

**IN THE MATTER OF THE HEALTH PROFESSIONS ACT, being Chapter H-7  
of the Revised Statues of Alberta, 2000**

**AND IN THE MATTER OF an Investigation into a Complaint about  
Dr. Antonin Kodet**

**DECISION OF THE HEARING TRIBUNAL OF THE COLLEGE OF NATUROPATHIC  
DOCTORS OF ALBERTA**

The hearing of the Hearing Tribunal was held at Field Law Offices in Calgary, Alberta on October 17, 2022.

Present were:

The members of the Hearing Tribunal of the College of Naturopathic Doctors of Alberta (the "CNDA"):

Dr. James Truong, ND, Chair  
Dr. Farheen Madatali, ND, Member  
Sheri Epp, Public Member  
Matthew Bennett, Public Member  
Anita Warnick, Public Member

Ms. Cherie Baruss, Complaints Director  
Mr. Gregory Sim, Legal Counsel for the Complaints Director

Dr. Antonin Kodet, ND, Investigated Member  
Mr. Mathieu LaFleche, Legal Counsel for the Investigated Member

Annabritt Chisholm, Independent Legal Counsel for the Hearing Tribunal

**Opening of the Hearing**

1. The hearing opened and the Chair introduced all persons present for the record. The Hearing Tribunal confirmed that none of its members were aware of any bias or conflict of interest that would impact their role on the Hearing Tribunal.
2. The Hearing Tribunal was advised that there were no objections to the members of the Hearing Tribunal and that no preliminary or jurisdictional issues were being raised. The hearing was open to the public, but no members of the public were present.
3. The Hearing Tribunal received an Exhibit Book from the Complaints Director with documents marked as Exhibits 1-15.

## Notice of Hearing

4. The Notice of Hearing was marked as Exhibit 1 and set out the following three allegations against Dr. Kodet:

1. On or about March, 2020 wrote to one or more patients publishing statements about viruses or vaccination that were inaccurate, unprofessional, unverifiable, misleading, or misinforming, contrary to the *Health Professions Act*, RSA 2000, c. H-7 at section 102, the CNDA Standard of Practice: Advertising and Marketing at sections 1, 2, the CNDA Standard of Practice: Communicating about Vaccinations at sections 3, 4, or the CNDA Code of Ethics, Responsibilities to the Patient at section 19 and Responsibilities to the Profession at sections 5, 6;
2. On or about March, 2020 wrote to one or more patients publishing statements about vaccination without:
  - a. Stating that you were not authorized to administer vaccinations;
  - b. Stating that naturopathic treatments are not a substitute for vaccinations;
  - c. Referring the patients to an appropriate regulated health professional to encourage further discussion about vaccinations,contrary to CNDA Standard of Practice: Communicating about Vaccinations at sections 5, 6 or 8;
3. On or about March, 2020 disclosed patients' personal health information or other information to others without their consent, by listing patients' personal email addresses in a group email message, contrary to the *Health Information Act*, RSA 2000, c. H-5 at sections 34, 35 or 36, or the CNDA's Code of Ethics, Responsibilities to the Patient section 11;

**ALL OF WHICH** is contrary to the provisions of the *Health Professions Act*, RSA 2000, c. H-7 as amended, the *Health Information Act*, RSA 2000, c. H-5 as amended, or the regulations, by-laws, Code of Ethics and Standards of Practice enacted pursuant thereto and as amended from time to time, constituting unprofessional conduct.

## Opening Submissions of the Complaints Director

5. On behalf of the Complaints Director, Mr. Sim stated that the Hearing Tribunal's role was to determine whether the allegations contained in Exhibit 1 were factually true, and if so, whether the proven conduct rose to a level of unprofessional conduct under the *Health Professions Act* (the "HPA").

6. Mr. Sim submitted that the allegations charge Dr. Kodet with sending out information, including to some of his patients, about viruses, vaccinations, and the COVID-19 pandemic. The allegations also concern Dr. Kodet's decision to reveal his patients' identities to each other and to his private contacts.
7. Mr. Sim noted that this case was about whether Dr. Kodet's conduct met the requirements of the College's Code of Ethics and Standards of Practice and the HPA and related legislation like the *Health Information Act* (the "HIA").
8. Mr. Sim submitted it was significant that Dr. Kodet sent the emails in question at the beginning of the COVID-19 pandemic, when information about the COVID-19 virus was in short supply, public health measures had not been implemented and people were curious and concerned. Mr. Sim further submitted that Dr. Kodet disseminated information he knew or should have known was inaccurate or misleading or both.
9. Mr. Sim asked the Hearing Tribunal to look at Dr. Kodet's emails and assess if they complied with the College's Standards of Practice and Code of Ethics, and the HPA.
10. Mr. Sim advised he would call the Complaints Director as a witness.

### **Opening Submissions of Dr. Kodet**

11. On behalf of Dr. Kodet, Mr. LaFleche submitted this case was not about any naturopathic treatment or product, any patient interaction or patient complaint. Rather, the Hearing Tribunal would need to decide if limitations should be placed on Dr. Kodet's ability to privately communicate and consider the adequacy and nature of the sources he relied on for those communications.
12. Mr. LaFleche submitted that the allegations raised by the Complaints Director were factually unproven and present an unworkable standard that no naturopathic doctor would be able to identify or understand in advance. He submitted that the Complaints Director's position meant naturopathic doctors would not be able to share their views unless they were able to rely on evidence that meets some arbitrary threshold the CNDA has not described, defined, or disseminated to its members.
13. Mr. LaFleche indicated that if the allegations were proven, it would cast a chill on a naturopathic doctor's ability to be receptive to new ideas or perspectives and explore them with others. Alternative medicine must tolerate alternative perspectives, otherwise the profession could grind to a halt.
14. Mr. LaFleche urged the Hearing Tribunal to consider what Dr. Kodet's communications say about the efficacy of COVID vaccines given that no COVID vaccine was invented or being discussed at that point.

15. Mr. LaFleche also encouraged the Hearing Tribunal to consider the intent of the Standards of Practice, the Code of Ethics and the legislation set out in the Notice of Hearing regarding requirements for communications and advertisements.

### **Examination of the Complaints Director**

16. Ms. Baruss testified that she is the Registrar, CEO and Complaints Director of the CNDA. In her capacity as the Complaints Director, she received a complaint against Dr. Kodet dated April 4, 2022 from Mr. [REDACTED] [Exhibit 2].

17. Ms. Baruss described Mr. [REDACTED]'s complaint as stemming from an email dated March 1, 2020 that Dr. Kodet sent to individuals, some of whom, including Mr. [REDACTED]'s wife, were his patients. Mr. [REDACTED] complained that Dr. Kodet's email appeared to propagate misinformation about the COVID-19 virus and campaign against vaccinations. The March 1, 2020 email was marked as Exhibit 3 and contained a link to a patent extract [Exhibit 4] and attached an article in Czech on coronavirus.

18. In his complaint Mr. [REDACTED] stated he was not a patient of Dr. Kodet's and did not agree with some of Dr. Kodet's practices. The Complaints Director stated she considered whether Mr. [REDACTED]'s concerns about Dr. Kodet's practices motivated his complaint to the CNDA. Ultimately, she found the contents of Dr. Kodet's March 1, 2020 email warranted an investigation.

19. Ms. Baruss reviewed the investigation, including the receipt of two letters of response to the complaint from Dr. Kodet dated April 28, 2020. She indicated that based on the information received, the investigator determined that it was not necessary to interview Dr. Kodet or the complainant.

20. Ms. Baruss noted that Dr. Kodet's written response to the complaint stated he initially intended to send the March 1, 2020 email to a private group, but then decided to share it with some of his patients who were concerned about COVID-19.

21. Ms. Baruss stated that her concerns with the March 1, 2020 email included that Dr. Kodet:

- a. referenced a patenting extract for Corona virus;
- b. suggested the extract stipulated a connection between man made viruses and efforts to establish a mandatory or spontaneous fear driven vaccination;
- c. referenced a strategy to manufacture a virus, infect the populous, scare tactics and mandatory vaccination;

- d. suggested that this would be fully or partially funded by the governments and or third party and that Dr. Kodet did not have to elaborate on its revenue and public control potential;
- e. attached a PDF she had concerns about; and
- f. stated getting out will improve resilience and that there were many simple steps that could be taken to improve immunity.

22. Ms. Baruss explained she was concerned with the contents of the March 1, 2020 email because at that point, the COVID-19 pandemic was in its early stages and there was no reliable information.

23. Mr. LaFleche objected to Ms. Baruss opining on the reliability of the information available at the start of the COVID-19 pandemic. He pointed out that she was not called as an expert witness but as a fact witness, that the investigator did not consult any external sources and that Dr. Kodet never received information with respect to Ms. Baruss' perspectives on the underlying facts.

24. Mr. Sim rephrased his question and asked Ms. Baruss if she was concerned that Dr. Kodet's email contravened the Code of Ethics or the Standards of Practice. He also suggested that the Hearing Tribunal could take note of the fact that the COVID-19 pandemic was beginning to hit Alberta in March 2020 and that Ms. Baruss was entitled to say things that were widely known without the need to call expert evidence.

25. Ms. Baruss indicated she was concerned the information provided in the March 1, 2020 email was inaccurate or misrepresented the linked patent extract [Exhibit 4]. One of her concerns was that the email referred to coronavirus as a man-made virus.

26. Ms. Baruss confirmed she had reviewed the patent. Mr. Sim questioned whether the patent stated that coronavirus was man-made.

27. After hearing an objection to this question from Mr. Lafleche and a response from Mr. Sim, the Hearing Tribunal allowed Ms. Baruss to answer the question and noted it would apply appropriate weight to the evidence when considering whether it was opinion or fact. In allowing Mr. Sim to continue with his line of questioning, the Hearing Tribunal also noted that Mr. LaFleche would have an opportunity to cross-examine Ms. Baruss.

28. Ms. Baruss noted the patent extract stated coronavirus was isolated from humans and did not suggest coronavirus was man-made. The patent extract also referenced "SARS-CoV," which was a different respiratory virus than the novel coronavirus that was the subject of Dr. Kodet's email. Ms. Baruss explained that her

preliminary concern with the patent extract was it was shared with Dr. Kodet's email referencing a man-made virus and she considered this misleading.

29. A certified English translation of the "Article on Coronavirus" attached to Dr. Kodet's email in Czech was marked as Exhibit 5.

30. Ms. Baruss reviewed Exhibit 5, which she believed suggested the COVID-19 pandemic was planned because it stated that John Hopkins University supported and prepared for "an accidental pandemic to take place." She indicated that she was also concerned that the article included comments about vaccine funding in a British Laboratory and made inflammatory allegations about the origins of coronavirus with no supporting evidence. She noted the document did not provide any reference or material to support where the claims it was making came from and there was no indication of the qualifications of the author or their authority to speak to such things.

31. An undated email from Dr. Kodet to [REDACTED] containing "Subject: Interesting 5 minutes on viruses and vaccination," was marked as Exhibit 6. This email was provided by Dr. Kodet in response to the Notice to Produce sent to him during the investigation that requested copies of emails he sent to patients.

32. The email marked as Exhibit 6 was addressed to "Hello everyone" and included a hyperlink to a YouTube video. Within the email Dr. Kodet wrote that "concerning the virus as such time to calm down" and "As of March 21...the death rate this year has been lower than previous years." Dr. Kodet suggested that because the WHO changed the definition of pandemic, it could be used anytime there was "extensive spread," meaning there would be a pandemic at any time because of the flu, herpes viruses or corona viruses that are continually present in society. He also suggested it was interesting to look at the background and motives of the people on the WHO. Dr. Kodet concluded the email "Enjoy the sun – it kills viruses and so does fresh air and a happier mindset."

33. Ms. Baruss noted her concerns with the email [Exhibit 6] included:

- a. Dr. Kodet's reference to the death rate as of March 21 being lower than previous years. She submitted this statement was misrepresentative as there were no statistics regarding the 2020 death available at that time, and no Alberta or Canadian statistics because COVID-19 had just reached Canada.
- b. Dr. Kodet's statement "Enjoy the sun - it kills viruses and so does fresh air and a happier mindset!" was concerning as there was no medical evidence to clearly find how one could protect oneself, recover from or avoid COVID-19, other than the limited information being delivered by Dr. Hinshaw.

34. A YouTube video hyperlinked in Dr. Kodet's email [Exhibit 6] was played during the hearing and a screenshot of the webpage for the video was marked as Exhibit 7. A transcription of the video prepared by the Hearing Tribunal for its review during its deliberations is attached as Appendix 1 to this decision.

35. Ms. Baruss stated that after she watched the YouTube video, she was concerned that Dr. Kodet was not complying with the Code of Ethics and Standards of Practice when he shared the video with individuals including some of his patients. Specifically, she was concerned because the video states the swine flu vaccine was not tested, which is not an accurate or verifiable statement. She was also concerned that the video discouraged vaccinations under the skin because that statement didn't comply with the Standard of Practice: Communicating about Vaccinations.

36. Ms. Baruss stated she was concerned that Dr. Kodet's communications did not meet the Standard of Practice: Communicating about Vaccinations, which requires a naturopathic doctor communicating about vaccinations to:

- a. clearly inform the patient that naturopathic treatments are not a substitute for vaccinations;
- b. clearly inform the patient that naturopathic doctors are not authorized to give vaccinations;
- c. accurately communicate the known benefits and risks of specific vaccines; and
- d. accurately communicate the risks of infectious disease.

37. An undated email from Dr. Kodet to [REDACTED] with the subject "Optimism" was marked as Exhibit 8. A blog post dated March 19, 2020 and linked in that email was marked as Exhibit 9.

38. Ms. Baruss indicated she had concerns with Exhibit 8 because Dr. Kodet shared information he acknowledged may or may not be of merit or correct. She was also concerned by his indication that he had stopped looking at the statistics for COVID-19.

39. Ms. Baruss further stated she had concerns about the linked blog post [Exhibit 9] because the author was a reporter, not a medical professional or scientist. Furthermore, the blog post suggested the death rate in Italy was inflated and related to the drugs given to patients rather than coronavirus itself. She was also concerned the information was not related to Alberta or Canada and seemed inflammatory and inaccurate.

40. An undated email from Dr. Kodet with the subject "Loma Linda MD: Eight Reasons To End The Lockdowns Now" was marked as Exhibit 10. The email contained a copy of an article of the same title posted April 12, 2020.

41. Ms. Baruss discussed that her concern with Exhibit 10 was that the email misrepresented the public health information being shared with Albertans. By sending this article Dr. Kodet was suggesting that the curve had flattened when in fact Dr. Hinshaw was advising Albertans that curve needed to flatten. Ms. Baruss was also concerned that the email contained unsubstantiated allegations that suggested the health care system was not overburdened.

42. Dr. Kodet's two letters of response to the complaint were dated April 28, 2020 and collectively marked as Exhibit 11.

43. Ms. Baruss pointed out where Dr. Kodet provided justifications for sending the March 1, 2020 email to some of his patients, including:

- a. Letter 1, bottom of page 1: Originally [his] intent was to forward the email to the contacts he normally exchanges my private emails with. However, when he translated the main idea, he decided to include some of his patients, since they had expressed concerns about this issue."
- b. Letter 2, bottom of page 1: He does "...not subscribe to conspiracy theories."
- c. Letter 2, top of page 2: He "...acknowledge[s] the existence of unacceptable marketing strategies as well as efforts to create and dominate market by powerful corporate interests."
- d. Letter 2, about three paragraphs from the bottom of page 2: the CNDA Standards of Practice focus on scheduled immunizations, mandatory professional vaccination and vaccinations for specific historically reappearing conditions, not man-made viruses such as COVID-19. He stated that vaccines for well established, studied and naturally occurring infections have long track records for their use, high reliability, greater predictability and have also been provided without a sense of urgency or many unknowns.
- e. Letter 2, two paragraphs from the bottom of page 2: "None of these conditions is satisfied by the vaccines that are developed or tested against the newly popularised man-made viruses."

44. Ms. Baruss also noted it was Dr. Kodet's position that the Standard of Practice: Communicating about Vaccinations was intended solely for communications about routine vaccinations, not a vaccination for COVID-19.



45. The CNDA Code of Ethics was marked as Exhibit 12, the CNDA Standard of Practice: Advertising and Marketing was marked as Exhibit 13, the CNDA Standard of Practice: Communicating About Vaccinations was marked as Exhibit 14 and the CNDA Standard of Practice: General was marked as Exhibit 15.

46. Ms. Baruss advised that these Standards and the Code of Ethics were in place at the relevant time in March and April of 2020 but that the Standard of Practice: Communicating about Vaccinations has been subsequently updated to emphasize that it applies to all vaccinations, not just routine vaccinations.

### **Cross-Examination of the Complaints Director**

47. Under cross-examination by Mr. LaFleche, Ms. Baruss confirmed that she is trained as a lawyer. She does not have post-secondary training as a naturopathic doctor nor any training in biology, infectious diseases or epidemiology.

48. Ms. Baruss also confirmed that Katie Cooper, the CNDA investigator, is her legal assistant. Ms. Cooper has taken investigator training through CLEAR but has no postsecondary training as a naturopathic doctor nor any medical education or formal training in biology, infectious disease, or epidemiology.

49. Ms. Baruss stated that neither she nor Ms. Cooper communicated with or received information from Mr. ██████'s wife [Exhibit 3]. She agreed with Ms. Cooper's determination that interviews were not necessary to complete the investigation. The investigation relied on publicly available information and no independent expert, medical doctor or external study was consulted.

50. Ms. Baruss indicated they did not determine how many patients received Dr. Kodet's emails as they accepted his evidence that some of the recipients were patients.

51. Mr. LaFleche asked Ms. Baruss if the CNDA ever provided guidelines to its members about communications specific to COVID-19 or the pandemic. She indicated that the CNDA hadn't provided any direction or warnings to Dr. Kodet prior to the complaint.

52. An article from the Ottawa Sun dated February 25, 2020 was marked as Exhibit A for Identification. When the article was put to Ms. Baruss, she advised she was not aware of any public discussion at the beginning of the COVID-19 pandemic that raised concerns about the virus originating from a Chinese laboratory. The only COVID-19 news she followed was that reported by Dr. Hinshaw.

53. Ms. Baruss advised that although there was no reference to Dr. Hinshaw's communications in the investigation report, they informed her day-to-day practice as the CNDA Registrar and Complaints Director.

54. Ms. Baruss confirmed the investigation report was completed July 7, 2021.

55. A CNN article dated July 16, 2021 was marked as Exhibit B For Identification. When the article was put to Ms. Baruss, she indicated she was aware of comments made in 2021 about COVID-19 and the possibility the virus had been leaked from a lab. However, she noted this was 15 months after the complaint was received and responded to, and 16 months after the initial communications sent by Dr. Kodet. She also stated she did not rely on CNN but instead, on information presented by Dr. Hinshaw and the government. She could not confirm the origins of COVID-19.

56. Ms. Baruss confirmed she did not consult with a naturopathic doctor because this matter related to compliance with the Standards of Practice.

57. Mr. LaFleche presented a Government of Canada document that listed drug and vaccine applications and authorizations for COVID-19. Ms. Baruss reviewed the document and agreed that based on the list provided, no drugs or vaccines applications or authorizations were made for COVID-19 in March or April 2020. The document Government of Canada Drug And Vaccine Authorizations For COVID-19: List Of Applications Received dated 2022-09-20 was marked as Exhibit C For Identification.

58. When Mr. LaFleche asked for Ms. Baruss' opinion on the patent extract [Exhibit 4], Mr. Sim objected on grounds that Ms. Baruss is not a patent agent. The Hearing Tribunal allowed the question to be answered based on its understanding of Ms. Baruss' evidence that she had reviewed patents in her role as a lawyer.

59. Ms. Baruss explained she was able to identify that the patent related to SARS-CoV, but that she could not interpret all of the various genomes referenced in the patent or the gene sequence for the illness defined in the patent.

60. She advised that during the investigation she used Google Translate to interpret the article written in Czech. She received a certified translation of the same document prior to the hearing and the contents matched what she found on Google Translate. Ms. Baruss was concerned that the document relied on by Dr. Kodet did not have sources supporting the allegations made within it.

61. Ms. Baruss agreed with Mr. LaFleche's proposal that Dr. Lipton, the originator of the YouTube video [Exhibit 7] was a cell biologist and PhD [Exhibit D for Identification]. She also agreed that the YouTube video page contained a link that a referenced getting the latest information from Health Canada on COVID-19. She advised that neither she nor the investigator looked at the overall death rate because they were only concerned with the death rates related to the virus.

62. Regarding the blog post [Exhibit 9], Ms. Baruss indicated that she did not independently verify the accuracy of the statistics in the article as they were European statistics and did not relate to the Canadian situation at the relevant time.

63. Ms. Baruss confirmed that the investigation did not reveal that the post starting with "Loma Linda MD" was signed by anyone other than those who had originally signed it, five MD's and a DNP, nor was there anything to indicate that the authors were not MDs. She also advised that neither she nor the investigator consulted any sources to determine whether the commentary in the article was correct because the statistics were American and not specific to Alberta or Canada.

64. Ms. Baruss also confirmed that no Canadian statistics or information were included in the investigation report because none were available during the investigation. Ms. Baruss relied on the directives and information provided to regulatory colleges but this information was not included in the investigation report or records.

### **Re-Examination of the Complaints Director**

65. Ms. Baruss advised she did not recall whether she retained a copy of her translation of the Czech document using Google Translate.

66. Ms. Baruss stated that her decision to refer this matter to a hearing was not based on information beyond what was attached to the investigation report. She was concerned with the inflammatory and potentially misrepresentative nature of Dr. Kodet's emails and the implications of the attachments. She considered the requirements under the Standard of Practice: Communication with Vaccinations, and the Standard of Practice: Advertising and Marketing, which requires naturopathic doctors to present accurate and verifiable information. It was her opinion that Dr. Kodet's emails and the attachments were not accurate or verifiable and contravened the requirements for naturopathic doctors communicating about vaccinations.

### **Questions from the Hearing Tribunal**

67. Ms. Baruss told the Hearing Tribunal she did not know who "██████████" was. Ms. Baruss explained that the emails addressed to ██████████ were provided to her by Dr. Kodet in response to her request for emails he sent to patients relating to COVID-19. She advised she was not aware of the date the emails were sent, but indicated that it must have been prior to April 28, 2020 when Dr. Kodet provided her with the emails.

### **Evidence of Dr. Kodet**

68. Mr. LaFleche indicated that Dr. Kodet would not be calling any witnesses in support of his response to the allegations in the Notice of Hearing.

## Submissions of the Complaints Director

69. On behalf of the Complaints Director, Mr. Sim reiterated that the role of the Hearing Tribunal was to decide whether the allegations in the Notice of Hearing were proven on a balance of probabilities and whether any of the proven conduct amounted to unprofessional conduct.

70. The Complaints Director's position was that all three allegations were proven on a balance of probabilities and amounted to unprofessional conduct.

71. Allegation 1 is that Dr. Kodet wrote to one or more of his patients in March 2020 publishing statements about viruses or vaccinations that were inaccurate, unverifiable, misleading, or misinforming, contrary to the HPA, the CNDA's Code of Ethics or the Standards of Practice.

72. Mr. Sim submitted that the evidence to prove Allegation 1 is before the Hearing Tribunal in the form of the March 1, 2020 email from Dr. Kodet [Exhibit 3]. The March 1, 2020 email was sent to at least one of Dr. Kodet's patients, [REDACTED]. In Dr. Kodet's written response to the College [Exhibit 11] he admitted that the emails were sent to "some" of his patients.

73. The subject line of the March 1, 2020 email is "Corona virus man made - patented 2003." In this email, Dr. Kodet stated that coronavirus was created by people and suggested that the population was infected with it to scare them into agreeing to mandatory vaccinations. He also attached what he called a patenting extract for coronavirus, and stated he was attaching documents in Czech and German that prove what he was saying.

74. Mr. Sim submitted that Dr. Kodet's email essentially paraphrases the Czech document [Exhibit 5], which states that pharmaceutical companies, and possibly the US government, were directly behind the COVID-19 pandemic in that they created a virus to sell vaccines to the entire world. The translated document references a patent number, US72220852B1, which is the patent extract in Exhibit 4 linked in Dr. Kodet's email. Dr. Kodet relied on this information to support his position that people manufactured coronavirus and that it was intended to infect the population to scare them into accepting mandatory vaccinations.

75. Mr. Sim submitted that the problem with Dr. Kodet's position is that the patent extract does not say that people invented coronavirus. Mr. Sim submitted that it was not necessary to obtain an expert to confirm this as the patent clearly states that coronavirus was isolated from humans, not that it was invented by humans.

76. Mr. Sim reviewed the patent extract, which at page 9 states the

invention relates to a newly isolated human coronavirus. More particularly, it relates to an isolated coronavirus genome, isolated coronavirus proteins, and isolated nucleic acid molecules encoding the same. The disclosure further relates to methods of detecting a severe acute respiratory syndrome-associated coronavirus and compositions comprising immunogenic coronavirus compounds.

Based on this information, it is the Complaint's Director's submission that the patent extract is a patent for the genomic sequence for human coronavirus, not for the human invention of coronavirus.

77. Mr. Sim also noted that under the heading "Background," the authors of the patent extract explain that the genus coronavirus includes 13 species subdivided into at least three groups, and reference literature where this was described at least as early as 1996; not 2003 as suggested in Dr. Kodet's email.

78. Mr. Sim submitted that these statements are evidence that Dr. Kodet's March 1, 2020 email was patently false, which supports the finding that Dr. Kodet sent an email to people, who included some of his patients, about viruses or vaccinations, that was misinforming, misleading, and inaccurate.

79. Mr. Sim also noted that the first email in evidence was sent on March 1, 2020, which at the beginning of the pandemic, when people were beginning to be concerned, there was a virus circulating in Alberta and the public was facing public health measures of an unprecedented nature. Mr. Sim submitted that as a naturopathic doctor, Dr. Kodet took advantage of this concern to further his own personal beliefs about the merits of vaccinations and in doing so, disseminated information publicly and to some of his patients, that was patently false.

80. Mr. Sim pointed out to the Hearing Tribunal that Dr. Kodet's email ends with a description of his practice that states he provides "Treatment for adults and children with chronic illnesses and conditions that do not respond to conventional treatments." Dr. Kodet also describes himself as the author of two books. Mr. Sim submitted that this is clearly advertising and marketing material, in addition to being a general communication that Dr. Kodet sent out to his contacts and to some of his patients.

81. Section 102 of the HPA states that a regulated profession cannot make inaccurate or misleading statements in advertising or marketing materials. Mr. Sim submitted that Dr. Kodet's March 1, 2020 email breaches section 102 of the HPA as the information Dr. Kodet provided in his email was clearly wrong.

82. Mr. Sim further submitted that Dr. Kodet also breached the CNDA Standards of Practice on advertising and marketing, specifically sections 1 and 2. These sections require that all advertising and marketing materials be factual, accurate, and verifiable, and be understandable to the intended audience, they can't deceive or mislead or use

comparative statements about other health services or products. Dr. Kodet's email breached these requirements by including a document in Czech and part of a document in German when there's no indication that he believed everybody understood Czech or German. Dr. Kodet stated that those who don't read Czech or German may be able to find the document in English, but he did not provide a copy in English.

83. Mr. Sim also submitted that Dr. Kodet breached the Standard of Practice: Communicating about Vaccinations because Dr. Kodet only communicated that vaccines are part of a conspiracy, which is not consistent with explaining the known benefits and risks of vaccines as required by that Standard.

84. Mr. Sim asked the Hearing Tribunal to find that Dr. Kodet's conduct also breached the CNDA Code of Ethics under Responsibilities to Patients at section 19, which states that he is not permitted to promote his own personal moral beliefs when interacting with a patient. Furthermore, the section on Responsibility to the Profession, at sections 5 and 6, indicates that Dr. Kodet would need to clearly express when he is proffering a professional opinion that differs from the general opinion of the profession. Dr. Kodet did not indicate that his view that vaccines are part of a conspiracy is different from the College's message and general approach to vaccines.

85. Mr. Sim reviewed the second email sent by Dr. Kodet to his patients [Exhibit 6], which was produced to the College by Dr. Kodet in response a request for correspondence that he sent to patients. Dr. Kodet attempted to justify this communication to patients by explaining that his patients were concerned about the prospect of fast-tracked vaccinations.

86. In this email, Dr. Kodet states "the death rate this year has been lower than the previous years," and then references some statistics that he does not include in the email. The Complaints Director submitted that Dr. Kodet was discussing COVID-19 and saying the death rate from that virus was declining versus the previous year 2019 and that this was an irresponsible, misleading, and misinforming thing for Dr. Kodet to say as such information was not known.

87. Dr. Kodet ends the email with the comment that you should "Enjoy the sun - it kills viruses and so does fresh air and a happier mindset." Mr. Sim submitted that in March or April 2020 it was irresponsible, misleading and misinforming to conclude and email about COVID-19 or coronavirus with a comment about the sun killing viruses. Doing so suggested that the sun could kill COVID-19 and there was no information available at that time to support such a claim.

88. Mr. Sim submitted that the same references to the HPA, the Code of Ethics, and the Standards of Practice reviewed for the first email, also applied to this second email.

89. Next, Mr. Sim referred to the third email [Exhibit 8] in which Dr. Kodet forwarded a blog post [Exhibit 9]. In this email, Dr. Kodet stated that he had no idea whether the author of the blog post was correct. Mr. Sim submitted that the HPA, the Code of Ethics and the Standards of Practice obligate naturopathic doctors to ensure their communications to patients are accurate, objectively verifiable, not misleading, and not misinforming. Mr. Sim submitted that Dr. Kodet did not meet this obligation when he communicated with patients and did not try to confirm the accuracy of the information he was sending. Instead, Dr. Kodet stated "I'm washing my hands of this. I'm forwarding it to you, but I have no idea whether this is true or not." He also noted that "I've stopped looking at statistics for COVID" and "I'm not even going to look at the evidence to see whether this article, this blog post, is true or not. I'm just going to forward it to you."

90. Mr. Sim noted that in the blog post [Exhibit 9] that Dr. Kodet forwarded to his patients, the author stated that the people who died in Italy with coronavirus may not have died from coronavirus but from the antiviral treatments that they received to treat the virus or from treatments they received for other pre-existing health conditions. Mr. Sim submitted that, by disseminating the blog post and failing to consider and outline other possibilities for the deaths, Dr. Kodet implicitly endorsed the article in a manner that was irresponsible, misleading, and misinforming.

91. Then, Mr. Sim turned to Dr. Kodet's fourth email to his patients [Exhibit 10]. He noted that this email contained an article written by a group of physicians from the US in April 2020. Dr. Kodet did not mention that the article based outside of Alberta or Canada. The article commented that the curve was already being flattened, the healthcare system was not being overburdened, there was no further risk of overburdening the healthcare system, and that the mortality rate was overestimated. Mr. Sim submitted that Dr. Kodet could not have verified this information in April 2020 and that it was inconsistent with the Alberta experience at that time. Therefore, it was misleading and misinforming for Dr. Kodet to send this information and contrary to the HPA, the Code of Ethics, and the Standards of Practice for the same reasons as above.

92. Mr. Sim submitted that Dr. Kodet engaged in unprofessional conduct when he sent these emails to his patients. The emails were sent at the outset of the pandemic, when the public was rightly in fear and concerned. Dr. Kodet's actions justified these fears and concerns and may have dissuaded people from talking to someone who had knowledge of the subject matter. Dr. Kodet was allowed to talk to his patients who had concerns but these email communications were misleading, misinforming, inaccurate, unprofessional, and harmed the integrity of the profession. It breached the Code of Ethics, the Standards of Practice, and section 102 of the HPA.

93. Allegation 2 alleges that that Dr. Kodet wrote to one or more of his patients publishing statements about vaccinations without stating that he wasn't authorized to administer vaccinations, that naturopathic treatments are not a substitute for

vaccinations, and without referring the patients to an appropriate regulated health professional to discuss any further questions about vaccinations as required by the CNDA Standard of Practice: Communicating about Vaccinations.

94. Mr. Sim reviewed the CNDA's Standard of Practice: Communicating about Vaccinations as it existed at the relevant time, including the definitions of vaccination and vaccine and the requirement that when naturopathic doctors communicate about vaccinations, they "must do so responsibly, ethically and acknowledging Alberta public health guidelines." He noted the Standard outlined specific things naturopathic doctors must know and communicate, including Alberta's routine immunization schedule.

95. Mr. Sim submitted that the other obligations in the Standard apply to all vaccinations and vaccines. For example, section 5 requires naturopathic doctors to clearly inform a patient that they are not authorized to give vaccinations whenever they communicate about vaccines and vaccinations. Section 6 indicates that a naturopathic doctor must clearly inform the patient that naturopathic treatments are not a substitute for vaccinations. Section 7 states that a naturopathic doctor must ensure any communications about vaccinations are in accordance with the Standard of Practice on advertising or marketing. Section 8 states that a naturopathic doctor must refer patients to an appropriate regulated health profession or professional to encourage further discussion about vaccinations in accordance with the other standards of practice.

96. Mr. Sim pointed out that Dr. Kodet's March 1, 2020 email [Exhibit 3] states that vaccinations are the result of a conspiracy to invent a virus, infect the populace, create fear, and drive mandatory vaccination campaigns. Although Dr. Kodet is talking about vaccination in this email, he does not say any of the things required by the Standard.

97. Mr. Sim then stated that although Dr. Kodet's email in Exhibit 6 does not expressly mention vaccines in the body of the email, he attaches a YouTube video which discusses and discourages the use of vaccinations. In this email Dr. Kodet again failed to state any of the things he is required to under the Standard.

98. Mr. Sim submitted it is important that the obligations in the Standard are applied to all vaccines and vaccinations, not just routine immunizations. When a new vaccine is available, naturopathic doctors must refer patients to their physician for discussion.

99. Allegation 3 concerns Dr. Kodet's disclosure of his patients' personal health information or other information to others without their consent, by listing patients' personal email addresses in a group email message. Mr. Sim submitted that this conduct was contrary to the HIA and the CNDA's Code of Ethics.

100. Mr. Sim noted that the March 1, 2020 email [Exhibit 3] was sent to about 44 people and included the name and email of his patient, Ms. [REDACTED].



101. He cited the definition of "Health Information" in the HIA, which includes diagnostic treatment and care information and registration information. "Registration Information," includes "Demographic Information" and is further described in the regulations. The *Health Information Regulation* indicates demographic information includes a person's name and their electronic address.

102. Based on these definitions, Mr. Sim submitted that a patient's name and email address is health information and must be protected under the HIA. Dr. Kodet cannot disclose a patient's health information to anyone else without the patient's consent. Mr. Sim submitted that in this case, Dr. Kodet disclosed Ms. [REDACTED]'s health information without her consent by including her name and email address for all email recipients to see and be able to respond to. Mr. Sim noted that this was also an issue for other recipients who were also Dr. Kodet's patients.

103. Mr. Sim noted that in Dr. Kodet's written responses [Exhibit 11], he stated that he decided to include some of his patients in the email who had commented on or expressed concerns about coronavirus to him. Mr. Sim submitted that Dr. Kodet's statements suggest he made a last-minute decision to include patients in his email correspondence and that he did so without his patient's permission to share their personal health information with others; amounting to unprofessional conduct.

104. Mr. Sim indicated that, although this type of conduct is relatively minor unprofessional conduct, it is still unprofessional conduct that breaches enactments that apply to the naturopathic doctor's profession (the HIA and the *Health Information Regulation*). Mr. Sim further submitted that Dr. Kodet's conduct was also unprofessional conduct because it harmed the integrity of the profession.

105. Lastly, Mr. Sim pointed to section 7 of the Standard of Practice: Communicating about Vaccinations which requires any communication that a naturopathic doctor makes about vaccinations to comply with the standard of practice on advertising and marketing whether or not that communication could be characterized as advertising and marketing. In effect, this standard incorporates the requirements and the prohibitions of the other whether the conduct is actually advertising and marketing or not. Although it is the Complaints Director's position that the emails sent by Dr. Kodet were for advertising and marketing purposes, if the Hearing Tribunal finds otherwise, both standards still apply because the communications were about vaccinations.

### **Submissions of Dr. Kodet**

106. On behalf of Dr. Kodet, Mr. LaFleche submitted the Complaints Director had not proven the allegations on a balance of probabilities or that there was insufficient evidence to make a finding of fact one way or the other. He noted that no naturopathic doctor provided information about the prevailing general opinion of the profession, nor

was there evidence from anyone with any qualifications or credentials to talk about biology, public health, or any other matter relating to the coronavirus or COVID-19.

107. Mr. LaFleche surmised that to find Dr. Kodet departed from the standard opinion of the profession, the Hearing Tribunal needed to know the general opinion of the profession and it did not have that evidence before it.

108. Mr. LaFleche submitted that all the patent extract said is that there was a patent application for a coronavirus in 2003, which matches the representation made by Dr. Kodet. He submitted that it would be unfair for the Hearing Tribunal draw the conclusion that what Dr. Kodet said about the patent was false without an expert to walk it through the document.

109. Although Ms. Baruss explained her understanding of the patent, she is not a naturopathic doctor, scientist, or medical doctor, nor does she have specific expertise or training to be able to explain to the Hearing Tribunal that anything Dr. Kodet said or referenced in his email about the attachments was incorrect or misleading.

110. Mr. LaFleche submitted that it was incumbent on the Complaints Director to present evidence that Dr. Kodet's opinion was inconsistent with the general opinion of the profession, which she did not.

111. Mr. LaFleche indicated that this requirement extends to all three allegations. For example, in relation to Allegation 3, Ms. Baruss failed to provide evidence that Dr. Kodet did not have Ms. [REDACTED]'s consent to disclose her name and email address or that Ms. [REDACTED] was upset her information was disclosed. The evidence is that Mrs. [REDACTED] was included in an email circulated to like-minded individuals and was identifiable by just her name and email. She was not identified as a patient of Dr. Kodet's.

112. In his written response, Dr. Kodet stated that the people he communicated information to were those who had expressed concern and interest in the subject matter. Dr. Kodet's response indicated that he was responding to their concerns.

113. Mr. LaFleche indicated that it was important that none of the allegations relate to any aspect of Dr. Kodet's practice, ability to provide professional services or services offered to a patient. The allegations relate to Dr. Kodet's ability to express views and perspectives about a controversial issue of public debate, that had widely varying perspectives over time.

114. Although a regulator can put limitations on a member's ability to express their views, they can only do so in a way that is necessary to achieve the regulator's statutory objective. In light of this, Mr. LaFleche asked the Hearing Tribunal pay close attention to exactly what the CNDA chose to regulate as a profession, and particularly to the fact that there was no guidance given to the members about how to

communicate about issues of interest or debate. Mr. LaFleche submitted that the Complaints Director was trying to apply advertising standards to communications that are clearly not advertising, but discrete communications sent a select group.

115. Mr. LaFleche noted that the expectations and requirements for when a naturopathic doctor engages in advertising and marketing are expectations for communications about naturopathic services and products. Such representations are expected to be true or based on information that can be validated. Mr. LaFleche submitted it would be overbroad to apply the expectations and requirements for advertising and marketing to communications that did not describe or advertise any products or services, but instead were comments Dr. Kodet made to a select group.

116. Mr. LaFleche also submitted the Standards of Practice provide for broad acceptance of what constitutes a source of acceptable information. Mr. LaFleche suggested that while there may be different perspectives about Dr. Kodet's choice of sources it was important to look at the guidance the CNDA provided to naturopathic doctors because that is the standard against which members should be judged.

117. Finally, Mr. LaFleche submitted that the different Standards that have allegedly been breached are not clear. Instead, there is a labyrinthian number of differently worded sections that circle around the concept of the communication, but don't touch on it. He noted that the CNDA later amended the Standards of Practice: Communicating about Vaccinations because of this complaint, which suggests Dr. Kodet's conduct was not captured by the earlier version of the Standard. As a result, Dr. Kodet could not have breached the Standard.

118. Mr. LaFleche submitted that, with respect to the four emails at issue, there is no evidence to suggest that any of the emails were widely distributed or made available to the public. None of them advertise any products or services nor make any representations or comments about Dr. Kodet, the practice of naturopathic medicine generally or the efficacy of any treatment or product.

119. Mr. LaFleche also noted that the March 1, 2020 email [Exhibit 3] did not comment about the actual efficacy of a vaccine but only indicated that Dr. Kodet found some information that may suggest coronavirus was man-made. Mr. LaFleche submitted that the email did not discuss the efficacy of any COVID-19 vaccine, nor could it have, because no such vaccine existed in March or April 2020. The email only stated "Regardless of its/their effectiveness or and quality and reliability of testing."

120. Mr. LaFleche submitted that the fact the emails may have been sent to some patients cannot mean they were advertisements as the recipients were already patients. The emails were just communication made in private about some information that Dr. Kodet had learned of that did not touch on naturopathic services. The emails did not invite the recipient to buy any product or service. For the Hearing Tribunal to conclude

the emails were advertising would, in effect, mean every communication a naturopathic doctor issued was an advertisement, whether it touched on naturopathic services or not. Mr. LaFleche cautioned the Hearing Tribunal against overextending the interpretation of advertising and marketing to effectively create a standard for all communications by naturopathic doctors. He submitted that the Standard on its face is intended to be limited to only certain communications.

121. Mr. LaFleche also submitted that the Standard of Practice: Communicating about Vaccinations only applied to specific and routine vaccines, not vaccinations generally. As a COVID-19 vaccine did not exist when the emails were sent, Dr. Kodet could not be obligated to discuss something that did not exist. Mr. LaFleche concluded on this point by submitting that if the CNDA wanted its members to communicate specific things about vaccines, that should be in the Standard.

122. Mr. LaFleche suggested that when the Standards were taken as a whole, they should be interpreted to mean that when a naturopathic doctor makes statements that are comparative or that discuss naturopathic services or products in the same communication as vaccinations or vaccines, there's an obligation to follow the standards of practice with respect to those things, and that they cannot say that a vaccine is less effective than their naturopathic treatment. Here, the communications did not discuss any naturopathic products and services and so it was submitted that the Standard did not apply.

123. With respect to the allegation that the information presented by Dr. Kodet was not verifiable, Mr. LaFleche pointed out that "verifiable" means capable of objective proof and not a subjective statement or based on something that is impossible to prove. However, Dr. Kodet did not present objectively unverifiable facts. Mr. LaFleche submitted that just because a fact has not been proven as false or correct does not mean its not verifiable.

124. Mr. LaFleche referred to the Standard of Practice: General [Exhibit 15], which states that naturopathic medicine is premised on evidence informed practice. The Standard also references the types of information or evidence a naturopathic doctor may rely on to treat patients and make treatment recommendations. In this case, Dr. Kodet was not treating a patient or providing treatment recommendations.

125. Mr. LaFleche submitted that based on the Standard, acceptable evidence included patient perspectives, research, policies, opinions, and expert opinions, and is not so limited that every statement a naturopathic doctor makes must meet some particular threshold of being qualified or supported by peer review and scientific publications.

126. Mr. Lafleche further submitted that the acceptable range of evidence was deliberate and is one of the distinguishing features of the alternative practice of

naturopathic medicine, versus the practice of an MD. In a profession involving alternative practice, there has to be a degree of tolerance about alternative perspectives, such as those presented by Dr. Kodet in his emails. Dr. Kodet presented information and perspectives from a wide variety of sources, and it was noted that the CNDA has not expressly prohibited its members from using certain types of evidence.

127. Mr. LaFleche noted that the Complaints Director provided no evidence that the article in the fourth email was presented by individuals who were not MDs, or that the statistics referenced in Dr. Kodet's third email were inaccurate. The Complaints Director alleged that Dr. Kodet was obligated to substantiate the sources he referred to. However, this is not contemplated in the Standards of Practice or in any of the evidence before the Hearing Tribunal.

128. Mr. LaFleche submitted that the Complaints Director was seeking to punish Dr. Kodet for relying on the wrong type of evidence. However, Dr. Kodet used this evidence for discussion purposes, not for treatment and the Complaints Director failed to show that the perspective he shared was incorrect. She also failed to articulate a standard of evidence that Dr. Kodet would have needed to follow before presenting a perspective.

129. Mr. LaFleche submitted there was no evidence to suggest that anyone who received Dr. Kodet's emails was concerned, worried or had increased fear about anything as a result. In fact, Dr. Kodet explained in his response that "I had originally intended this just to go to my private group, but decided to include some patients who had expressed concerns and interests in this information."

130. Mr. LaFleche referred to the Code of Ethics and in which sections B5, B6 and B12 lists a naturopathic doctor's obligation to recognize their responsibility to give the profession's general opinion when interpreting scientific knowledge to the public. Mr. LaFleche submitted that Dr. Kodet did not interpret anything to the public and could not be found to have failed to give the profession's general opinion as the profession's general opinion had not been provided.

131. Mr. LaFleche explained that section B12 obligates a naturopathic doctor to build a professional reputation based on ability and integrity, not unsubstantiated claims. He submitted that section B12 doesn't have any bearing on this case because Dr. Kodet was not trying to build his professional reputation by claiming he is better than others. Instead, he provided substantiated statements through various email attachments.

132. Regarding the allegation that Dr. Kodet had breached sections 1 and 2 of the Standard of Practice: Advertising and Marketing [Exhibit 13], Mr. LaFleche submitted that section 1 requires a naturopathic doctor to ensure "all advertising and marketing in respect of their professional services and products are factual, accurate, professional, verifiable, understandable to the intended audience and in accordance with generally

accepted standards of good taste" and did not apply because none of the emails comment on professional services or products.

133. Section 2 of the Standard of Practice: Advertising and Marketing puts constraints around advertising. Mr. LaFleche submitted that this Standard did not apply because Dr. Kodet's emails were not advertisements. However, if the Hearing Tribunal found the emails were advertisements, he submitted that the emails did not contravene section 2. He noted the Complaints Director did not provide evidence to determine what other information was available in March 2020 that could have been included as relevant information. Furthermore, Dr. Kodet could not make any statements about the efficacy of a particular vaccine for COVID-19 because there were no COVID-19 vaccines in March 2020. Mr. LaFleche also noted that Dr. Kodet did not provide treatment to a patient, was not providing guidance to a patient about making a treatment decision, the email did not include anything about a patient coming to him with a concern, and he was not offering anything as an alternative. Moreover, Mr. LaFleche submitted that most of the recipients were not patients and so the emails cannot be seen as providing treatment but instead as private communication to friends.

134. Finally, Mr. LaFleche concluded by submitting Dr. Kodet should not be faulted for sharing information of interest with friends and a select group of patients, none of whom raised any concerns. He also asked the Hearing Tribunal to remember the emails do not touch on any professional service or skill or ability of a naturopathic doctor.

### **Reply of the Complaints Director**

135. Mr. Sim reiterated that this hearing was not about the origins of COVID-19 but about statements that Dr. Kodet chose to initiate and send to a group of people that included some of his patients.

136. The issue the Complaints Director had with Dr. Kodet's emails was that Dr. Kodet made statements in those emails that were false and misinforming. Dr. Kodet stated coronavirus was man-made and attached a patent extract which he suggested was evidence of this, when in fact that is not the case.

137. Regarding the claim that expert evidence was required to know where the virus came from, Mr. Sim submitted that the Complaints Director did not have to show where the virus came from. Instead, the Complaints Director had to show what was alleged, which was that a statement that Dr. Kodet made in the email in Exhibit 3 was wrong. He said the patent extract proved the virus was man-made when it wasn't, which was misleading.

138. With respect to Dr. Kodet's having the freedom to say what he thinks, Mr. Sim submitted that Dr. Kodet does have the ability to say what he thinks, but what he does

not have the right to do is to say things that are patently false, misleading, and misinforming, particularly when speaking to his patients.

139. Regarding the comments that there must be some hallmarks of what constitutes advertising or marketing and that Dr. Kodet's emails had to fit within those hallmarks, Mr. Sim referenced that the Standard of Practice: Advertising and Marketing states that the CNDA supports naturopathic doctors' use of advertising to communicate the type and availability of services to the public or other health care professionals and nothing more. Mr. Sim submitted that it would be a mistake to limit advertising and marketing to some specific format as it would make it impossible for the College to regulate what its members are doing.

140. Mr. Sim submitted that the Standard of Practice: Advertising and Marketing does not require a public statement to be one made to everyone as suggested by Mr. LaFleche. Each email sent by Dr. Kodet discussed his services by mentioning adult and pediatric naturopathic medicine, and books he has written that are for sale. Mr. Sim submitted that the Complaints Director's position was that these statements were advertising and marketing. However, if that is not the finding of the Hearing Tribunal, the Standard of Practice: Communicating about Vaccinations applies the Standard of Practice: Advertising and Marketing. This means that if Dr. Kodet was communicating about vaccinations, then by reference, he was required to uphold the Standard of Practice: Advertising and Marketing.

141. As for comments made about the danger of incorporating the Standard of Practice: Advertising and Marketing by reference, Mr. Sim submitted that this was not an issue because the Standard of Practice: Advertising and Marketing requires a naturopathic doctor to make sure that everything they are saying is factual, accurate, professional, verifiable, understandable, they can't deceive or mislead. This applies whether a naturopathic doctor is going to advertise or communicate about vaccines.

142. Regarding Dr. Kodet's submission that the Standard of Practice: Communicating about Vaccinations only applies if a naturopathic doctor is discussing the efficacy of vaccines, Mr. Sim submitted that this was not the standard. The Standard applies when a naturopathic doctor is communicating about vaccinations, it is not limited to discussions about the efficacy of vaccines. When Dr. Kodet chose to talk about vaccinations, he engaged the Standard and should have to comply with it.

143. With respect to Dr. Kodet's submission that there was no evidence that he was responding to any patient specific concerns or that anyone had come to him with questions about vaccines, Mr. Sim referred the Hearing Tribunal to Dr. Kodet's written responses to the complaint which he submitted provide evidence to the contrary. In the first letter, Dr. Kodet stated "Originally my intent was to forward it to my contacts, but I decided to include some patients." He later stated "One of the patients' concerns has been to what extent would the prospective fast-track vaccination and handling the issue of the man made viruses, compromise their rights," and "I have been attempting to

calm my patients down." Mr. Sim submitted that the email in Exhibit 6 shows that Dr. Kodet was responding to patients asking him about their concerns with COVID-19, including the possibility of fast-tracked vaccinations.

144. Regarding Mr. LaFleche's description of the Standards as a labyrinthian maze, Mr. Sim submitted that Dr. Kodet was charged with so many things because it is the Complaints Director's position that his conduct breached multiple standards.

145. Regarding Dr. Kodet's position that the Complaints Director had not proven Allegation 3, Mr. Sim submitted that Dr. Kodet's written response stated that he decided to include patients in his emails at the last minute. There was no evidence that Dr. Kodet asked Ms. [REDACTED] or any other patients for their consent.

146. Mr. Sim suggested that the Hearing Tribunal should consider Dr. Kodet's conduct from the perspective of the people who received his emails. If the Hearing Tribunal accepted Dr. Kodet's submission that an expert is needed to speak to the contents of the emails sent by Dr. Kodet, then it may also find that the recipients of the emails may have also been confused or misled by the information presented to them.

147. Finally, Mr. Sim submitted there was no evidence of the Complaints Director's personal opinions or that she was seeking to punish Dr. Kodet. Instead, the evidence was that a complaint was received and investigated through the process laid out in the HPA, and there was a decision to refer that matter to a hearing. The Complaints Director did not need to provide evidence of the impact on the patient. The unprofessional conduct was in the statements Dr. Kodet made in the emails he sent. The law does not require proof of harm to make a finding of unprofessional conduct.

### **Reply of Dr. Kodet**

148. Mr. LaFleche reiterated Dr. Kodet's position that this was not a case where the issues were complicated or difficult to find but that the Hearing Tribunal had insufficient evidence to find the allegations before it were proven.

### **Decision of the Hearing Tribunal**

149. The Hearing Tribunal finds Allegations 1 and 2 are proven on a balance of probabilities and that the proven conduct is unprofessional conduct under the HPA.

150. The Hearing Tribunal finds there is insufficient evidence to factually prove Allegation 3 on a balance of probabilities.

Allegation 1: On or about March, 2020 wrote to one or more patients publishing statements about viruses or vaccination that were inaccurate, unprofessional, unverifiable, misleading or misinforming, contrary to the Health Professions Act, RSA



2000, c H-7 at section 102, the CNDA Standard of Practice: Advertising and Marketing at sections 1, 2, the CNDA Standard of Practice: Communicating about Vaccinations at sections 3, 4 or the CNDA Code of Ethics, Responsibilities to the Patient at section 19 and Responsibilities to the Profession at sections 5, 6.

151. The Hearing Tribunal finds Allegation 1 is proven on a balance of probabilities and constitutes unprofessional conduct.

152. The evidence before the Hearing Tribunal indicates the emails sent by Dr. Kodet in Exhibits 3, 6, 8 and 10 were all sent in or around March 2020 and prior to April 28, 2020 when Dr. Kodet provided them to the Complaints Director as part of his written response to the complaint. The Hearing Tribunal considered that the email in Exhibit 3 is dated March 1, 2020, the email in Exhibit 6 references March 21, the email in Exhibit 8 links to a March 19, 2020 blog post and the email in Exhibit 10 contains a copy of an article posted April 12, 2020.

153. The Hearing Tribunal is also satisfied that the four emails [Exhibits 3, 6, 8 and 10] were sent to one or more of Dr. Kodet's patients and that Dr. Kodet was communicating in his capacity as a naturopathic doctor. The Hearing Tribunal relied on the evidence that Ms. [REDACTED] was a patient of Dr. Kodet's for Exhibit 3 and that Dr. Kodet provided Exhibits 6, 8 and 10 to the CNDA in response to a request for copies of emails he sent to patients.

154. The Hearing Tribunal is similarly satisfied that each of the four emails contain statements about viruses or vaccination:

- a. Exhibit 3 attaches a patent extract for coronavirus and suggests that the extract provides evidence of a connection between man made viruses and an effort to establish a mandatory or spontaneous fear driven vaccination. Dr. Kodet suggests that the strategy involved is to manufacture a virus, infect the populous, and employ scare tactics to lead to mandatory vaccination. He suggests that this strategy would be fully or partially funded by governments or third parties and that there was the potential for revenue and public control as a result. Dr. Kodet suggested that these strategies had been employed by the vaccination industry in the past to sell old stocks of otherwise useless vaccines. He purports to have provided this information so that the recipients can question or learn from it. He closes his email with a postscript "Getting out will improve your resilience as well as there are many simple steps you can take to improve your immunity." The email linked to a patent extract [Exhibit 4] and attached an article in Czech which was translated for the Hearing Tribunal's reference in Exhibit 5.
- b. The subject of Exhibit 6 is "Interesting 5 minutes on viruses and vaccination." The email includes a link to a YouTube video [Exhibit 7] and opens with Dr.

Kodet writing "concerning the virus as such – time to calm down." Dr. Kodet then provides some information about the death rate as of March 21 [2020] and suggests that there are relatively very precise statistics with reasonable level of specificity and reliability. He comments on the WHO's decision to change the definition of pandemic and indicates that because of the change, there will be a pandemic every year or any time. He concludes by stating "It is also interesting to look into the background of those who on the WHO and their motives for supporting it. Enjoy the sun – it kills viruses and so does fresh air and a happier mindset."

- c. Exhibit 8 is an email with the subject line "Optimism". Dr. Kodet states he stopped looking at statistics for COVID a long time ago because the statistical criteria for evaluating cases had been altered and the reliability of testing data was questionable. It attaches an article from nomorefakenews.com dated March 19, 2020 and entitled "Italy Coronavirus: New explosive information" (Exhibit 9). The article questions whether people in Italy were dying with the virus, from toxic antiviral drugs or because of it. The article states that "imaging the coronavirus was the CAUSE of death would be a ridiculous fantasy." It also states that death numbers were being used to justify locking down and wreaking havoc on economies worldwide.
- d. Exhibit 10 is an email from Dr. Kodet that includes a copy of a post titled "LOMA LINDA MD: Eight reasons to end the lockdowns now." The post notes the original article was taken down and declared under investigation and then reposted. The post suggests deaths directly caused by COVID-19 had been over reported. It also supported ending lockdowns because of economic collapse and job loss. It stated that the health care system was not overburdened and that mortality was overestimated.

155. The Hearing Tribunal is not satisfied that any of the emails were provided as advertising or marketing materials. While Dr. Kodet used a professional email signature block in Exhibits 6, 8 and 10, this in and of itself is insufficient evidence for the Hearing Tribunal to find that Dr. Kodet was trying to advertise or market his professional services. Therefore, the Hearing Tribunal does not find a breach of section 102 of the HPA or the CNDA Standard of Practice: Advertising and Marketing as that standard pertains to advertising and marketing materials.

156. However, the Hearing Tribunal considered that Dr. Kodet's use of his professional email signature block along with the fact that he was writing to individuals, some of whom were his patients, about viruses and vaccinations, suggests that Dr. Kodet was providing his opinions and intentionally or not, asking the email recipients to rely on his knowledge as a naturopathic doctor. The Hearing Tribunal also considered in this regard, the evidence that Dr. Kodet provided saying that the emails were in part responding to some of the concerns his patients had raised with him about COVID-19.

Thus, while the Hearing Tribunal did not find the emails were advertising or marketing material, it is cognizant that naturopathic doctors are trusted healthcare professionals and must be aware of the public's trust in them. They must also maintain the integrity of the profession when they communicate and provide their opinions and information to the public and to patients.

157. Exhibit 3 contains comments on both coronavirus and vaccinations. The Hearing Tribunal is satisfied that it is possible to ascertain from a plain language reading of the patent extract [Exhibit 4] that the within-mentioned coronavirus is one that has been isolated from humans, not invented by humans. The Hearing Tribunal finds it was not necessary to rely on an expert witness to arrive at this conclusion. Having made this finding, the Hearing Tribunal is satisfied it was inaccurate and misleading for Dr. Kodet to suggest to individuals, some of whom included his patients, that the patent extract provided evidence coronavirus was man made.

158. Exhibit 6 contains a link to a YouTube video that does not support vaccinations, and contains comments from Dr. Kodet about the virus that are not substantiated (i.e. "time to calm down" and that the sun, a happier mindset, and fresh air, will kill viruses.).

159. The Hearing Tribunal does not find that the communications breached the cited sections of the CNDA Code of Ethics as there is insufficient evidence before it that Dr. Kodet had moral or religious reasons to present information against vaccination (section 19) or that the profession had established a general opinion about coronavirus that he should have been providing (section 5). There is also insufficient evidence before the Hearing Tribunal to find that Dr. Kodet sent the email communications to enhance his reputation (section 6).

160. The Hearing Tribunal does however, finds that Dr. Kodet's communications in Exhibits 3 and 6 breach sections 3 and 4 of the CNDA Standard of Practice: Communicating about Vaccinations. While the Hearing Tribunal is aware that the Standard before it has since been updated to confirm that it pertains to all vaccinations, the Hearing Tribunal finds that a reasonable interpretation of the Standard in place at the time of Dr. Kodet's communications was that it applied to all vaccinations and not just vaccinations delivered as part of Alberta Health's routine immunization schedule. In reaching this conclusion, the Hearing Tribunal notes that the definitions of vaccination and vaccine are general and not specific to routine immunizations.

161. By incorrectly suggesting the circulating virus was manmade, that it was purposefully released to drive mandatory vaccination at the outset of a pandemic and when a vaccination did not exist, Dr. Kodet was not accurately communicating about the risk of the infectious disease or the known benefit and risk of specific vaccines (Exhibit 3). Exhibit 6 also contained unsubstantiated information about how to kill the virus and linked to a YouTube video that provided a definitive perspective on

vaccinations based on what the Hearing Tribunal considers to be conspiracy. While the Hearing Tribunal accepts that naturopathic doctors may have varying perspectives on vaccinations, they are obligated to provide credible alternative sources, which sources citing conspiracy are demonstrably not. Dr. Kodet provided misleading and unsubstantiated information on vaccines and the coronavirus pandemic and thus breached the Standard of Practice: Communicating about Vaccination such that his conduct amounted to unprofessional conduct (section 1(1)(pp)(ii) of the HPA).

162. The Hearing Tribunal takes notice that in and around March 2020 the publicly available knowledge about the coronavirus that would be declared responsible for the COVID-19 pandemic was limited. As a result, the Hearing Tribunal finds it was unprofessional for Dr. Kodet to provide and rely on an unsourced document [Exhibit 5] to suggest that the virus was man made and released by a government agency to infect the population for the purpose of bringing about mandatory vaccination. His opinion was one sided and, in respect to whether the virus was man made, not supported by the evidence he provided on its face.

163. Although there is less of a focus on coronavirus specific vaccinations in Exhibits 6, 8, and 10, Dr. Kodet continued to send information about coronavirus and the pandemic situation that was one-sided and thus potentially misleading. While he suggested the information may or may not be correct, he failed to present alternative opinions (e.g. in favour of the lockdowns or Alberta specific information) for his patients and other email recipients to consider when forming their own opinions. By signing off his emails as a naturopath, Dr. Kodet had an obligation to ensure he was communicating in a way that upheld the integrity of the profession. He failed to do so.

164. The Hearing Tribunal finds that by engaging in the proven conduct under this Allegation, Dr. Kodet harmed the integrity of profession and as such, his conduct amounts to unprofessional conduct pursuant to section 1(1)(pp)(xii) of the HPA. While Dr. Kodet's position that the profession should tolerate alternative perspectives by virtue of the fact its members provide alternative medicine, neither the public interest nor the integrity of the profession is well served when its members make statements that are unsubstantiated, unclearly sourced or rooted in conspiracy.

Allegation 2: On or about March, 2020 wrote to one or more patients publishing statements about vaccination without:

- a. Stating that you were not authorized to administer vaccinations;
- b. Stating that naturopathic treatments are not a substitute for vaccinations;
- c. Referring the patients to an appropriate regulated health professional to encourage further discussion about vaccinations,

Contrary to CNDA Standard of Practice: Communicating about Vaccinations at sections 5, 6 or 8;

165. The Hearing Tribunal finds this allegation is proven and that this conduct amounts to unprofessional conduct pursuant to sections 1(1)(pp)(ii) and 1(1)(pp)(xii) of the HPA.

166. For the reasons outlined under Allegation 1 above, the Hearing Tribunal finds Exhibits 3 and 6 included communications where Dr. Kodet wrote to one or more patients publishing statements about vaccinations.

167. As set out in paragraph 162 above, the Hearing Tribunal is satisfied that as it was drafted in March 2020, the Standard of Practice: Communicating about Vaccinations applied to all communications about vaccinations generally, not just routine immunizations.

168. In neither Exhibit 3 nor Exhibit 6 did Dr. Kodet indicate that as a naturopathic doctor he was not authorized to administer vaccinations, state naturopathic treatments were not a substitute for vaccinations, or refer patients to appropriate regulated health professionals for further discussion about vaccinations.

169. While the Hearing Tribunal accepts that there are varying positions on vaccinations within the profession, Dr. Kodet's use of the video and emails amounted to fear tactics and theorized conspiracy to put forward his position was not responsible or professional and harms the integrity of the profession.

170. As a result, the Hearing Tribunal finds this Allegation is proven and constitutes unprofessional conduct under sections 1(1)(pp)(ii) and 1(1)(pp)(xii) of the HPA.

Allegation 3: On or about March, 2020 disclosed patients' personal health information or other information to others without their consent, by listing patients' personal email addresses in a group email message, contrary to the Health Information Act, RSA 2000, c H-5 at sections 34, 35 or 36, or the CNDA's Code of Ethics, Responsibilities to the Patient section 11.

171. The Hearing Tribunal finds Allegation 3 has not been proven on a balance of probabilities.

172. The Hearing Tribunal considered the Complaints Director's submission that names and email addresses are a form of registration information that falls under the definition of health information under the HIA.

173. The Hearing Tribunal also considered that section 11 of the CNDA Code of Ethics requires naturopathic doctors to comply with all applicable privacy and consent laws and protect patients' right to privacy. Section 11 clearly states that naturopathic doctors may only disclose information with consent of the patient or where authorized by law without consent.

174. Based on the written responses to the complaint provided by Dr. Kodet in Exhibit 11, the evidence before the Hearing Tribunal is that Dr. Kodet's emails [Exhibits 3, 6, 8 and 10] were sent to patients. While the March 1, 2020 email [Exhibit 3] lists over 40 recipients, the remaining three emails are sent to a [REDACTED] and presumably bcc'd other recipients. Of the recipients of the March 1, 2020 email, the Hearing Tribunal is only aware of one of the recipients, Ms. [REDACTED], being a patient of Dr. Kodet's. The Hearing Tribunal is not aware of whether [REDACTED] is a patient of Dr. Kodet's.

175. The Hearing Tribunal is aware that the onus of proof is on the Complaints Director and in this case, although Dr. Kodet's evidence was that he decided to send the emails to patients at the last minute, the Hearing Tribunal finds there is insufficient evidence to find on the balance of probabilities that any patient recipients of Dr. Kodet's emails had not consented to Dr. Kodet disclosing their personal information in a group email message.

176. Had the Complaints Director provided evidence that Dr. Kodet did not obtain consent to disclose his patients' personal information, the Hearing Tribunal may have found differently. However, the Hearing Tribunal did not find that a last minute decision to include patients in his email communications provided sufficient basis to infer an absence of consent.

177. As a result, the Hearing Tribunal finds this Allegation is not proven.

## **Conclusion**

178. For the reasons set out above, the Hearing Tribunal finds Allegations 1 and 2 proven on a balance of probabilities and that the proven conduct amounts to unprofessional conduct.

179. The Hearing Tribunal will receive submissions on sanctions and costs of the investigation and hearing in writing. If the parties cannot agree on a schedule to make these submissions, either party may request the Hearing Tribunal impose a schedule. If either or both parties wish to make oral submissions on sanctions and costs, they may request an oral hearing (virtual or in person) from the Hearing Tribunal. Any requests to the Hearing Tribunal should be made through the Hearings Director.

Signed this \_\_\_\_ day of March, 2023 on behalf of the Hearing Tribunal of the College of Naturopathic Doctors of Alberta

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Dr. James Truong, ND, Chair

## Appendix 1: Hearing Tribunal Transcription of Exhibit 6

<https://www.youtube.com/watch?v=SO0kKckzemg>

This is not an accident.

This is nature's natural immune vaccination system.

I'll give you one significant insight into this that comes from us in 1986, when the swine flu epidemic scared everybody.

And the significance was that all of a sudden, the government felt that it was necessary to inject everybody with a vaccine against swine flu, and the problem was nobody tested this vaccine.

And while they were creating all these vaccines, insurance companies started to step away from the government and said "wait a minute, you're going to inject the entire population with vaccines that haven't really fully been tested?"

The insurance companies' brokers said, "we're not going to cover that!"

The government actually had to change the Constitution of the United States because, by definition in the Constitution the government can't be an insurer of the people.

And yet, the insurance companies said they're not going to cover this government mandated vaccine, and the government said "Ok, we'll cover it!" And guess what?

There was no real swine flu epidemic at all, but it cost the government billions of dollars in insurance for a simple reason: the vaccines killed many more people than the so called swine flu that really didn't exist.

And the vaccines created a situation called 'Guillain-Barre' syndrome, which is a destruction of the nervous system as a result of the vaccination, and they started to realize, oh my God, the vaccinations were much more toxic than the so called swine-flu.

Immunology has made a misunderstanding about something very important called 'the tonsils'.

We have all heard of tonsils and many of us had our tonsils taken out.

If you look in a conventional book, a tonsil represents an immune mechanism that will protect us from invasive organisms.

And the tonsils, there's actually three pairs or six tonsils making a ring around your throat.

And the significant of the tonsils is that they are the devices that "apparently are protecting us" and I use that with quotes; from foreign things, such as viruses or bacteria that enter through our mouth, our nose, our eyes or our ears because all of these structures have conduits that connect to the throat.

So, if an invasive organism enters into our body through any of the holes in our head, these organisms must pass through the ring of tonsils.

It is believed and still believed by many that these tonsils represent the first line of defense to protect us against these invasive organisms.

It's time to reconsider this concept completely for this reason. When we say that tonsils are there for our defense, you would think 'well tonsils are there to protect us from anything that gets on the inside 'Tonsils, actually invite antigens into the body.'

And all of a sudden 'what do you mean invite them? I thought they were supposed to protect me?'

Well all the tonsils have a little tiny slivers of connection to the surface so that as we eat something or something goes down our throat, a small sample of what we just swallowed goes down a little crevices and enter into the tonsils.

The function of the tonsils is then to read the nature of these things that we brought into our mouth, and then identify them by creating antibodies that will complement with these foreign things introduced into the body.

By this mechanism the immune system then gets to sample everything that comes in through the apertures in our head and passes through our throat.

Not only does it sample it, but it's the place where we set up a learning system.

This is where we teach the immune system to recognize the things in our environment, and so basically the tonsils are not protective mechanisms in that regard, against an infection.

The tonsils are a place of immunological learning because we invite the antigens in so we can create antibodies against them.

By definition, the tonsils are designated for oral vaccination, meaning anything you put into your mouth, the tonsils will facilitate an immune response against anything that is not part of your normal body.

When you bypass the natural mechanism and insert the antigens under the skin, you fool the system because at all entry points of the body, the system has sentry guards to see what's coming into the body, and create an awareness of it for the system of what's in there.

If you go underneath the skin, you begin to introduce something that there are no sentries for; no guides to say, 'hey what happened in this area? All of a sudden, there are antigens that showed up. How did they get here? Not through any normal way that the body knows,

So the first thing is you trick the immune system, but not in a natural way, you have confused it.

The natural way is orally to bring something into the body. So when it comes to vaccinations, please realize: nature already gave us a vaccination system. What we should have our scientists do in focus on how we can best use that system, rather than trying to avoid it entirely and inject vaccines under our skin



**IN THE MATTER OF THE HEALTH PROFESSIONS ACT, being Chapter H-7  
of the Revised Statues of Alberta, 2000**

**AND IN THE MATTER OF an Investigation into a Complaint about  
Dr. Antonin Kodet**

**DECISION OF THE HEARING TRIBUNAL OF THE COLLEGE OF NATUROPATHIC  
DOCTORS OF ALBERTA**

**Introduction**

1. The Hearing Tribunal issued its Merits Decision on April 27, 2023. In that decision, it determined that two of three allegations in the Notice of Hearing were proven and constituted unprofessional conduct:

Allegation 1: On or about March, 2020 wrote to one or more patients publishing statements about viruses or vaccination that were inaccurate, unprofessional, unverifiable, misleading, or misinforming, contrary to the *Health Professions Act*, RSA 2000 c. H-7 at section 102, the CNDA Standard of Practice: Advertising and Marketing at sections 1, 2, the CNDA Standard of Practice: Communicating about Vaccinations at sections 3, 4, or the CNDA Code of Ethics, Responsibilities to the Patient at section 19 and Responsibilities to the Profession at sections 5, 6.

Allegation 2: On or about March, 2020 wrote to one or more patients publishing statements about vaccination without:

- a. stating that you were not authorized to administer vaccinations;
- b. stating that naturopathic treatments are not a substitute for vaccinations;
- c. referring the patients to an appropriate regulated health professional to encourage further discussions about vaccinations,

contrary to CNDA Standard of Practice: Communicating about Vaccinations in sections 5, 6 or 8.

2. The Hearing Tribunal found Allegation 3 in the Notice of Hearing was not proven.
3. The Hearing Tribunal requested submissions on sanction from the parties. It received:
  - a. Written Submissions of the Complaints Director dated August 4, 2023;
  - b. Response Submissions of Dr. Kodet dated August 24, 2023; and
  - c. Reply Submissions of the Complaints Director dated September 8, 2023.

## Submissions on Behalf of the Complaints Director

### Orders requested by the Complaints Director

4. The Complaints Director requested that the Hearing Tribunal make the following orders under section 82 of the *Health Professions Act* (the "HPA"):

- a. Dr. Kodet shall receive a reprimand with the Hearing Tribunal's decision serving as the reprimand;
- b. Dr. Kodet's permit shall be suspended for three (3) consecutive days;
- c. Dr. Kodet shall complete a professional ethics course to be approved in advance by the Complaints Director in writing, and to be completed within 90 days from service of the Hearing Tribunal's written decision addressing sanctions (the "Sanctions Decision"). This course shall not count towards Dr. Kodet's continuing competence requirements; and
- d. Dr. Kodet shall pay a portion of the investigation and hearing costs in the sum of \$4,000 within 30 days from service of the Sanctions Decision.

5. The Complaints Director submitted that the fundamental purpose of sanctions in discipline proceedings is to ensure that the public are protected from unprofessional conduct. This assurance is provided through orders that ensure the public is not at risk of harm through the continued conduct of the investigated member, the public has confidence in the profession and that an appropriate message is sent to others within the profession that makes clear that the proven conduct is unacceptable.

6. The factors set out in the decision of *Jaswal v Newfoundland Medical Board* were reviewed and applied to the facts of this case to support the Complaints Director's position that the requested orders were appropriate:

- a. *Nature and Gravity of the Proven Allegations*: Dr. Kodet engaged in serious unprofessional conduct given the Hearing Tribunal's findings in respect to Allegations 1 and 2. This is an aggravating factor.

With respect to Allegation 1, the Hearing Tribunal found Dr. Kodet provided misleading and unsubstantiated information on vaccines and the COVID-19 virus to individuals relying on his professional opinion as a naturopathic doctor. His conduct was amplified because at the time it occurred, there was a scarcity of public information about the COVID-19 virus. Naturopathic

doctors must communicate truthfully to preserve the integrity of the profession and protect the public interest.

With respect to Allegation 2, the Hearing Tribunal found Dr. Kodet failed to disclose essential information to his patients, including that he was not authorized to give vaccinations and that they should consult with other health care providers about vaccinations. Dr. Kodet provided a partial viewpoint that did not allow the recipients of the information the opportunity to understand and evaluate the context in which the information was provided.

- b. *Age and Experience of the Regulated Member*: Dr. Kodet was registered for over 20 years at the time of the proven conduct. As a senior member of the profession, he bears a higher professional obligation and should have been alive to issues and applicable standards. This is an aggravating factor.
- c. *Presence or Absence of Prior Complaints*: There is no evidence of any relevant prior complaints or findings of unprofessional conduct against Dr. Kodet.
- d. *Age and Mental Condition or Vulnerability of Offended Client*: Dr. Kodet's patients received misleading communications. However, there is no evidence that age, mental conditions or vulnerability were factors to consider. This is a neutral factor.
- e. *Number of Times the Offence was Proven to Occur*: In this case, Dr. Kodet engaged in the proven conduct over multiple weeks in March and April 2020. As the conduct was not a single event this is an aggravating factor.
- f. *Role of Dr. Kodet in Acknowledging What Occurred*: Dr. Kodet did not acknowledge his conduct was unprofessional and so this cannot be a mitigating factor in this case.
- g. *Whether the Member has Suffered Other Serious or Financial Penalties as a Result of the Allegations Having Been Made*: The Complaints Director is not aware that Dr. Kodet has suffered other serious or financial penalties because of the complaint being made against him. This is a neutral factor.
- h. *Impact on the Complainant*: There is no evidence before the Complaints Director that any patients were adversely impacted by the proven conduct. This is a neutral factor. However, to remain consistent with the need to

protect the public, the sanctions ordered by the Hearing Tribunal should still reflect the risk of serious harm that Dr. Kodet's conduct caused.

- i. *Need to Promote Deterrence* : The sanction orders should deter Dr. Kodet specifically and other members of the profession generally from engaging in similar conduct in the future. The orders sought by the Complaints Director are both remedial and punitive and reflect an appropriate response to the unprofessional conduct at issue.
- j. *Need to Maintain Public Confidence in Integrity of the Profession* : The Hearing Tribunal must consider what message it will send to the public to maintain confidence in the profession. Members of the CNDA must be held to the standards and obligations expected of them. Communications and compliance with clear standards of practice are fundamental aspects of naturopathic medical practice. In this case, the Hearing Tribunal must consider what message it will send to the public to maintain confidence in the profession.
- k. *Degree to Which the Conduct Was Outside the Range of Permitted Conduct* : Dr. Kodet's conduct was a significant departure from what is expected of a naturopathic doctor in Alberta. The Hearing Tribunal determined that Dr. Kodet failed to provide credible sources to support the anti-vaccine rhetoric he was promoting; made incorrect claims; failed to communicate to his audience about their ability to seek advice and information about vaccines from other healthcare professionals; and failed to inform his patients that he was not authorized to give vaccines as a naturopathic doctor.
- l. *Range of Sanctions in Similar Cases* : The Complaints Director referenced the Schneider case so that the Hearing Tribunal could consider how an earlier Hearing Tribunal dealt with one allegation involving statements made by a naturopathic doctor about vaccinations during or around the COVID-19 pandemic. In that case Dr. Schneider promoted anti-vaccine messaging at a public library when he gave a public seminar series. He did not communicate to the audience that naturopathic doctors are not authorized to administer vaccines. He admitted that he breached the CNDA's Standard of Practice: *Communicating about Vaccinations* and that his conduct was unprofessional. After considering and accepting a joint submission on sanction, the Hearing Tribunal ordered a reprimand, a 1-day suspension, an ethics course and costs of \$2,000.  
The Complaints Director submitted that the sanctions imposed on Dr. Kodet should be more severe because Schneider was distinguishable: there was

only one allegation, the member admitted to his conduct and the parties proceeded with a joint submission on sanction.

### Costs

7. The Complaints Director requested that the Hearing Tribunal order Dr. Kodet to pay a portion of the costs in the fixed amount of \$4,000.
8. The Complaints Director cited the Hearing Tribunal's authority to order costs under section 82(1)(j) of the HPA as well as the Alberta Court of Appeal's decision in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336 [*Jinnah*] at paras 127, 135-138 and 145-146.
9. *Jinnah* holds that the intention of costs orders is to indemnify a college fully or partially for costs incurred as a result of the discipline. However, *Jinnah* directs that costs should not be awarded in every discipline case and that costs should be borne by the profession unless one or more of four compelling reasons to order significant costs exists, i.e.:
  - a. the member engaged in serious unprofessional conduct;
  - b. the member has engaged in unprofessional conduct on two or more occasions;
  - c. the member failed to cooperate with the investigation and forced the college to expend more resources than otherwise necessary; or
  - d. the member engaged in hearing misconduct.
10. In *Jinnah*, the Court found that 25% of the costs originally ordered in that case was a significant portion of the total costs.
11. The Complaints Director submitted that \$4000 represents approximately 8% of the overall costs (\$48,082) and is not a significant amount of the total costs. It accounts for the fact that the third allegation was dismissed.
12. However, the Complaints Director submitted that if the Hearing Tribunal considered \$4,000 was a significant amount of costs then it was still warranted based on the compelling reasons to order significant costs in *Jinnah*.
13. Dr. Kodet's conduct was a marked departure from the ordinary standard of care and is an example of serious unprofessional conduct as articulated in *Jinnah*. The Complaints Director noted that the list of examples in *Jinnah* was not closed and that a

marked departure from clearly written standards of practice must be serious unprofessional conduct.

14. Dr. Kodet breached multiple standards of practice regarding communications about vaccines and clearly departed from them by actively perpetuating conspiracy-based information about the COVID-19 virus when information about it was limited. At that time, the public was significantly relying on healthcare professionals' opinions. He engaged in unprofessional conduct on a number of occasions and directed his communications to various individuals.

15. The Complaints Director referred to paragraph 169 of the Hearing Tribunal's Merits Decision in which the Hearing Tribunal found: "Dr. Kodet's use of the video and emails amounted to fear tactics and theorized conspiracy...[that] was not responsible or professional and harms the integrity of the profession."

16. The Complaints Director submitted that the impact of Dr. Kodet's conduct was heightened because it occurred in March and April of 2020 at the onset of the COVID-19 pandemic. The Hearing Tribunal made findings of serious unprofessional conduct that justified the time and expense of proceedings with an investigation and hearing.

17. Finally, the Complaints Director proposed that a costs award of \$4000 would be consistent with the principles established by the courts and is a proper consideration of the factors relevant to costs that are referenced in *Jinnah*.

### **Submissions of Dr. Kodet**

18. Dr. Kodet submitted that the sanction orders sought by the Complaints Director are disproportionate and unnecessary.

### Sanctions

19. Dr. Kodet submitted that he should receive a caution. His submissions also detailed that a costs award would be inappropriate and contrary to legal precedent.

20. Dr. Kodet noted that the case before the Hearing Tribunal concerned several e-mails sent by Dr. Kodet to a specific audience. He submitted that while the Hearing Tribunal found the e-mails contained inaccurate and potentially misleading information, it did not find that Dr. Kodet had intentionally communicated his own opinions in the emails at issue. It also found the communications were not advertising or marketing or that Dr. Kodet had made the impugned statements to enhance his professional stature or reputation.

21. Dr. Kodet submitted that he believed the information he provided in the emails was worth considering and could be questioned or learned from.
22. Dr. Kodet also noted that the Hearing Tribunal found there was no general opinion about COVID-19 in the profession at the time he sent the emails in question, so there was no clarity as to what alternative opinions he should have been providing. The duty to present alternative opinions is also not something expressly articulated in Standards of Practice.
23. Dr. Kodet agreed that *Jaswal* is the leading case on factors to consider for appropriate sanctions. However, he disagreed with how the factors should be applied in this case. He submitted:
  - a. *Nature and Gravity of the Proven Allegations*: this was not serious unprofessional conduct. The information transmitted related to a matter of broad social and political interest that was and remains the subject of extensive public debate. The emails were also sent to a specific and limited audience. There were no patient complaints or evidence of harm. Dr. Kodet did not endorse the sources of the information transmitted. There was some ambiguity in respect to the Standard Dr. Kodet had to follow. There was also no vaccine in place for COVID-19 at the time Dr. Kodet sent the emails so other health care professionals would not have been in a position to counsel any patients. Further to that, there is no evidence that patients were misinformed about a naturopathic doctors ability to provide vaccines.
  - b. *Age and Experience of the Regulated Member*: Dr. Kodet's experience is of no relevance to this complaint because the COVID-19 pandemic was a discrete and unique societal event. This is a neutral factor.
  - c. *Presence or Absence of Prior Complaints*: there is no evidence of any prior findings of unprofessional conduct or complaints against Dr. Kodet. This supports a lesser sanction.
  - d. *Age and Mental Condition or Vulnerability of the Offended Client*: there is no evidence that any patient was vulnerable or even reviewed or acted on the information provided by Dr. Kodet. This supports a lesser sanction.
  - e. *Number of Times the Offence was Proven to Occur*: the communications relate to one subject and took place over a short period of time, prior to the

- change in the Standard and prior to the Hearing Tribunal's decision. This warrants a sanction at the lower end of the spectrum.
- f. *Role of Dr. Kodet in Acknowledging What Occurred:* Dr. Kodet defended himself but was cooperative with the investigation and fully participated in the complaints process.
  - g. *Impact on the Complainant:* there is no evidence of any harm or adverse impact on any patient arising from the conduct at issue. There was also no risk of potential harm as Dr. Kodet was not providing advice with respect to a patient's health or treatment. Dr. Kodet's intention was to promote critical thinking to the audience that received his emails.
  - h. *Need to Promote Deterrence:* A caution would accomplish the need for deterrence. The circumstances surrounding the COVID-19 pandemic have changed dramatically since March 2020. It is part of Dr. Kodet's practice to defer and refer patients to MD's with respect to actual vaccinations. The practice of naturopathic medicine requires that clinicians be allowed to keep an open mind and to freely discuss and consider ideas that may not be mainstream. To impose a serious sanction on a first offence without specific guidance from the CNDA would go beyond general deterrence and risk chilling discourse within the profession.
  - i. *Need to Maintain Public Confidence in the Integrity of the Profession:* A caution along with the Hearing Tribunal's decision will maintain confidence in the integrity of the profession without unduly jeopardizing free and open discourse. Even the complainant identified that his concern was about whether Dr. Kodet "should be warned."
  - j. *Degree to Which the Conduct was Outside the Range of Permitted Conduct:* The Hearing Tribunal did not find that Dr. Kodet's conduct fell well below the required standard. The Hearing Tribunal made a different determination about the reliability of certain sources as compared to Dr. Kodet. There is no evidence to suggest that the sources noted by Dr. Kodet were notoriously false or had previously been rejected by the CNDA. There is also no evidence that the information Dr. Kodet shared in the emails was applied by him in a clinical circumstance.
  - k. *Range of Sanctions in Similar Cases:* Dr. Kodet submitted that *Schneider* was not a comparable case. The communications at issue related to routine immunizations and were not associated with the COVID-19 pandemic. There



would have been a clear and significant risk of potential public harm arising from miscommunications. In *Schneider* the Complaints Director asked for less onerous sanctions for more serious conduct.

In *Gill v Hauschel*, the decision of Ontario's Health Professions Appeal and Review Board ordered a caution after finding a physician made inappropriate or inaccurate public comments surrounding the COVID-19 pandemic. A similar sanction is appropriate for Dr. Kodet given the heightened importance of evidence-based medicine for a physician vs. naturopathic doctor.

### Costs

24. With respect to costs, Dr. Kodet submitted that no costs should be awarded against him. He noted that *Jinnah* changed the law on costs such that *Schneider* was not applicable.

25. By default, costs should be borne by the CNDA. In this case, there are no circumstances that point to an exception being warranted:

- a. Dr. Kodet's conduct does not rise to the threshold level of serious unprofessional conduct;
- b. Dr. Kodet does not have a previous disciplinary record;
- c. Dr. Kodet fully cooperated with the investigation;
- d. There as no hearing misconduct.

26. As a result, costs should not be awarded against Dr. Kodet.

### **Reply Submissions of the Complaints Director**

27. The Complaints Director replied to Dr. Kodet's submissions on sanction and addressed three main issues: the findings of the Hearing Tribunal, the *Jaswal* factors, and the appropriateness of costs.

### Hearing Tribunal Findings

28. In his submissions on sanction, Dr. Kodet claimed that the Merits Decision was not "clear-cut" and that many "allegations" were not proven. His statements are inaccurate. The Hearing Tribunal found most allegations against Dr. Kodet were proven

and amounted to violations of the CNDA's Standards of Practice and harm to the profession's integrity.

29. Dr. Kodet's assertion of ambiguity in the Standards of Practice is baseless, and his actions regarding COVID-19 vaccines are irrelevant.

30. The Complaints Director also noted that Dr. Kodet's submissions with respect to a lack of intent is misleading. The Hearing Tribunal's findings did not require it to make a finding as to whether Dr. Kodet specifically intended to mislead anyone with the information in the emails.

### Jaswal Factors

31. The Complaints Director reiterated that Dr. Kodet's conduct was serious due to the public's vulnerability during the COVID-19 pandemic. The absence of specific harm to patients or clinical advice does not mitigate his actions.

32. Dr. Kodet provided inaccurate and misleading information about the risk of infectious disease while the world was subsumed by the risk of that disease. Comparisons to other situations are not mitigating or relevant.

33. Dr. Kodet's age and experience should have led to better judgment, making his experience an aggravating factor. The fact that COVID-19 was a unique event does not change the requirement for regulated members like Dr. Kodet to follow the Standards of Practice. Further, the repeated nature of his conduct should be considered aggravating.

34. The Complaints Director further submitted that sanctions should serve to deter unprofessional conduct in the future. The proposed orders would not have a chilling effect on the profession as Dr. Kodet suggests. Regulated members are aware of their long-standing obligation to follow the Standards of Practice.

### The Proposed Costs are Appropriate

35. The Complaints Director submitted that Dr. Kodet's proposal to avoid costs is untenable, considering legal precedents.

36. Dr. Kodet misinterpreted the analysis for ordering costs in *Jinnah*. *Jinnah* sets out a general presumption against imposing substantial costs. However, earlier case law in *KC v College of Physical Therapists of Alberta* and *Dr. Ignacio Tan III v Alberta*

*Veterinary Medical Association* is still instructive for determining what amount of costs is appropriate.

37. The Complaints Director believes the proposed orders in the original submissions are appropriate and should be imposed. Dr. Kodet's failure to uphold professional standards during a pandemic harmed the profession's integrity. A caution is insufficient to deter such unprofessional conduct.

### **Decision of the Hearing Tribunal**

38. The Hearing Tribunal's authority to issue sanctions is under section 82 of the HPA.

39. The Hearing Tribunal finds that a caution is an insufficient sanction in this case. A reprimand is warranted.

40. As the Hearing Tribunal set out in its Merits Decision, Dr. Kodet breached multiple Standards of Practice when he sent the emails in question. The Hearing Tribunal found that Dr. Kodet's conduct harmed the integrity of the profession. He used fear tactics and made statements that were unsubstantiated, unclearly sourced or rooted in conspiracy.

41. The Hearing Tribunal finds that a caution against future conduct is insufficient. Dr. Kodet was a senior member of the profession who should have understood the Standards of Practice and his obligations to uphold them. A caution against future similar conduct is insufficient. Dr. Kodet must be reprimanded for the conduct he did engage in.

42. Given the seriousness of its findings, the Hearing Tribunal also finds that a three-day suspension is appropriate in this case.

43. The Hearing Tribunal believes a multi-day suspension is necessary to serve the purposes of specific and general deterrence. Naturopathic doctors must understand that despite the profession's acceptance of alternative perspectives, its regulated members must uphold the Standards of Practice adopted by the profession. Naturopathic doctors must communicate in a way that upholds the integrity of the profession.

44. The Hearing Tribunal also notes that unlike in the *Schneider* case, there was no admission by Dr. Kodet and the proven conduct was repeated over a period of time. A more severe suspension is necessary.

45. Finally, the Hearing Tribunal accepts that Dr. Kodet should be required to attend a professional ethics course acceptable to the Complaints Director.

46. Although the Tribunal did not find a breach of the Code of Ethics, his actions show a lack of understanding of his ethical obligations as a naturopathic doctor. Dr. Kodet issued communications to patients that listed his credentials as a naturopathic doctor. The ethics course, coupled with three days out of practice serving his suspension will provide Dr. Kodet with an opportunity to undertake further education and consider his legislative and regulatory obligations as a naturopathic doctor and provide him time to reflect on how he conducts himself professionally and communicates to patients and the public.

47. The Hearing Tribunal did not base its consideration of sanctions on whether Dr. Kodet intended to engage in the proven conduct or breach the standards. The Hearing Tribunal was not required to make a finding of intent when it considered Allegations 1 and 2; intent aside, Dr. Kodet's conduct was serious unprofessional conduct on its face.

#### Costs

48. The Complaints Director requested that Dr. Kodet be ordered to pay \$4000 of the costs of the investigation and hearing within 30 days of being served with a copy of the Hearing Tribunal's Sanctions Decision.

49. Dr. Kodet submitted that the Hearing Tribunal should not order costs in this case.

50. The statement of costs provided by the Complaints Director indicates the costs associated with the investigation and hearing as of August 4, 2023 were \$48, 082. The Hearing Tribunal is live to the fact that this amount of costs is not reflective of the total costs the CNDA will have incurred by the end of this hearing. Since August 4, 2023, the Hearing Tribunal has reviewed the parties' submissions on sanctions, met to deliberate and make its decision, and has prepared this decision. As a result, total costs may well be over \$50,000.

51. The Complaints Director has requested that the Hearing Tribunal order less than 10% of total costs against Dr. Kodet.

52. The Hearing Tribunal has reviewed the directions on costs provided by the Alberta Court of Appeal in *Jinnah v Alberta Dental Association and College*, 2022 ABCA 336. *Jinnah* makes clear that costs should not be awarded in every case under the HPA and that there is a presumption that the profession should bear the inevitable costs of

self-regulation in most discipline cases unless there is a compelling reason to impose significant costs. In *Jinnah*, the court noted that a significant portion of the costs would be an amount equal to or greater than 25%.

53. The Hearing Tribunal finds that \$4000 is not a significant portion of the costs of this case. That being said, the Hearing Tribunal accepts it must provide principled reasons as to why any award of costs is warranted. It looked to the decisions of *KC v College of Physical Therapists of Alberta* and *Dr. Ignacio Tan III v Alberta Veterinary Medical Association* for assistance.

54. After reviewing those decisions along with *Jinnah*, the Hearing Tribunal considered:

- a. The two proven allegations were serious unprofessional conduct. While not at the most serious end of the spectrum of unprofessional conduct, the Hearing Tribunal is of the view that this hearing was important for sending a message not only to Dr. Kodet but to other members of the profession and to the public. As a result, Dr. Kodet should be responsible for some portion of the costs of this hearing.
- b. The CNDA only called one witness and there is no evidence that either party unduly drew out the hearing.
- c. One allegation was not proven.
- d. Dr. Kodet did not lead evidence to suggest that \$4000 of costs would deliver a crushing financial blow to him.
- e. This was Dr. Kodet's first hearing, which weighs against significant costs.
- f. There is no evidence of hearing misconduct or that Dr. Kodet failed to cooperate with the CNDA during the investigation or hearing process. This weighs against significant costs.

55. The Hearing Tribunal also considered the *Schneider* decision which was cited by both parties. Although *Schneider* was decided after *Jinnah*, the Hearing Tribunal still considered it a useful precedent because it dealt with a smaller costs award. The Hearing Tribunal agrees that Dr. Kodet should pay higher costs than Dr. Schneider because this matter did not proceed by agreement.

56. Considering all of the factors above, the Hearing Tribunal agrees that it is appropriate for Dr. Kodet to pay costs of \$4000 within 30 days from the date he is served with a copy of this decision.

### **Conclusion**

57. For the reasons set out in this decision, the Hearing Tribunal makes the following orders under section 82 of the HPA:

- a. Dr. Kodet shall receive a reprimand, which the Hearing Tribunal's decision shall serve as.
- b. Dr. Kodet's practice permit shall be suspended for three consecutive days.
- c. Dr. Kodet shall complete a professional ethics course to be approved in advance by the Complaints Director in writing, and to be completed within 90 days from service of the Hearing Tribunal's Sanctions Decision. This course shall not count towards Dr. Kodet's continuing competence requirements.
- d. Dr. Kodet shall pay costs of the investigation and hearing to a maximum of \$4000, to be paid within 30 days from the date he is served with a copy of the Hearing Tribunal's Sanctions Decision.

DATED THIS 22 DAY OF FEBRUARY 2024

On behalf of the Hearing Tribunal



Dr. James Truong, ND  
Chair of the Hearing Tribunal