

DISCIPLINE COMMITTEE OF THE COLLEGE OF HOMEOPATHS OF ONTARIO

IN THE MATTER OF a hearing directed
by the Inquiries, Complaints and Reports Committee of
the College of Homeopaths of Ontario
pursuant to Section 26(1) of the Health Professions Procedural Code
being Schedule 2 of the *Regulated Health Professions Act, 1991*,
S.O. 1991, c. 18, as amended.

BETWEEN:

THE COLLEGE OF HOMEOPATHS OF ONTARIO

- and -

SUKHDEV SINGH KOONER

DECISION AND REASONS

A panel of the Discipline Committee of the College of Homeopaths of Ontario (the “**Panel**”) held a hearing on April 26 and 27, 2022. The hearing proceeded by videoconference pursuant to the *Regulated Health Professions Act, 1991* - Health Professions Procedural Code, the *Hearings in Tribunal Proceedings (Temporary Measures) Act, 2020* and the Discipline Committee Rules. Rebecca Durcan represented the College of Homeopaths of Ontario (the “**College**”). Sukhdev Singh Kooner (the “**Registrant**”) was self-represented. Elyse Sunshine acted as independent legal counsel (“**ILC**”) to the Panel.

ALLEGATIONS

The Notice of Hearing, dated September 29, 2021, was filed as Exhibit 1 and set out the following:

The Registrant

1. The Registrant registered with the College on or about May 3, 2016.

Advertising

2. On or about April 21, 2021 a member of the public contacted the College about a sign that advertised the treatment and prevention of COVID-19. The sign also stated that the COVID-19 vaccine “is one of the number one killers.”

3. On or about April 25, 2021, the Registrant confirmed that he was the owner and/or controller of the sign. The Registrant advised he had posted the sign a year earlier.
4. Vaccination is not within the scope of practice of the homeopathic profession.

Acts of Professional Misconduct

5. It is alleged that the above noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the *Health Professions Procedural Code* (the “**Code**”), being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “**RHPA**”), as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 315/12 made under the *Homeopathy Act, 2007* (the “**Act**”):
 - a. Paragraph 1 – Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession;
 - b. Paragraph 9 - Failing to advise a patient or the patient’s authorized representative to consult another member of a health profession within the meaning of the RHPA, where the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skills or judgment to offer or is beyond his or her scope of practice;
 - c. Paragraph 28 - Permitting the advertising of the member or his or her practice in a manner that is false or misleading;
 - d. Paragraph 48 - Engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable or unprofessional; and/or
 - e. Paragraph 49 - Engaging in conduct that would reasonably be regarded by members as conduct unbecoming a member of the profession.

THE REGISTRANT’S PLEA

The Registrant denied all of the allegations of professional misconduct set out in the Notice of Hearing.

THE ISSUES

The Panel had to determine the following issues:

1. Did the College prove the factual allegations on a balance of probabilities (that is, was it more likely than not that the alleged facts occurred)?
2. If any or all of the alleged facts were proven, did the College prove that the Registrant’s conduct constituted the acts of professional misconduct set out in the Notice of Hearing?

DECISION

For the reasons set out below, the Panel makes findings on all of the allegations of professional misconduct set out in the Notice of Hearing.

MOTION RE BIAS

During his evidence, the Registrant brought a motion challenging the composition of the Panel, because there was only one professional member and two public members, and alleging bias on the part of a Panel member, because of an email relating to the election of the President of College Council. The Panel heard oral submissions from both parties and dismissed the motion. The Panel found that the Panel composition was appropriate and in accordance with the requirements of the Code. The email correspondence relating to the election of the President was not indicative of bias. An informed person, viewing the matter realistically and practically – and having thought the matter through – would not conclude that it is more likely than not that the Panel member, whether consciously or unconsciously, would not decide fairly. The email correspondence relating to the election of the President was not relevant to the within hearing and there was no suggestion that it involved any prejudgment by the discipline panel, or related to the relationship of a panel member to a participant in the hearing or any other concerns that may give rise to bias. There was no reasonable apprehension of with respect to the Panel member.

EVIDENCE

The Panel heard oral testimony from Basil Ziv, Registrar of the College, and the Registrant. The following documents were filed as evidence at the hearing:

Exhibit No.	Title
1	Notice of Hearing
2	Public Register printout for the Registrant
3	Email from Grand West Homeopaths to Basil Ziv (“BZ”), April 18, 2021
4	Email chain with TP (a member of the public)
5	Email from BZ to the Registrant, April 21, 2021
6	Letter from Registrant to BZ, April 25, 2021
7	Email from BZ to the Registrant, April 30, 2021
8	Email chain between BZ and AL(a representative of Health Canada), April 28, 2021
9	Email chain between NL (a member of the public) and BZ
10	Notice of investigation, May 10, 2021
11	Notice of investigation with attachments, May 27, 2021
12	Standard 19: Vaccination

13	Advertising - Standard
14	Email from the Registrant to BZ re resignation, September 29, 2021
15	Email to the Registrant re investigation, May 27, 2021
16	Unredacted tweet
17	Package of information
18	Package of additional information
19	Letter from the Registrant to BZ re: election of officer to the College, June 13, 2021
20	Email chain between CHO Council and BZ, June 2, 2021 to September 3, 2021
21	Email chain between BZ and Council, July 22, 2021 to August 13, 2021
22	Vaccination Exemption Letter, issued March of 2022

Summary of the Evidence

Evidence of Basil Ziv

Basil Ziv has been a homeopath for more than 30 years. He is currently the Registrar of the College. He is familiar with the Registrant.

On April 18, 2021, Mr. Ziv received an email from a member of the College (the “**April 18th Email**”). The April 18th Email attached an image of a sign which read as follows:

FOR TREATMENT AND PREVENTION OF

COVID-19

CALL

HOMEOPATHIC MEDICAL CLINIC

519-990-8474

VACCINES FOR COVID-19

ARE ONE OF THE

NUMBER ONE KILLERS

AS PER SCIENTIFIC REPORT

PUBLISHED IN THE JOURNAL OF

ORTHOMOLECULAR

MEDICINE VOL. 20, NO. 1 2005

“DEATH BY MEDICINE”

(the “**Sign**”).

Mr. Ziv was concerned to have received this email because the Sign was contrary to the standards of the College and in particular, the Advertising Standard. The College has particular requirements regarding how members speak to the public. It is necessary for members to adhere

to the requirements of the College. The College expects registrants to communicate with the public in accordance with the rules, regulations and guidelines of the College.

Mr. Ziv testified that vaccination is not within the scope of practice of homeopaths and noted that the standards say homeopaths cannot vaccinate and cannot speak against vaccination.

On April 19, 2021, the College received another email from a member of the public (TP), also attaching a picture of the Sign.

Following receipt of these emails, Mr. Ziv reached out to the owner of the Sign, who he discovered was the Registrant. Using a “right touch” approach to regulation, Mr. Ziv spoke with the Registrant and asked him to remove the Sign. The Registrant confirmed the Sign was his but declined to remove it. Mr. Ziv followed up with an email to the Registrant on April 21, 2022 (**Exhibit 5**). In the email, Mr. Ziv referenced the fact that the Registrant had been elected to the Council of the College. He did this because he felt the conduct was even more concerning because as a member of Council, the Registrant was held to a higher standard to uphold the requirements of the College. He explained that the Sign did not reflect well on the College as a whole, not just him as an individual registrant.

By email dated April 25, 2021 (**Exhibit 6**), the Registrant responded, taking the position that the Sign did not offend any of the College requirements. He signed the cover email as “Dr. Kooner.” However, homeopaths are not authorized to use the doctor title because it is a restricted title. The Registrant was not a member of any Ontario health college authorized to use that title.

On April 30, 2021, Mr. Ziv wrote to the Registrant (**Exhibit 7**) and informed him that because he would not remove the Sign, he would be seeking the approval of the Inquiries, Complaints and Reports Committee (“**ICRC**”) to appoint an investigator.

By email dated April 28, 2021 (**Exhibit 8**), Mr. Ziv was advised that Health Canada had received a complaint concerning the Registrant, who was advertising his services and/or homeopathic remedies claiming to prevent or treat COVID-19. The representative from Health Canada noted that the Sign may not meet the advertising requirements of the College.

By email dated May 2, 2021 (**Exhibit 9**), a further member of the public raised a concern about the Sign.

An investigation was commenced into the Registrant’s conduct on or about May 10, 2021 (**Exhibits 10 and 11**).

During the relevant time period, Standard 19: Vaccination, which had been approved on May 14, 2015, was in force (the “**Vaccine Standard**”). Vaccinations are not within the scope of practice of homeopaths. They cannot advise against vaccination or go against the practice of another profession who are authorized to administer vaccinations. If a patient attends for a vaccine or asks about vaccines, a homeopath is expected to tell the client that this is outside of their scope

of practice and is expected to refer the patient to a professional who is authorized to administer vaccines. Homeopaths are expected to respond to such inquiries in a professional, accurate and balanced manner.

The College expects its members to acknowledge that vaccines are not within their scope of practice and therefore they should not advise against them.

Registrants are expected to be aware of College standards. They are published on the College's website. Mr. Ziv testified that the Registrant was also a member of Council during this time and would therefore certainly be aware of the standards.

Mr. Ziv gave evidence regarding the College's Advertising Standard (**Exhibit 13**). The College needs to ensure that what registrants advertise is accurate, conforms to regulations and is in the public interest.

Mr. Ziv testified that the Sign was an advertisement and therefore was required to comply with the Advertising Standard. It is important not to mislead the public through advertising. The Sign was problematic, in part, because it is not possible to know whether a particular treatment will result in a cure. The Sign also was not verifiable, and advertisements have to be accurate and verifiable. Patients are vulnerable when they see a practitioner. They must be able to provide informed consent to treatment and practitioners need to be careful to provide balanced information to them.

Although Mr. Ziv had asked the Registrant to alert him when he took the Sign down, he does not recall ever receiving any communications from him that he had taken the sign down.

Mr. Ziv also testified regarding the Registrant's notification of his resignation from the College. Although it appears that the Registrant first provided notification in September 2021, there is documentation suggesting that the resignation was only effective in December 2021. This is likely to due to the College's internal processes.

Evidence of Sukhdev Singh Kooner

The Registrant was registered with the College in May 2016 and submitted his resignation in September 2021. During the relevant time period, he was also a member of College Council.

The Registrant is aware of protected titles. While he was a member of the College of Physicians and Surgeons of Ontario ("**CPSO**") prior to 2015, he was no longer a member of the CPSO during the relevant time period. He was aware of his obligation to comply with the RHPA, the Act and College standards.

He testified that notwithstanding that he had removed the Sign on May 3, 2021, the College still went ahead with the investigation. He testified about an order from the city of Windsor to remove the sign because he did not have a permit.

He testified that the College did not ask him before starting the investigation, and that the people who complained should have said something directly to him. He noted that none of the complaints were from patients, but from members of the public, so these were not complaints about care he provided.

The Registrant agreed that he had control of the Sign and that he had put it up in approximately April of 2020. He included the name of his clinic and his personal cell number. He acknowledged that the Sign was visible to the public.

The Registrant asserted that there was nothing wrong with the statements on the Sign. It is within the scope of homeopathy to make these statements. The treatment and prevention of COVID-19 is available in homeopathic medicine. It was based on scientific evidence. This treatment is verifiable and true and therefore the Sign is not false or misleading.

The Registrant explained that the complainants misinterpreted the meaning of the Sign. The Sign does not tell people to get vaccinated or not. The Sign doesn't talk about vaccines and whether one should get them. The Sign is not discussing the pros and cons of vaccines (although, the Registrant maintains that he could do that if he wished). The second statement in the Sign does not refer to vaccinations. It talks about number 1 killers by which he means allopathic medicine and the allopathic system. He stated that all allopathic medicines are "killers," and vaccines are one of them. Homeopathy is the only thing that can save the system.

The Registrant testified that the Sign talked about treating symptoms of COVID-19, but acknowledged that the word "symptoms" was not on the Sign. However, he felt it didn't have to because he was not talking to patients. But in any event, his view was that whether you have COVID-19 or symptoms, it is the same thing because there is no disease without symptoms. The Registrant testified that if you treat the symptoms, the disease disappears so the symptoms and diagnosis are the same.

It was not his intention to force his beliefs on anyone. People were free to read the reference and decide for themselves.

The Registrant disagreed that the Sign constitutes an advertisement because the purpose of it is not to promote his business. He provided treatment during the pandemic for free, without charging consultation fees. He testified that it was not an advertisement, but rather was public information.

The Registrant asserted that there is evidence that what is contained on the Sign is true and referred to Dr. Samuel Hahnemann, founder of homeopathy. He explained how COVID-19 could be treated by homeopathic remedies. The public is free to make informed treatment decisions.

He testified that the Sign does not contain the word cure and does not guarantee or promise anything. He asserted the claims on the Sign can be verified. He is of the view that he is complying with the standards.

The Registrant testified that as long as he has consent and a consent form, he can discuss vaccines. He does not push anything on patients. He discusses vaccines and lets the patients decide. The consent form does not stop patients from seeking medical advice. He allows patients to make an informed choice. He does not believe the regulations governing homeopaths prevent a discussion regarding vaccines, as long as he is not forcing the patient to do anything.

The Registrant maintained that the Sign is in conformity with the standards and the ICRC simply failed to understand the spirit of the Sign.

The Registrant indicated that the Sign contained a scientific reference which the College overlooked. He indicated that the words on the Sign are not his opinion, but the opinion of the authors of the referenced scientific report.

In cross-examination, the Registrant agreed that it was important that registrants keep up to date on College requirements and when they do not, the public is placed at risk. The Registrant further agreed that the College is required to respond when a registrant is not complying with the legislation.

The Registrant did not accept that the Sign induced false hope in those reading it.

The Registrant stated that he did not discourage patients from getting vaccinated, he just put the information in front of his patients so they could make a decision. When his patients ask him about vaccines, he has to tell them the truth about these “number 1 killers.” He just gives them the pros and cons. He denied that this constituted talking about vaccines and was contrary to the Vaccine Standard.

The Registrant acknowledged that he provided a vaccine exemption letter and used the doctor title because he used an old stamp and hasn't changed it (**Exhibit 22**).

REASONS FOR DECISION

Although the Registrant is not currently a member of the College, because the conduct took place when he was a member, we accept that we have jurisdiction to consider the matter and make findings.

The College was required to prove the allegations of professional misconduct on a balance of probabilities with clear, cogent and convincing evidence. In other words, the Panel had to decide

whether, based on the evidence, it was more likely than not that the alleged acts of professional misconduct occurred.

Credibility Assessments

The Panel considered the evidence of the two witnesses which, in many cases, diverged. As such, the Panel was required to conduct credibility assessments. The Panel accepted that credibility assessments have two constituent elements, honesty and reliability, and that the Panel may consider the following factors:

- a) the witness's opportunity to observe events;
- b) the witness's interest in the outcome;
- c) whether the witness's evidence accords with common sense/the probability or improbability of the witness's story;
- d) whether the witness's evidence was consistent with other evidence;
- e) whether the witness's evidence was internally consistent; and
- f) the appearance and demeanour of the witness.

The Panel's credibility assessments are provided below.

Assessment of Basil Ziv's Credibility

Observation and Recollection: Mr. Ziv was directly involved in the discussions and correspondence that he testified about. He had good recollection of the events at issue.

Interest in the outcome: Mr. Ziv had no interest in the outcome of the case, other than the inherent tensions of the discipline process i.e. witnesses have an inherent interest in having their evidence believed.

Appearance and demeanour: The Panel had no concerns with Mr. Ziv's appearance and demeanour. He answered all questions in a forthright, respectful and professional manner.

Common Sense/the probability or improbability of the witness's story: Mr. Ziv's evidence was based on objective factors. There were no problematic components. His evidence comported with common sense.

Consistencies/ Inconsistencies: Mr. Ziv's evidence was consistent with external documents. There were no contradictions in his evidence.

After a consideration of the relevant factors, the Panel found Mr. Ziv to be a credible witness

Assessment of the Registrant's Credibility

Observation and Recollection: The Registrant was directly involved in the discussions and correspondence that he testified about. He generally had good recollection of the events at issue.

Interest in the outcome: Other than the desire not to be convicted of professional misconduct, which is the same for all registrants involved in this process, the registrant did not appear to have an interest in the outcome of the case.

Appearance and demeanour: The Registrant was respectful and appeared forthright in his responses.

Common Sense/the probability or improbability of the witness's story: The Panel had concerns in this area of the credibility assessment. For instance, the Registrant repeatedly said he selected the words for the Sign, and despite the clear language, denied that the Sign implied that vaccines were one of the "number 1 killers." It is not plausible that anyone reading that Sign would not infer that the Registrant intended to represent the words of the Sign... VACCINES FOR COVID-19 ARE ONE OF THE NUMBER ONE KILLERS." The Panel also found it implausible that the Registrant relied on sources to support his views of COVID-19 that were written decades before we even knew about COVID-19. The Panel further found it improbable that the Registrant did not view the Sign as an advertisement, yet included his clinic name and personal telephone number.

Consistencies/Inconsistencies: There were material inconsistencies in the Registrant's evidence. At times, the Registrant acknowledged that homeopaths are not permitted to discuss vaccinations, but then gave evidence that this was permitted. At times, he conceded that the Sign advertised services, but other times said it did not. He testified at times that the Sign was intended to refer to only the treatment of the symptoms of COVID-19 but other times, he stated that he could treat COVID-19 using homeopathic techniques.

The Registrant's evidence was also at times inconsistent with external evidence. For instance, he indicated that his discussion with Mr. Ziv only related to a request to remove the Sign, but denied that it referenced the investigation, notwithstanding his admission that he received correspondence regarding the investigation. Further, notwithstanding that he signed vaccination exemption letters, the Registrant testified that he did not believe that he engaged in any discussions about vaccines. He then further testified that he does not believe the issue of vaccinations is relevant. The Registrant was also inconsistent on a peripheral issue relating to use of the doctor title. He denied holding himself out as a doctor, despite the vaccine exemption letter (**Exhibit 22**).

After a consideration of the relevant factors, the Panel had concerns regarding the Registrant's credibility.

Findings on the Allegations

The Panel found that the College's evidence established, on a balance of probabilities, the factual allegations set out in the Notice of Hearing, which supported findings that the Registrant engaged in the acts of professional misconduct alleged.

The Panel's findings with respect to each act of professional misconduct are outlined below.

Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession (para 1)

Failing to maintain the standard of practice of the profession or a published standard of the College is an act of misconduct.

The Panel accepts that the Sign would be considered to be an advertisement and as such, it needs to comply with the Advertising Standard. The Advertising Standard requires that advertisements be verifiable, that they be professional and that they do not negatively impact on public confidence in the delivery of health care services. The Sign both suggests that the Registrant can prevent and treat COVID-19 and that vaccines are one of the number one killers. None of these claims are verifiable. The Registrant relies on an article from 2005 to suggest that his claims are verifiable – this entirely pre-dates the COVID-19 pandemic and as such, is completely irrelevant to events occurring decades later. The Sign, on its face, is both fearmongering and provides false hope. Therefore the Sign reflects negatively on the profession. By posting the Sign, the Registrant breached the Advertising Standard.

The Vaccine Standard clearly notes that vaccination is not within the homeopathic scope of practice. It states that a registrant shall not advise his patients against vaccination. The Sign clearly is aimed at discouraging patients and members of the public from vaccination..

Registrants are also required to advise patients that the administration of vaccines is an act that is outside the Homeopathic scope of practice and the patient should consult with a health-care professional who has the act within his/her scope of practice. The Registrant maintained that he could discuss the pros and cons of vaccines if he wished. The Registrant also issued vaccine exemption letters. As such, there is clear evidence that the Registrant discussed vaccinations with patients. This is contrary to the Vaccine Standard, which requires him to advise that vaccines are not within his scope of practice and refer patients to professionals who are authorized to administer vaccines. Accordingly, the Panel finds that the Registrant acted contrary to the Vaccine Standard.

A finding of failure to maintain the standard of practice can be made in the absence of expert evidence. While expert evidence is sometimes required to prove what the standard of practice requires in each case, this is not necessary where there is an explicit standard of practice

published on the point, which is the case here. Further, the Registrant's breaches of these standards were so obvious / notorious that expert evidence was not required.

The Panel therefore finds that the College established on a balance of probabilities that the Registrant contravened the standards of practice of the profession.

Failing to advise a patient to consult another member of a health profession, where the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skills or judgment to offer or is beyond his or her scope of practice (para 9)

To establish this act of misconduct, the College needed to establish that it was more likely than not that there was a patient or patients who required a service that was beyond the expertise of the Registrant or out of scope and the Registrant did not advise the patient of this. The Registrant admitted he engaged in discussions regarding vaccines with patients and there was no evidence that the Registrant referred patients to a healthcare professional authorized to administer vaccines. There was also evidence before us that the Registrant wrote vaccine exemption letters. It is clear that vaccination is not within the scope of homeopathy. The Registrant was not a member of any other regulatory college that is authorized to provide vaccinations. Accordingly, the Panel makes a finding under this head of misconduct.

Permitting the advertising of the member or his or her practice in a manner that is false or misleading (para 28)

The Panel has made factual findings that the Sign was an advertisement of the Registrant's practice. The Sign, on its face, states that the Registrant can treat and/or prevent COVID-19. The Sign also states that vaccines are a number one killer. Both of these statements are false and/or misleading. Accordingly, this head of misconduct has been established.

Disgraceful, dishonourable or unprofessional conduct (para 48) and conduct unbecoming (para 49)

The Registrant is also alleged to have engaged in behaviour that members of the profession would reasonably regard as disgraceful, dishonourable or unprofessional. Generally speaking, conduct that demonstrates lack of integrity, dishonesty, abuse of power, or disregard for the welfare and safety of members of the public, is conduct that will not be tolerated by a health profession.

The allegation of "conduct unbecoming" is intended to capture conduct outside the practice of the profession. Not all private misbehaviour is conduct unbecoming a member. However,

behaviour that reflects on one's integrity or competence to the point where public protection is required is conduct unbecoming.

The Registrant intentionally posted the Sign, which is contrary to the Standards and played on the fears of his patients and the general public during an unprecedented global pandemic. Posting the Sign reflected badly on the entire profession. As regulated professionals, homeopaths have an obligation to ensure their communications with the public and patients are within scope, are verifiable and not contrary to standards. The Panel finds that by deliberately posting this misinformation, the Registrant abused his power as a regulated health professional, in whom the public places their trust. Providing false and misleading information regarding vaccines to patients and the public, a topic that he is explicitly not permitted to discuss with patients in any event, demonstrates a disregard for the welfare and safety of such individuals. The Registrant demonstrated no insight into why the Sign was problematic. Even when he was contacted by the College and was requested to remove it, he refused. The Panel was particularly concerned that as a member of the College's Council, the Registrant should have known better and had an enhanced duty to comply with the requirements of the College and to represent the profession.

By posting the Sign and refusing to remove it, the Registrant engaged in behaviour that reflected on his integrity and competence, to the point where public protection is required.

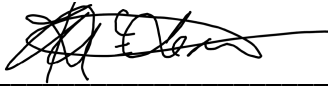
In all of the circumstances, the Panel finds the Registrant's conduct to be disgraceful, dishonourable and unprofessional and also finds it to be conduct unbecoming.

The Panel requests that a penalty hearing be scheduled at the first available opportunity.

Dated in the City of Toronto on October 28, 2022.

DISCIPLINE PANEL

Heather Broadhead, Public Member
Anna Cardozo, Professional Member
Kamika Mclean, Public Member, Chair of Discipline Committee

Signed: 
Kamika Mclean, Chair