted that there was no evidence of any communications between Dr. Muradov and the pharmacy to suggest that Dr. Muradov provided any context for the patient or the prescription.

68. Mr. Sim argued that the Hearing Tribunal fundamentally misapprehended the evidence and followed an unreasonable chain of analysis. In its decision, the Hearing Tribunal stated there was no evidence to suggest that Dr. Muradov prescribed the medication, and that he only intended to refer R.B. to Kripps Pharmacy, albeit with an improper referral procedure. The Hearing Tribunal relied on Dr. Muradov's inclusion of R.B.'s medical history and date of birth on the "referral" form.

69. However, Mr. Sim submitted a referral is made with the intention of a practitioner to evaluate a patient with their expertise, but Dr. Muradov provided no information to facilitate this, despite having lab results for R.B. that he could have provided. The evidence showed Dr. Khan has not been a registered physician since 2009. Mr. Sim further noted that Dr. Muradov did not include any medical history on the form itself but merely a symptom (longstanding fatigue).

70. In finding that Dr. Muradov did not intend to prescribe, Mr. Sim submitted that the Hearing Tribunal failed to discuss the other evidence in its decision. All of the elements of a prescription were included in the form, and Dr. Muradov should not be able to provide medical services that he is prohibited from just by attaching a more acceptable label to his actions.

71. Mr. Sim indicated that the Hearing Tribunal failed to discuss the evidence of the March 2018 form Dr. Muradov sent to Kripps Pharmacy. Mr. Sim suggested that had Dr. Muradov truly referred R.B. to a physician at Kripps Pharmacy, there would have been no need to send a second referral form. However, had Dr. Muradov been prescribing for R.B., he would have needed to send a second form.

72. Mr. Sim argued that the Hearing Tribunal made contradictory findings when it found that Dr. Muradov adjusted the dosages of the medication (Allegation 4) but did not find that he had actually prescribed the medication (Allegation 2). Mr. Sim

submitted that the evidence shows that Dr. Muradov had complete control over R.B.'s drug therapy throughout, including adjusting dosages, managing side effects, ordering a second prescription and failing to collaborate with Kripps Pharmacy or Dr. Khan, all of which is consistent with the prescribing of a medication.

73. Mr. Sim requested that the Appeal Panel find Allegation 2 proven and quash the Hearing Tribunal's decision and finding on Allegation 1.

Response by Dr. Muradov

74. Mr. Rossall stated that the Appeal Panel would have to determine if the Hearing Tribunal's decision was reasonable in the circumstances of this case. He submitted that the starting point for this analysis is that the Hearing Tribunal was in the best position to assess the evidence before it.

75. He noted that the Hearing Tribunal was present through the hearing and heard the evidence first hand. The Hearing Tribunal was entitled to, and did, ask questions of witnesses, fill in gaps of evidence where necessary and generally satisfy itself that the evidence it required was presented.

76. Mr. Rossall reviewed how the Hearing Tribunal made further enquiries after the close of the oral hearing to clarify certain issues, and that it took approximately six weeks to issue the Merits Decision, as well as a further month after the submissions on sanction were made to issue the Sanctions Decision. He submitted it can be inferred that the Hearing Tribunal did its job appropriately and thoroughly.

77. Regarding the issue of prescription, Mr. Rossall submitted that the evidence showed that Dr. Muradov did not intend to deceive the Hearing Tribunal by referring to the process as a 'referral.' Dr. Muradov conducted research into Kripps Pharmacy after learning about the business at a function in Calgary, and found the pharmacy was friendlier towards naturopaths than many pharmacies in Alberta. Dr. Muradov then contacted Dr. Thorpe of Kripps Pharmacy, who told Dr. Muradov that he would simply need a brief medical history and a referral, which is what Dr. Muradov sent to the pharmacy. Mr. Rossall proposed that Dr. Muradov would not have needed to include the word "fatigue" on the referral form if he intended to prescribe, he would have simply included a medication and a dosage.

78. Next, Mr. Rossall submitted that the Complaints Director's submissions ignore the fact that the prescription in question was ordered by Dr. Khan of Kripps Pharmacy. He referenced the prescription bottles labeled "Dr. Asif Khan" at Tab 8 of the Hearing Record and noted there was no reference to Dr. Muradov on the prescription bottles.

79. Mr. Rossall noted that R.B.'s evidence was that she believed she was being referred to Kripps Pharmacy. She stated that she spoke to someone at the pharmacy

but was not sure who, which Mr. Rossall submitted does not eliminate the possibility that the person she spoke with was Dr. Khan.

80. Mr. Rossall argued that there was also no evidence to suggest that Dr. Muradov knew anything about Dr. Khan's suspension and that Dr. Khan's potential suspension has no bearing on the conduct of Dr. Muradov as he was not aware of this information. Furthermore, how the pharmacy dealt with R.B. in terms of delivering the medications was beyond the knowledge of Dr. Muradov and has no bearing on his conduct.

81. Mr. Rossall referred to Dr. Muradov's chart notes, communications with R.B. and the fax coversheet to Kripps Pharmacy as corroborating Dr. Muradov's clear intention to send a referral. He noted the term "referral" was used in all references.

82. Mr. Rossall disputed the Complaints Director's submissions that Dr. Muradov had an obligation to follow up with Dr. Khan after making the referral. Dr. Muradov should be able to assume that health professionals in receipt of his referral would do their respective jobs. Dr. Muradov was not contacted for further information. Mr. Rossall suggested that the fact that R.B. received the medication prescribed by Dr. Khan was an indication that the information Dr. Muradov had provided to Kripps Pharmacy was sufficient.

83. Respectfully, Mr. Rossall submitted that the Complaints Director confused the notion of Dr. Muradov recommending adjustment to dosages (Allegation 4) with the act of prescribing.

84. Mr. Rossall reviewed that the Hearing Tribunal found that Dr. Muradov "...supervised the use of, or adjusted the prescribed dosage..." by suggesting that R.B. take a higher dose using existing medication increments. He also referred to the Hearing Tribunal's consideration that necessity to take the Pharmacy Therapeutics course "...indicates some need to understand pharmaceuticals and their interactions. It implies that some degree of monitoring the patient's use of pharmaceuticals is required and that in itself is not prohibited." Overall, Mr. Rossall submitted that this evidence did not mean that Dr. Muradov prescribed or purported to prescribe a drug for R.B..

85. Mr. Rossall submitted that, having seen all the documents in the record and heard all the evidence, the Hearing Tribunal made a reasonable decision that was unassailably correct and should not be interfered with.

#### Decision of the Appeal Panel on Ground of Appeal 1

86. The Appeal Panel considered the submissions of the parties on this ground of appeal and has reviewed the decision of the Hearing Tribunal. It has also reviewed the Agreed Exhibit Book and the Transcripts of the Hearing.



87. In the Merits Decision, the Hearing Tribunal considered that Allegations 1 and 2 were alternatives to each other: either Dr. Muradov improperly referred R.B. to Kripps Pharmacy expecting that a prescription be issued or he improperly prescribed regulated drugs for R.B..

88. In the opinion of the Appeal Panel, the Hearing Tribunal was not unreasonable in reaching its conclusion that Dr. Muradov did not prescribe or did not purport to prescribe drugs he was not authorized to prescribe. The Hearing Tribunal found that Dr. Muradov intended to refer R.B. to another health professional to accommodate her health care needs and that due to a lack of clear communication and documentation he failed to uphold the CNDA Standards of Practice and Code of Ethics when he did so.

89. The Appeal Panel finds the Hearing Tribunal's almost three pages of reasons for accepting Allegation 1 a) as proven are logical, coherent and justified. The Hearing Tribunal considered the documentation before it as well as the evidence of the witnesses.

90. Ultimately, the Hearing Tribunal found that Exhibits 4 and 6 [the electronic fax cover sheet and the document R.B. obtained from Kripps Pharmacy] were evidence of an improper referral and not evidence of prescribing, purporting to prescribe or a transfer of care.

91. In paragraph 62 of the Merits Decision, the Hearing Tribunal considered the following as evidence that a referral was intended to occur:

- a. R.B. understood that Dr. Muradov would be referring her to Kripps Pharmacy and that the term "referral" meant that Dr. Muradov was going to have the medications filled by another party and that he would be providing the information they required for her medication requirements.
- b. Dr. Muradov's evidence was that he intended to have another health care professional prescribe the treatment, knowing that prescribing was beyond his scope of practice in the Province of Alberta. This is why he referred R.B. to Kripps Pharmacy.

92. The Hearing Tribunal then examined multiple reasons why Dr. Muradov's communication and charting failed to meet the Standards of Practice: Collaboration in Patient Care and the Code of Ethics. The Hearing Tribunal, at paragraph 63 d. noted that:

Although more could have been said in the Standards with respect to communication and collaborating, the Tribunal finds that at a minimum, a Naturopath's communication with other health professional needs to be

clear and effective. For the reasons set out above, the Tribunal finds that this clear and effective communication did not occur here.

93. The Hearing Tribunal further considered that there was nothing documented in Dr. Muradov's charts or in his communication to R.B. on what the referral process would entail. The Hearing Tribunal also noted that it found the evidence did not reflect that Dr. Muradov clearly communicated his expectations of R.B.'s role in the referral process to her.

94. The Hearing Tribunal also found that there was no charted evidence of what Dr. Muradov's role would be in overseeing R.B.'s treatment but that there was evidence in his charts and in the testimony of R.B. and Dr. Muradov that showed Dr. Muradov was coordinating the dosage adjustments for Desiccated Thyroid and Hydrocortisone without the involvement of others (Merits Decision, paragraph 88).

95. The Hearing Tribunal then considered how Dr. Muradov should have appropriately communicated with R.B. and collaborated with her other health care practitioners.

96. In dismissing Allegation 2, the Hearing Tribunal considered Dr. Muradov's intention to collaborate, as well as the fact that Dr. Khan's name was on the prescription bottles. It also accepted that:

Exhibit 4 was intended to be and was in fact a referral, albeit one that was not done properly; it was not a prescription. Although there is information in the document that one would find in a prescription, there is also information that one would not expect to see in a prescription, such as the patient's medical history. The same could be said about Exhibit 6, which is the second copy of the pharmacist prescription request dated March 1, 2018 sent to Kripps Pharmacy. This document also contains the patient's medical history and date of birth; it also allegedly has Dr. Khan's signature. Without other evidence, the Hearing Tribunal is unable to verify that this is in fact Dr. Khan's signature. Accordingly, the Tribunal assigns little to no weight to this signature.

97. The Appeal Panel finds that in weighing all of the evidence before it, the Hearing Tribunal reached a reasonable conclusion that the evidence suggested it was more likely than not that Dr. Muradov improperly referred R.B. to Kripps Pharmacy instead of prescribed or purported to prescribe for R.B..

98. The Appeal Panel next considered whether, in finding that Allegation 4 (supervising the use of, or adjusting dosages of, one or more Schedule 1 drugs) was

proven, the Hearing Tribunal's decision created an illogical chain of analysis or did not add up.

99. Having reviewed the evidence and submissions before the Hearing Tribunal and noting the Hearing Tribunal's reasons for accepting Allegation 4 to be proven, the Appeal Panel finds it was reasonable for the Hearing Tribunal to distinguish Dr. Muradov's supervising or monitoring the use of prescribed Schedule 1 drugs and adjusting the dosages of the prescribed Schedule 1 drugs from actually prescribing the drugs for R.B..

100. The Appeal Panel notes that the wording of Allegation 4 suggests that Dr. Muradov supervised or adjusted dosages from an already prescribed drug. In the Appeal Panel's view, the Hearing Tribunal was not being asked to determine that supervising the use of or adjusting the dosages of an already prescribed drug constituted prescribing.

101. The Appeal Panel notes that at paragraph 87 of the Merits Decision, the Hearing Tribunal found that:

Dr. Muradov testified that he was not adjusting dosages, but rather was suggesting possible dosage adjustments. He expected that R.B. would follow-up with her health care providers to confirm the suggested dosage adjustments. Similar to the Hearing Tribunal's findings with respect to Allegation 1(a), the Hearing Tribunal finds that Dr. Muradov failed to clearly communicate this expectation to R.B. and that he also failed to collaborate with her medical professionals with respect to these suggestions and recommendations he was making.

102. The Hearing Tribunal noted that the CNDA's Standards or policies with respect to supervision lacked certainty. However, it found that Dr. Muradov was at least monitoring R.B.'s use of the Schedule 1 drugs without properly collaborating with other health care professionals or communicating with R.B.. In doing so, the Hearing Tribunal found Dr. Muradov fell below the Standards required with the College in a manner that amounted to unprofessional conduct.

103. In making this finding, the Hearing Tribunal reasonably found that Dr. Muradov's conduct fell below the expectations of the CNDA's Code of Ethics and Standards of Practice; including the Standards of Practice: Collaboration in Patient Care.

104. As a result of the above analysis, the Appeal Panel dismisses this ground of appeal and upholds the Hearing Tribunal's findings that Allegations 1 a) and 4 were proven on a balance of probabilities and constituted unprofessional conduct.

**Ground of Appeal 2: The Hearing Tribunal erred in fact, or in law, or both in finding that the College's Standards of Practice and Code of Ethics or either of them lack clarity and by treating this as a mitigating factor in relation to sanction orders.**

Submissions of the Complaints Director

105. Mr. Sim submitted that the Hearing Tribunal erred in finding that a lack of clarity in the CNDA's Standards of Practice and Code of Ethics could be a mitigating factor in relation to sanction when it held at paragraph 35 of the Sanctions Decision:

...the lack of clarity of the Standards of Practice and Code of Ethics with respect to collaboration, communication, referral practices, monitoring and supervising were also considered by the Hearing Tribunal. Although the Hearing Tribunal was able to conclude that Dr. Muradov failed to meet certain standards, in spite of this lack of clarity, this lack of clarity affected the Hearing Tribunal's deliberations on the allegations, and made the matter less than straight-forward for the Tribunal to determine. This lack of clarity is a mitigating factor in the circumstances.

106. Mr. Sim noted that in the Merits Decision, the Hearing Tribunal had no difficulty in finding that Dr. Muradov breached the Code of Ethics and the Standards of Practice and that his conduct in respect to Allegations 1 a) and Allegation 4 was unprofessional. The Hearing Tribunal acknowledged that the perceived lack of clarity in respect to application of the Standards of Practice in Allegation 4 did not prevent it from finding that Dr. Muradov's conduct fell short of the Standard of Practice for Collaboration in Patient Care and the Code of Ethics.

107. Mr. Sim submitted that the Hearing Tribunal became unnecessarily sidetracked by the question of whether "supervising" a patient's drug therapy would include "monitoring" it. He noted the CNDA's Standards of Practice do not define these terms but that having concluded that Dr. Muradov had unilaterally adjusted R.B.'s drug dosages and that this breached the Standards of Practice and the Code of Ethics, it was unnecessary for the Hearing Tribunal to try to define the terms "supervision" and "monitoring."

108. Mr. Sim submitted that the Hearing Tribunal engaged in an illogical, unreasonable and erroneous chain of analysis when it treated the perceived lack of clarity in the standards as a mitigating factor on sanctions. Mitigating factors include things like whether the member is remorseful, whether the unprofessional conduct was an isolated incident and whether the member attempted to minimize damage caused by the unprofessional conduct. He suggested that a perceived lack of clarity in the Standards of Practice would be more properly considered in respect to whether the allegation was proven.

109. The fact that the Hearing Tribunal found its task difficult had no logical connection to determining sanctions that would protect the public, maintain the integrity of the profession, ensure fairness to the member or deter others from similar conduct.

110. Mr. Sim submitted that the Code of Ethics and Standards of Practice were flexible and general and always required professional judgment to be applied. It is not possible to have precise Standards and Codes of Conduct for every aspect of naturopathic medicine.

111. He requested that the Appeal Panel vary the Sanctions Decision and impose new sanctions without regard for any perceived lack of clarity in the Standards.

#### Submissions of Dr. Muradov

112. Mr. Rossall disagreed with Mr. Sim's assertion that the lack of clarity in the College's guidelines could not be considered a mitigating factor on sanctions.

113. Mr. Rossall stated that the College has no guidelines regarding how to write an appropriate referral while, in contrast, institutions such as the College of Physicians and Surgeons of Alberta have publicly available and detailed descriptions of these requirements.

114. He submitted that if the Complaints Director is going to insist on compliance with the Standards of Practice and hold members accountable if they fail to meet these Standards, then it would be appropriate for a Hearing Tribunal to consider the clarity (or lack thereof) in these documents.

115. The Hearing Tribunal stated that it struggled to interpret the Standards of Practice. If these documents were not clear to two other naturopaths and a layperson with experience on previous panels, it is not appropriate to expect Dr. Muradov to understand them either.

#### Decision of the Appeal Panel on Ground of Appeal 2

116. The Appeal Panel finds the Hearing Tribunal was reasonable and did not err in principle when it found the lack of clarity in the CNDA's Standards of Practice and Code of Ethics could be a mitigating factor on sanctions.

117. The Appeal Panel notes that at paragraph 14 a. of the Sanctions Decision, the Hearing Tribunal summarized Mr. Rossall's written submissions on this issue as follows:

- a. The CNDA's Standards of Practice refers to clear communication and effective collaboration, but in Dr. Muradov's position, the Standards are

neither clear, specific or objective. For example, Counsel for Dr. Muradov referred to sections in the Decision where the Tribunal found that the CNDA Standards of Practice could have been clearer, particularly with respect to communication. While this does not absolve Dr. Muradov, in Dr. Muradov's position, poor communication by CNDA, the lack of clarity in the Standards of Practice and lack of intentional wrongdoing should be weighed accordingly.

b. ...

- c. The CNDA does not have guidelines as to what constitutes an appropriate and proper referral. Counsel for Dr. Muradov referred to guidelines set up by Alberta College of Physicians and Surgeons of Alberta and Alberta Health Services as examples of detailed referral guidelines; details that are lacking from CNDA. Similarly, there are no CNDA standards or policies regarding adjustment or recommendations on medication adjustment.

118. At paragraph 18 d. of the Sanctions Decision, the Hearing Tribunal considered that in reply, Mr. Sim stated:

Notwithstanding any lack of clarity in the College's Standards and Code of Ethics, the Tribunal had no difficulty in finding that Dr. Muradov's conduct fell below the standards expected of him. The lack of clarity was not an obstacle in making the necessary findings. The Complaints Director referred to *Walsh v Council for Licensed Practical Nurses*, 2010 NLCA 11, *Sussman v College of Alberta Psychologists*, 2010 ABCA 300, *McPherson v Institute of Chartered Accountants*, 1991 CarswellBC 80, and *Lum v Alberta Dental Association and College (Review Panel)*, 2016 ABCA 154, for a number of principles, including:

- i. Not every standard needs to be written down, and not every word needs to be defined to be sufficiently certain; as long as the purpose of the standards is known or ascertainable or at least capable of being deduced, the standards would be sufficient. Standards can apply in general terms or be flexible and sensitive to each circumstance.
- ii. The lack of precise definitions for terms in Codes and Standards does not preclude their application. The interpretation and application of the Code or Standard may require the exercise of judgment.

119. In its concluding remarks, the Hearing Tribunal at paragraph 57 of the Sanctions Decision noted that the issues arising from the facts in this case were complicated and that the College's Standards had not been tested before.

120. That the Hearing Tribunal found Dr. Muradov's conduct to clearly fall below the generally expected standards of collaboration, communication, documentation, accountability and responsibility, speaks to the gravity and seriousness of Dr. Muradov's conduct in this case.

121. However, the Appeal Panel does not find it unreasonable or an error in principle for the Hearing Tribunal, in considering all of the evidence and applying that evidence to the statutory authorities of the CNDA, to express concern with a lack of clarity in Standards of Practice that had not been previously tested.

122. The Appeal Panel considered that if a Hearing Tribunal, comprised of a panel of professionals and a member of the public have a difficult time interpreting and applying the Standards of Practice and if there are no previous Hearing Tribunal decisions clarifying the application of those standards, it is reasonable to find the lack of clarity should be a mitigating factor.

**Ground of Appeal 3: The Hearing Tribunal imposed sanctions that were unreasonably lenient in all of the circumstances, and it erred in fact, or in law, or both in fettering its discretion to impose a suspension as a sanction.**

123. In written submissions on sanctions, the Complaints Director requested the following sanctions be ordered against Dr. Muradov:

- a. Dr. Muradov shall receive a reprimand with the written decision on penalty serving as the reprimand;
- b. Three month suspension;
- c. \$1,000.00 fine;
- d. Remedial course to be approved in the advance by the Complaints Director in writing in:
  - i. Collaboration with other health care professionals; and
- e. Dr. Muradov shall pay 2/3 of the costs of the investigation and hearing.

124. In response, Dr. Muradov submitted that the following sanctions would be more appropriate in the circumstances:

- a. Dr. Muradov shall receive a reprimand and the Hearing Tribunal's decision shall serve as the reprimand;
  - b. Dr. Muradov will successfully complete a course on communications with other health care providers/referrals subject to the requirement that he will provide proof to the Complaints Director that he has successfully completed the course within 120 days of receiving the Hearing Tribunal's decision identifying the course, or within such other period of time agreed by the Complaints Director;
  - c. Dr. Muradov shall complete a reflective essay of 500-750 words to be submitted to the Complaints Director within 90 days following completion of the communications course, or within such other period as agreed by the Complaints Director;
  - d. Dr. Muradov will pay a fine in the amount of \$1,000.00 due within 12 months of receiving the Hearing Tribunal's decision, or within such other period of time agreed to by the Complaints Director; and
  - e. Dr. Muradov will pay a portion of the costs of the investigation and hearing in the amount of \$2,000.00 due within 12 months of receiving the Hearing Tribunal's decision, or within such other period of time agreed to by the Complaints Director.
125. In the Sanctions Decision, the Hearing Tribunal ordered:
- a. Dr. Muradov shall receive a reprimand with the written decision on penalty serving as the reprimand.
  - b. Dr. Muradov shall pay a \$2,000.00 fine for each of the proven Allegations 1 a) and 4 for a total \$4,000.00 to be paid within 1 year of receipt of the Hearing Tribunal's decision.
  - c. Dr. Muradov shall successfully complete at his own expense remedial training in the following areas on a schedule as agreed upon with the Complaints Director:
    - i. A course on record keeping and documentation; and
    - ii. A course on collaboration and communication with other health care providers.



- d. Dr. Muradov shall complete at his own expense 3 annual reviews with a field officer of the College in matters relating to documentation, storage and retrieval policies and procedures and communication practices.
- e. Dr. Muradov shall pay costs of the investigation and hearing in this matter fixed in the amount of \$15,000.00, to be paid within 1 year of receipt of the Hearing Tribunal's decision or such other time period as may be agreed upon with the Complaints Director.
- f. The Hearing Tribunal will retain jurisdiction in the event that there is any dispute regarding the implementation of any of the orders referred to above.

#### Submissions of the Complaints Director

126. Mr. Sim argued that in not imposing a suspension as a sanction, the Panel fettered its discretion and were unreasonably lenient. He submitted that the purpose of sanctions were to ensure that the public is protected from unprofessional conduct. The Hearing Tribunal acknowledged how serious Dr. Muradov's actions were and that they could have caused harm to the patient. Mr. Sim also indicated that while Dr. Muradov's previous disciplinary proceedings differed in regards to circumstances, both cases involved brief and inadequate recommendations for patients in his care and demonstrated a pattern of Dr. Muradov shifting the blame of his failure to communicate onto others.

127. Mr. Sim submitted that the Hearing Tribunal failed to appropriately weigh these factors in making their Sanctions Decision. He cited the Sanctions Decision where the Hearing Tribunal stated that a suspension would be "too severe" and that it would not aid Dr. Muradov in improving his communication and record-keeping.

128. Mr. Sim submitted that the Hearing Tribunal unreasonably determined that a suspension would only be imposed if it improved Dr. Muradov's communication and record-keeping. He stated that suspensions can be implemented to temporarily stop the investigated member from practicing and immediately protect the public, to give the member time to reflect, to provide time for education, to implement a financial impact for the duration of the suspension, and to deter future unprofessional conduct. No rules prohibit a Hearing Tribunal from imposing a suspension in certain circumstances. Mr. Sim noted that the Hearing Tribunal did not impose a suspension as it would not improve Dr. Muradov's communication or record-keeping but failed to specify how the fines that they imposed would improve these skills.

129. The Sanctions Decision noted that there were very few previous decisions regarding naturopathic doctors. Despite a number of cases involving pharmacy and medical professionals cited in the Complaints Director's submissions, the Hearing Tribunal dismissed them entirely without explaining why the circumstances of these

cases were too different to compare, or why the conduct in these cases was more dangerous than Dr. Muradov's.

130. The Hearing Tribunal also stated that its lengthy discussions in attempting to interpret the Standards of Practice led them to fix the costs to be paid by Dr. Muradov at \$15,000. Mr. Sim agreed that the discussions should not be Dr. Muradov's responsibility, but argued that these deliberations were just a fraction of the total cost of the hearing. Two-thirds of the hearing cost was estimated to be at just over \$63,000, and yet the Hearing Tribunal gave no indication of how it arrived at the fixed \$15,000 fee.

131. For the above noted reasons, Mr. Sim submitted that the sanctions imposed were too lenient and unreasonable.

#### Submissions of Dr. Muradov

132. Regarding the appropriateness of the sanctions, Mr. Rossall argued that the professional discipline process is meant to provide a learning opportunity rather than to be negative or punitive. The Panel reviewed lengthy submissions and had copies of all cited cases. That they did not comment on every case mentioned in the submissions should not be taken to mean that they disregarded them.

133. Mr. Rossall also cited the two prior cases from the College's disciplinary processes, *Ahlan* and *Hoffman*. He argued that both cases saw naturopaths commit far more serious and potentially harmful behaviour involving the injection of drugs to multiple patients after numerous warnings from the Complaints Director, and yet the Complaints Director and the Panel did not issue a suspension. The Panel was evidently aware that the option to suspend was available to them, as they commented on the possibility of a suspension, but in the circumstances found that the suspension was not necessary.

134. While the Complaints Director may not have liked the results of the Panel's decision, this did not necessarily mean that there was a palpable error that would justify overriding the decision.

135. While Dr. Muradov's previous conduct issue also involved such attributes such as record-keeping, the Panel addressed this history in the Sanctions Decision by adding an educational course to be completed, which was a more severe sanction than his previous proceedings. Mr. Rossall argued that a previous history with some similar attributes was not automatically a suspension-worthy offense. The Panel conducted a thorough analysis of the issue of suspension and determined that it was not a case that required that level of suspension. The substantial financial penalties imposed on Dr. Muradov were also in addition to his own legal costs. Mr. Rossall argued that the Panel

was entitled to impose more lenient sanctions than the Complaints Director would have preferred, and its decision is entitled to deference.

**Ground of Appeal 4: The Hearing Tribunal breached the duty of procedural fairness owed to the parties by imposing sanctions orders that neither party had proposed, and without providing the parties with notice or an opportunity to make further submissions.**

#### Submissions of the Complaints Director

136. Mr. Sim submitted that the Hearing Tribunal breached procedural fairness by imposing sanctions not previously discussed and without giving the parties an opportunity to respond.

137. Mr. Sim argued that fundamental fairness requires both parties know the sanctions being considered by a hearing tribunal to allow them the opportunity to respond accordingly.

138. In this case, the Hearing Tribunal ordered that Dr. Muradov submit to inspections by a field officer without consulting the College regarding this sanction. The College does not have a field officer, nor are there any definitions for the role of field officer in the Act or in the Naturopath Regulations. Mr. Sim submitted that the College is a small regulator with limited resources, and it was inappropriate for the Hearing Tribunal to demand that a new employment position be created, trained, and then sent out to Dr. Muradov's practice.

139. Mr. Sim noted the case of *Becker v College of Pharmacists of Manitoba*, 2016 MBQB 105, cited by Mr. Rossall in his written submissions. In that case, the court found that the council breached procedural fairness by substantially increasing the penalty without inviting submissions on the point by the parties. He argued that this case was similar to Dr. Muradov's, and that like in the *Becker* case, the Hearing Tribunal should have consulted the College as to whether the sanction it was considering imposing was practical or even possible to carry out.

#### Submissions of Dr. Muradov

140. Mr. Rossall submitted there was no breach of procedural fairness in the inclusion of a sanction that neither party put forward. The Act allows a hearing tribunal to impose a broad range of sanctions, including any order that it considers necessary to protect the public.

141. Mr. Rossall stated that in this case, the Hearing Tribunal imposed sanctions that were less severe than the Complaints Director requested and more than Dr. Muradov had hoped for, resulting in sanctions that fell in the "middle ground" of severity. This was a reasonable decision and well within the Hearing Tribunal's discretion.

142. He noted that both parties agreed that some form of sanction addressing education and training were appropriate and that like the remedial course work mentioned by both parties, an annual inspection is a form of continuing education.

143. Mr. Rossall advised the Appeal Panel that if they were troubled by the inclusion of the field officer inspections, they were at liberty to discard the sanction.

144. Mr. Rossall submitted that the Panel adopted a proper and fair process, appropriately reviewed and considered all evidence, and issued two detailed and thorough decisions. He requested that the appeal be dismissed and that he be entitled to costs relating to the appeal on the same scale as was awarded against him following the hearing (\$15,000).

#### Decision of the Appeal Panel on Grounds of Appeal 3 and 4

145. The Appeal Panel agrees that the Hearing Tribunal engaged in a breach of procedural fairness when it imposed sanctions that neither of the parties had proposed or were given a chance to consider.

146. Specifically, the Appeal Panel finds the Hearing Tribunal demonstrated a breach of procedural fairness when it ordered that Dr. Muradov "complete at his own expense 3 annual reviews with a field officer of the College in matters relating to documentation, storage and retrieval policies and procedures and communication practices" when neither party had proposed a practice visit or an annual review as part of their submissions.

147. Although it considered Dr. Muradov's submission that the issue of education and improving communication was put before the Hearing Tribunal and that an annual review could fall within that category, the Appeal Panel does not find the order for annual reviews by a field officer to be in the same range of sanctions recommended by the parties. It considered the Complaints Director's submissions that the CNDA does not have a field officer and the acceptance by Dr. Muradov that the practicalities and costs involved with carrying out this order very likely make it unreasonable.

148. The Appeal Panel agrees that a hearing tribunal cannot impose a sanction that the CNDA is incapable of carrying out. This goes to the core of the Hearing Tribunal's jurisdiction under Part 4.

149. The Appeal Panel considered the submissions of the Complaints Director, which provided that the sanction orders made by the Hearing Tribunal were imposed globally, and that a breach of procedural fairness renders the Sanctions Decision invalid. It also considered that Dr. Muradov disagreed with this position and suggested that it was

open to the Appeal Panel to strike the order in relation to the annual review and let the remainder of the decision stand.

150. While the Appeal Panel agrees with Dr. Muradov that it may not always need to quash the entire decision, it determined that in this case, the most appropriate method of proceeding was to re-examine sanctions as a whole to ensure that the sanctions ordered collectively serve to protect the public interest and uphold the integrity of the profession.

151. The Appeal Panel is mindful that its authority under section 89(5) of the Act permits it to:

- a. make any finding that, in its opinion, should have been made by the hearing tribunal;
- b. quash, confirm or vary any finding or order of the hearing tribunal or substitute or make a finding or order of its own;
- c. refer the matter back to the hearing tribunal to receive additional evidence for further consideration in accordance with any direction that the council may make, or
- d. refer the matter to the hearings director to schedule it for rehearing before another hearing tribunal composed of persons who were not members of the hearing tribunal that heard the matter, to rehear the matter.

152. After consulting with the parties at the appeal hearing, the Appeal Panel determined that it was not necessary to refer the matter back to the Hearing Tribunal or to the Hearings Director for a rehearing. The Appeal Panel was satisfied that it could use its authority to make any finding that the Hearing Tribunal could have made and vary orders of the Hearing Tribunal to correct the lack of procedural fairness at the lower level.

153. As the Appeal Panel had not yet determined appropriate sanctions and was mindful of the Hearing Tribunal's concern regarding oversight in ordering the annual reviews, it asked for additional submissions from both parties on what appropriate oversight might look like if it decided oversight was required.

154. After considering the Hearing Record, including the initial submissions of the parties on sanction, and the submissions made by the parties in respect to the Sanctions Decision at the appeal, the Appeal Panel quashes the orders made by the Hearing Tribunal in the Sanctions Decision and makes the following orders:

Order 1: Dr. Muradov shall receive a reprimand with the written decision of the Appeal Panel serving as the reprimand.

155. The Appeal Panel notes that both parties submitted that Dr. Muradov should receive a reprimand. It agrees a reprimand is an appropriate sanction in this case to remind Dr. Muradov that his conduct was unacceptable and fell below the standards expected of a naturopathic doctor in Alberta.

156. As the Appeal Panel quashed the orders made by the Hearing Tribunal in the Sanctions Decision, its own written decision shall serve as the reprimand.

Order 2: Dr. Muradov shall pay a fine of \$1000 within 12 months of receiving the Appeal Panel's written decision, or within such other period of time agreed to by the Complaints Director.

157. The Appeal Panel notes that both parties submitted that Dr. Muradov should pay a fine of \$1000.

158. Under section 158 and section 4 of Schedule 15 of the Act, the Appeal Panel could order a maximum fine of \$5,000 for each proven allegation that is found to constitute unprofessional conduct. The Appeal Panel considered that a fine of \$1000 as proposed by both parties would act as a specific and general deterrent for Dr. Muradov and other regulated members of the profession.

159. The Appeal Panel notes that a \$1000 fine is four times the fine Dr. Muradov paid under the previous complaint matter settled by voluntary undertaking. Had there been a finding that Dr. Muradov was prescribing or purporting to prescribe for R.B., a larger fine would have been warranted.

Order 3: Dr. Muradov's practice permit shall be suspended for 1.5 months on dates agreeable to the Complaints Director, not to be unreasonably refused.

160. The Appeal Panel agrees with the Complaints Directors submissions that some period of suspension is appropriate in this case. However, based on the materials before it, the Appeal Panel finds that a 1.5 month suspension is more appropriate in this case than the three month suspension proposed by the Complaints Director.

161. Dr. Muradov is not a new naturopathic doctor, he was registered with the CNDA for over six years when the proven conduct occurred and had one prior complaint that involved improper consultation of a patient. Although the prior complaint was resolved by way of a voluntary undertaking, it should have made Dr. Muradov aware of the importance of adequate communication as a cornerstone of his practice. In this case, his failure to properly refer R.B. through his failure to properly communicate and

collaborate with other health care professionals and his failure to appropriately communicate with R.B. herself was serious. It resulted in Dr. Muradov adjusting the dosages with prescription drugs without communicating with the prescribers or other members of R.B.'s health care team.

162. Dr. Muradov and other naturopaths cannot engage in improper referrals or fail to communicate their role as part of a patient's health care team without recognizing that there will be serious consequences for their actions. Collaboration is an essential element of the practice of naturopathic medicine in Alberta. As Dr. Muradov's prior complaint matter also involved a failure to communicate in a manner expected by regulated members, the Appeal Panel finds that the proven conduct in this case warrants a suspension. In its opinion, a 1.5 month suspension from practice will serve as a deterrent to Dr. Muradov and others to ensure that the public is protected.

163. The Appeal Panel did not find that the three month suspension requested by the Complaints Director was warranted in this case. It considered the cases cited by the Complaints Director in written submissions on sanctions but finds that those cases either involved more serious conduct or included conduct that occurred over a larger time period (e.g. the renewal of a prescription without a physician's prescription for three years without oversight; inappropriate prescription of narcotics and barbiturates to a patient over an extended period of time; an attempt to alter patient records under review).

164. Although the Appeal Panel notes that Dr. Muradov submitted that a suspension would result in undue financial hardship, especially in light of the ongoing COVID-19 pandemic, the Appeal Panel finds that Dr. Muradov did not provide any evidence of this. Dr. Muradov, like any regulated member under the Act who is ordered a suspension, will be responsible for ensuring that his practice is covered during the suspension period.

Order 4: Dr. Muradov shall successfully complete, at his own expense, a course approved in advance by the Complaints Director and on a schedule agreed upon by the Complaints Director:

- a. A course on record keeping and documentation; and
- b. A course on collaboration and communication with other health care professionals.

165. The Appeal Panel considered that both parties proposed that Dr. Muradov take a course on communication and collaboration. The Appeal Panel finds that Dr. Muradov's practice fell well below the expected standards of a naturopathic doctor in Alberta in

this area and that a course is appropriate to help him develop strategies for improving his practice moving forward.

166. Although neither party proposed the course on record keeping and documentation, the Appeal Panel notes that neither party objected to it on appeal. Therefore, the Appeal Panel determined it would carry forward this order from the Sanctions Decision.

167. The Appeal Panel finds that a course on record keeping and documentation will cover a significant area of deficiency identified within Dr. Muradov's practice in this hearing.

168. The Appeal Panel also considered whether it would need to order oversight of Dr. Muradov's practice by using a practice visit as proposed in the Complaints Director's submissions following the appeal hearing. Ultimately, it determined that it would be more useful for Dr. Muradov to take a course and use this opportunity to improve his practice than make an order of oversight. The Appeal Panel is confident that the sanction orders as a whole, including this coursework and the period of suspension, will serve as a specific and general deterrent to protect the public interest moving forward.

Order 5: Dr. Muradov shall pay 2/3 of the costs of the investigation and hearing within 24 months of receiving the Appeal Panel's written decision.

169. The Appeal Panel orders Dr. Muradov to pay 2/3 of the costs of the investigation and hearing within 24 months of receiving the Appeal Panel's written decision or such other time period as may be agreed upon with the Complaints Director.

170. The Appeal Panel considered the submissions of the Complaints Director and finds that, as set out in *Lysons v Alberta Land Surveyors' Association*, 2017 ABCA 7, it is a common part of professional disciplinary sanctions for a member who is found to have engaged in unprofessional conduct to pay all or a portion of the hearing and investigation costs.

171. The Appeal Panel acknowledges that two of the allegations against Dr. Muradov were proven and that Allegations 1 and 2 were presented in the alternative. Therefore, two of the three allegations that could have been proven, were proven and found to constitute serious unprofessional conduct.

172. The Appeal Panel also considered that there was no indication that the hearing accrued unnecessary costs. Both Dr. Muradov and R.B. were important and necessary witnesses and the parties proceeded to the hearing with agreed exhibits and admissions on sanctions were accomplished in writing.



173. The Appeal Panel reviewed the cases cited by Dr. Muradov in his sanction submissions but finds that payment of \$2000 of costs of approximately \$63,000 does not meet the cost factors cited by the Complaints Director. It also notes that the hearings in the cases cited by Dr. Muradov proceeded with Joint Submissions on Sanction, which it understands may result in lower costs as well as negotiations between the parties that result in the member paying less costs. In this case, the hearing was fully contested so the same circumstances do not apply.

174. The Appeal Panel further considered that Dr. Muradov did not provide evidence that he would be unable to pay the costs proposed by the Complaints Director or that paying those costs would create significant financial hardship for him.

### **Conclusion**

175. For the reasons set out above, the Appeal Panel has dismissed the Complaints Director's appeal of the Merits Decision and quashed the orders made by the Hearing Tribunal in respect to the Sanctions Decision.

176. In summary, the sanctions ordered by the Appeal Panel are as follows:

1. Dr. Muradov shall receive a reprimand with the written decision of the Appeal Panel serving as the reprimand.
2. Dr. Muradov shall pay a fine of \$1000 within 12 months of receiving the Appeal Panel's written decision, or within such other period of time agreed to by the Complaints Director.
3. Dr. Muradov's practice permit shall be suspended for 1.5 months on dates agreeable to the Complaints Director, not to be unreasonably refused.
4. Dr. Muradov shall successfully complete, at his own expense, a course approved in advance by the Complaints Director and on a schedule agreed upon with the Complaints Director:
  - a. A course on record keeping and documentation; and
  - b. A course on collaboration and communication with other health care professionals.
5. Dr. Muradov shall pay 2/3 of the costs of the investigation and hearing within within 24 months of receiving the Appeal Panel's decision or such other time period as may be agreed upon with the Complaints Director.
6. The Appeal Panel will accept submissions from the parties on costs of the appeal and requests that these submissions are provided to it in writing by March 19, 2021.

Dated February 24, 2021

For the Appeal Panel of Council of the College of Naturopathic Doctors of Alberta



Ms. Elsy Gagné, Chair

**IN THE MATTER OF AN APPEAL TO THE COUNCIL OF THE COLLEGE OF  
NATUROPATHIC DOCTORS OF ALBERTA BY THE COMPLAINTS DIRECTOR**

**PURSUANT TO SECTION 87 OF THE *HEALTH PROFESSIONS ACT***

**FROM THE MERITS DECISION (APRIL 28, 2020) AND THE SANCTIONS  
DECISION (JUNE 26, 2020) OF THE HEARING TRIBUNAL OF THE COLLEGE OF  
NATUROPATHIC DOCTORS OF ALBERTA**

**DECISION OF THE APPEAL PANEL OF COUNCIL ON COSTS OF APPEAL**

**Introduction**

1. This was an appeal by the Complaints Director from the decisions of a Hearing Tribunal of the College of Naturopathic Doctors of Alberta (the "CNDA") dated April 28, 2020 and June 26, 2020.
2. In its Decision regarding the appeal dated February 24, 2021 (the "Appeal Decision"), the Appeal Panel invited the Complaints Director and Dr. Muradov (the "Parties") to provide written submissions on costs by March 19, 2021.
3. The Appeal Panel received written submissions from Dr. Muradov dated March 14, 2021 and from the Complaints Director dated March 19, 2021.

**Written Submissions of Dr. Muradov**

4. On behalf of Dr. Muradov, Mr. Rossall reviewed the Appeal Panel's broad discretion to award costs of an appeal to an investigated person under section 89(6) of the *Health Professions Act* (the "Act").
5. Mr. Rossall submitted that the Parties should bear their own costs of the Appeal on the basis that they had mixed success before the Appeal Panel and it was not Dr. Muradov's decision to commence the appeal.
6. Mr. Rossall noted that the Appeal Panel dismissed the Complaints Director's first two (2) grounds of appeal that dealt with the Hearing Tribunal's Merits Decision and that it quashed the Hearing Tribunal's Sanctions Decision. Mr. Rossall also submitted that in substituting its own decision on sanctions, the Appeal Panel did not impose every sanction the Complaints Director recommended (*i.e.*, the full period of suspension sought). Therefore, it was relevant that the Appeal Panel's decision on sanctions was partially aligned with submissions from the Parties.
7. Mr. Rossall cited the Alberta Court of Appeal's decision in *Zuk v Alberta Dental Association and College*, 2018 ABCA 398 at paragraph 4 which states "if success was

mixed and neither party was substantially successful, no costs are awarded." Mr. Rossall emphasized that the *Zuk* decision illustrates the importance of assessing the number and nature of issues on appeal as well as the success of each party to conclude whether one party should bear the costs.

8. At paragraph 170 of the Appeal Decision, the Appeal Panel cited the Alberta Court of Appeal's decision in *Lysons v Alberta Land Surveyors' Association*, 2017 ABCA 7 which states "it is a common part of professional disciplinary sanctions for a member who is found to have engaged in unprofessional conduct to pay all or a portion of the hearing and investigation costs." Mr. Rossall distinguished that case from Dr. Muradov's, stating that Mr. Lysons had no success on appeal whereas Dr. Muradov was partially successful.

9. Mr. Rossall also submitted Dr. Muradov's choice not to appeal the Hearing Tribunal's decisions streamlined the appeal process and rendered it more cost-effective. Mr. Rossall argued that given the divided success of the grounds of this appeal, it would be appropriate for each party to bear its own costs.

10. Finally, Mr. Rossall submitted that it would be punitive to impose further costs on Dr. Muradov, especially as Dr. Muradov's MS diagnosis already places restrictions on his ability to practice and, likely, his working life expectancy.

#### **Written Submissions of the Complaints Director**

11. On behalf of the Complaints Director, Mr. Sim reviewed the Appeal Panel's authority under section 89(6) of the Act to order costs of the appeal. He noted that the *Zuk* case cited in Dr. Muradov's submissions described costs relevant to an appeal to the Court of Appeal and did not describe how costs should be assessed under section 89(6) of the Act.

12. Mr. Sim submitted that the Appeal Panel should order Dr. Muradov to pay fifty percent (50%) of the costs of the Appeal. Mr. Sim noted that the estimated costs of the Appeal to date totalled \$50,550.65.

13. Mr. Sim stated that while the assessment of sanctions involved consideration of public protection, general deterrence, and maintaining confidence in the profession, the assessment of costs involves its own considerations.

14. Mr. Sim cited the case of *Jaswal v Newfoundland (Medical Board)*, 1996 CanLII 11640 at paragraph 50 which provides a non-exhaustive list of six (6) factors that are relevant to a discretionary decision to order costs, although he noted that not all factors would be relevant in this case. Mr. Sim also cited *K.C. v College of Physical Therapists of Alberta*, 1999 ABCA 253 at paragraph 94 to note that the Alberta Court of Appeal has held that costs are discretionary. In that regard, it held that discretion should be

exercised reasonably, and relevant factors in considering whether to award costs include the conduct of the parties, the seriousness of the charges, and the reasonableness of the amounts.

15. Mr. Sim then referred to the *Lysons* case in which the Court of Appeal stated at paragraph 13 that "Requiring the professional to pay all or a portion of hearing and investigation costs is a common part of professional disciplinary sanctions."

16. Mr. Sim proposed that the following three (3) factors from *Jaswal* are relevant in determining discretion to order payment of costs in this matter:

*a. The degree of success, if any, of the member in resisting any or all of the charges*

17. Mr. Sim acknowledged the Appeal Panel's decision to uphold the Hearing Tribunal's Merits Decision (the first two (2) grounds of appeal) but quash the Sanctions Decision (which related to the last two (2) grounds of appeal).

18. Mr. Sim disagreed that the Complaints Director was unsuccessful on the third ground of appeal. Although the Appeal Panel did not impose the full length of the suspension the Complaints Director requested, the issue in the third ground of appeal was whether the sanctions imposed by the Hearing Tribunal were too lenient and whether a suspension should have been imposed. The Appeal Panel agreed a suspension was warranted, meaning Dr. Muradov unsuccessfully resisted this ground of appeal.

19. The Appeal Panel held that costs of the investigation and hearing should be awarded against Dr. Muradov and imposed an order for 2/3 of the costs. Mr. Sim submitted that this demonstrates that the Complaints Director was successful on half of the grounds of appeal, and therefore half of the appeal costs should be payable by Dr. Muradov.

*b. Whether the persons presenting the case could reasonably have anticipated the result based on what they knew prior to the hearing*

20. Mr. Sim submitted the Complaints Director made reasonable arguments in good faith on all four (4) grounds of appeal. Mr. Sim further argued that the Complaints Director could not have reasonably anticipated the Appeal Panel would allow her appeal in part. Therefore, Dr. Muradov should not pay less than fifty percent (50%) of the costs.

- c. The financial circumstances of the member and the degree to which his financial position has already been affected by other aspects of any penalty imposed*

21. Mr. Sim submitted that Dr. Muradov has continued to practice since the complaint was received and there is no evidence to suggest Dr. Muradov would undergo significant financial hardship in paying the costs of the appeal. While the imposed sanctions will have a financial impact on Dr. Muradov, the degree to which Dr. Muradov's financial circumstances have been affected is unknown.

22. For all the reasons listed above, Mr. Sim submitted that the Complaints Director's submission on costs was consistent with the principles established by the Courts. Dr. Muradov's conduct was found to fall below the expected standards, and the Courts have recognized that it is appropriate that a guilty member bears the costs of disciplinary proceedings.

23. Mr. Sim argued that requiring Dr. Muradov to pay costs is fair to other members of the profession, who should not bear the financial burden of another member's unprofessional conduct.

#### **Decision and Reasons of the Appeal Panel on the Issue of Costs**

24. As noted by the Parties, the Appeal Panel's authority to order costs of the appeal arises from section 89(6) of the Act. The Appeal Panel has now considered the submissions of the Parties with respect to costs of the appeal.

25. For the following reasons, the Appeal Panel has determined that it is appropriate to order Dr. Muradov to pay fifty percent (50%) of the costs of the appeal.

26. The Appeal Panel further noted that the Complaints Director's role falls within the College's role to govern the profession in the public interest. As part of that regulatory role, the Complaints Director has an obligation to bring forward an appeal where it is believed that a decision of a panel of the Hearing Tribunal does not send the appropriate message to the profession or the public. As evidenced by the Appeal Panel's decision to quash the Sanctions Decision, the Complaints Director was not unreasonable in doing so in this case.

27. However, in this appeal, the Parties had mixed success. The Complaints Director was unsuccessful in persuading the Appeal Panel to overturn the Hearing Tribunal's findings with respect to unprofessional conduct. Although not noted by either party in submissions on costs, the Appeal Panel is mindful that Dr. Muradov was unsuccessful in arguing the jurisdiction of the Appeal Panel to hear the full appeal, which was an issue that required the Appeal Panel's time and attention. Further, while Dr. Muradov did not

cross-appeal, he did make submissions on why the Hearing Tribunal's decision should be upheld, including an argument that there was no breach of procedural fairness. This is not a case where the Parties were in complete agreement on sanctions to be imposed. Therefore, the mixed success of the Parties suggests that costs should be split.

28. The Appeal Panel considered whether it was sufficient for the Parties to each bear their own costs. Ultimately, the Appeal Panel was persuaded by the principle from the *Lysons* case, and that both parties were only partially successful on issues before the Appeal Panel.

29. The Appeal Panel also noted that Dr. Muradov made submissions but did not provide evidence of an inability to pay half the costs of the appeal.

30. Lastly, the Appeal Panel further noted that it directed Dr. Muradov to pay two-third (2/3) of the costs of the investigation and hearing within twenty-four (24) months of receiving the Appeal Panel's decision or such other time period as may be agreed upon with the Complaints Director. The Appeal Panel considered that the same twenty (24) month time period is reasonable for payment of fifty percent (50%) of the costs of the appeal.

### **Conclusion**

31. For the reasons set out above, the Appeal Panel ordered that Dr. Muradov pay fifty-percent (50%) of the costs of the appeal within twenty-four (24) months of receiving the Appeal Panel's decision on costs, or such other time period as may be agreed upon with the Complaints Director.

Dated May 13, 2021

For the Appeal Panel of Council of the College of Naturopathic Doctors of Alberta



Ms. Elsy Gagné, Chair