

Board of Directors of Drugless Therapy – Naturopathy

Presentation to the
Standing Committee on Social Policy

Bill 171, Schedule P

April 24, 2007

Introduction

The Board of Directors of Drugless Therapy-Naturopathy (hereinafter referred to as the "Board" or the "BDDT-N") is the statutory regulatory body under the *Drugless Practitioners Act* for the 861 naturopathic doctors (NDs) who are currently registered in Ontario. As such, the Board has been keenly interested and involved in the move to regulate the naturopathic profession under the *Regulated Health Professions Act* (RHPA) and in the development of a profession-specific statute for NDs under the RHPA, as is now proposed by Schedule P of Bill 171.

The Health Professions Regulatory Advisory Council (HPRAC) has recommended that naturopathic doctors be regulated under the RHPA three times, most recently in its April, 2006 Report, "New Directions". The current government and the Minister of Health and Long-Term Care deserve considerable credit for moving the regulation agenda for the naturopathic profession forward, so that the public may be better served in its access to a health care profession for which there is increasing public demand.

Naturopathic doctors have been regulated in Ontario since 1923; first under the *Medicine Act* and since 1925 under the *Drugless Practitioners Act*. The BDDT-N came into operation in the 1950s. As such, the naturopathic profession is one of the oldest regulated professions in Ontario.

The *Drugless Practitioners Act* has, however, become seriously outdated. Naturopathic doctors are the only health care professionals still regulated under the Act. Its provisions have grown progressively more inadequate in enabling the Board to regulate the profession efficiently and effectively, particularly in the modern health care environment. It is past time that the *Drugless Practitioners Act* be revoked as Schedule P proposes.

Accordingly, the Board very much supports the spirit and direction of Schedule P, in particular the principal thrust of bringing naturopathic doctors under the regulatory umbrella of the RHPA. Doing so will significantly enhance regulation and will improve public access to important health care services.

Nevertheless, the Board does have some concerns with Schedule P and wishes to recommend some amendments. These amendments are motivated by two considerations. One is to enable naturopathic doctors to continue to practise to their full scope of practice as it currently exists under the *Drugless Practitioners Act*. It is our very clear understanding that the Ministry supports this objective. The second is to remove any unnecessary anomalies among the provisions of the proposed *Naturopathy and Homeopathy Act, 2006*, the RHPA and the profession-specific Acts of the other analogous RHPA professions.

Scope of Practice Statement

The scope statement as proposed in Bill 171 reads:

3. (1) The practice of naturopathy is the assessment of disorders and dysfunctions and treatment using naturopathic techniques to promote, maintain or restore health.

This statement unfortunately omits the words “disease” and “diagnosis” and eliminates the term “integrated use”, all of which are contained in the statement proposed in the April 2006 Health Professions Regulatory Advisory Council (HPRAC) Report. In the case of other professions, the scope of practice statement generally includes the word “diagnosis” when members of the College are authorized to perform that particular controlled act, which is the case for naturopathic doctors. In addition, the term “integrated use” is a distinguishing characteristic of the naturopathic profession. NDs are educated in a broad range of natural therapies and in how to integrate these treatment modalities in a manner that addresses the unique needs of each patient.

The scope statement proposed by HPRAC was:

*“The practice of naturopathic medicine is the promotion of health, the assessment of the physical and mental condition of an individual, and the **diagnosis**, prevention and treatment of **diseases**, disorders and dysfunctions through **the integrated use** of natural therapies and natural medicines that promote the individual’s inherent self-healing mechanisms.”*

The scope statement for each profession regulated under the RHPA provides registrants and the public with a brief description of the practice and statutorily-recognized activities of the profession. The omission of these words and phrases from the scope statement for the naturopathic profession will affect how the profession is viewed or understood by the public, may unnecessarily restrict the profession's activities in the future and will not clearly identify the profession by its distinguishing characteristics.

We recommend the following statement:

The practice of naturopathy is the assessment of an individual and the diagnosis and treatment of diseases, disorders and dysfunctions through the integrated use of naturopathic techniques to promote, maintain or restore health.

Continued Access to Natural Substances

Naturopathic doctors routinely use a number of natural substances in practice and have done so safely and effectively for many years. The Ministry of Health and Long-Term Care has confirmed its wish and intention to allow NDs who are registered by the new College to continue to have access to those substances.

While we appreciate the Ministry's intentions in this regard, we are not convinced that the solution or mechanism designed by the Ministry, as reflected in Schedule P, will be effective in achieving the outcome the profession and the Ministry both want and that patients need. The problem to be addressed relates to the complexities of the intersection between federal and Ontario legislation in the regulation of "drugs".

Over time, some of the natural substances routinely used by naturopathic doctors have been placed on lists under federal legislation, such as **Schedule F** of the *Food and Drugs Act*. By virtue of appearing on those lists, the substances are then available only with a prescription. Under federal law, prescriptions for those substances may be issued only by members of professions that have been granted prescribing authority under provincial legislation. In Ontario, that is the authority to perform the controlled act of "prescribing, dispensing, selling or compounding" in subsection **27 (2) 8.** of the RHPA. Schedule P does not contemplate giving naturopathic doctors access to this controlled act. We understand that the Ministry believes it can use its authority under subsection 117 (1) of the (Ontario) *Drug and Pharmacies Regulation Act* to remove those substances to which NDs should continue to have access and that have been or will be classified as "prescription only" from the drug schedules and to list them on **Schedules A or B** under that Act. This would remove specific substances from the drug category and make them available as over-the-counter substances, not only to naturopathic doctors, but to the general public as well.

Legal advice tendered to the Board indicates that the solution proposed by the Ministry may not work. Even with the natural substances listed on **Schedules A or B** of the *Drug and Pharmacies Regulation Act*, Ontario's pharmacists will be prohibited by federal law from dispensing those substances recommended by a naturopathic doctor. In fairness to the Ministry, it acknowledges that the solution it proposes is not clear-cut and may not survive a challenge from the federal government that has jurisdictional primacy in this field.

We are also concerned that not only naturopathic doctors, but members of the general public, would have access to those substances by virtue of listing them on **Schedules A or B** of the *Drug and Pharmacies Regulation Act*. The Board believes that some of these substances are unsafe for use except under a qualified practitioner's direction and, therefore, should not be available "over-the-counter" to the general public.

The best solution is to grant naturopathic doctors access to the controlled act of "prescribing, dispensing and compounding", subject to a regulation that would list those natural substances, either individually or by category, to which naturopathic doctors have heretofore had access and to which the Ministry wishes them to continue to have access.

The Board commends this proposed amendment to the Standing Committee's consideration.

Diagnosis

Committee members will be aware that "communicating a diagnosis" is a controlled act under the RHPA, currently authorized to seven professions. As recommended by HPRAC and consistent with current practice under the *Drugless Practitioners Act*, the naturopathic profession will be the eighth profession authorized to "communicate a diagnosis".

Nevertheless, the Board has concerns with the wording of the authorized act for the naturopathic profession.

The statement as proposed in Bill 171 to provide authority for the controlled act of communicating a diagnosis is:

4. (1) 5 *Communicating a naturopathic diagnosis identifying as the cause of an individual's illness, a disorder or dysfunction that may be identified through an assessment that uses naturopathic techniques and that includes assessing the individual's lifestyle, environment and nutritional history.*

We have a concern with respect to the use of the word "illness" rather than 'symptoms', because the wording of the controlled act in the RHPA uses the term "symptoms" and, from a clinical perspective, "symptoms" is the appropriate term. It is our understanding from discussions with Ministry officials that there was no specific purpose in using the former, rather than the latter. Since "symptoms" is the word used in the controlled acts provision of the *Regulated Health Professions Act*, that is the word that should be used in the corresponding authorizing provision in order to be consistent with the terminology used with other professions and also to use the more clinically-appropriate term.

The Board is also concerned about the phrase "*and that includes assessing the individual's lifestyle, environmental and nutritional history*". The inclusion of this statement might be interpreted as imposing a requirement that such assessment tools must be used every time the authorized act is used. While this would often be the case, there are situations where acute conditions need to be addressed first before the complete assessment would be performed (e.g., an acute ear infection). We also note that a similar phrase is not used to modify any other professions' authorized act statement and was not used in the most recent RHPA profession-specific Act, namely *Traditional Chinese Medicine Act, 2006* that obtained Royal Assent last fall.

The other area of concern with the proposed wording of this authorized act is that prefacing diagnosis with the word “*naturopathic*” could be interpreted as excluding any diagnosis that might also be, or overlap with, a medical diagnosis. We understand that such an interpretation was not intended by the Ministry. With the exception of the wording under the *Traditional Chinese Medicine Act, 2006*, and where the type of diagnosis is unique to the TCM profession, no such modifier is attached to any of the other professions that have access to the controlled act of "communicating a diagnosis". Accordingly, we respectfully suggest that the term "*naturopathic*" be removed from the statement to avoid the risk of future misinterpretations that could lead to an unnecessary restriction on the practice of naturopathic doctors.

We recommend the following statement:

Communicating a diagnosis within the scope of naturopathy, identifying a disease or disorder as the cause of an individual’s symptoms, through an assessment that uses naturopathic techniques.

Restricted Titles

Section **8. (1)** of Schedule P provides protection for the terms “*naturopath*” and “*drugless therapist*”, but does not provide protection for the titles that naturopathic doctors have used for some time, namely "naturopathic doctor", or "doctor of naturopathy", abbreviations or variations thereof or equivalents in another language. These are the terms that are used and protected in all jurisdictions in North America that regulate naturopathic medicine. These titles enable the public to distinguish naturopathic doctors who are educated in the biomedical sciences and have met entry to practice criteria in those jurisdictions from unregulated practitioners who are not eligible for regulation. The term “*naturopath*” is also used by the World Health Organization to distinguish a lesser-trained and unregulated practitioner from a highly educated naturopathic doctor. Protecting the same titles in Ontario that are used throughout North America and by the WHO will provide the public with some assurances that the practitioners they are seeing are educated and qualified to the highest standards of naturopathic medicine.

We recommend that Section **8. (1)** be amended to state the following:

No person other than a member shall use the titles “doctor of naturopathy”, “naturopathic doctor”, “ND”, “naturopath”, “drugless therapist”, a variation or abbreviation or an equivalent in another language.

We also support the Ministry’s recommendation that naturopathic doctors be authorized to use the prefix "Doctor" but we do have a concern with the requirement that it be followed by the phrase “doctor of naturopathy”. The more commonly used terms

following the name in all jurisdictions in North America are "ND", or "naturopathic doctor".

We recommend that Section **20. (1) (1.2)** be amended to state:

A member referred to in subsection (1.1) shall not use the title “doctor” without using the phrase “naturopathic doctor” or “ND” immediately following his or her name.

Acupuncture

All naturopathic doctors in Ontario are required to demonstrate competency and are examined by the Board in acupuncture, a modality that NDs are currently authorized by law to utilize in providing health care to patients.

Ministry officials have assured the BDDT-N that it is their intent to provide an exemption in the Minister’s regulation to permit NDs to continue to perform acupuncture after Schedule P is proclaimed. The current exemption applies to registrants regulated under the *Drugless Practitioners Act* and must be included again under the proposed *Naturopathy and Homeopathy Act, 2006* if patients are to continue to receive acupuncture treatment from NDs.

Transitional Provisions

Bill 171 does not include provisions for the conversion of the BDDT-N into the new College, as was the case for most of the existing regulatory bodies in 1991 when the RHPA was first enacted. This would require the Board to wind up its operations upon proclamation of Schedule P. As a consequence, it is unclear what will happen to the assets of the BDDT-N (financial and database) once the new College is fully operational.

If the Board becomes the Transitional Council (with additional public and professional members added to provide a full complement) it would provide continuity during the transitional period. The legal continuance of the Board into the Transitional Council would also solve the problem of what to do with existing misconduct cases that is created by the approach currently taken in Schedule P. Under Bill 171 there is no authority to deal with those cases, as the new college will automatically lose jurisdiction over conduct that occurred before the *Naturopathy and Homeopathy Act, 2006* is proclaimed. Meanwhile the *Drugless Practitioners Act* will be repealed and, even if it were still operational, the BDDT-N would have no source of funds from registration fees or otherwise to pay for the investigations and hearings that would result. However, if the Board is continued as the new College, the ongoing entity would have clear and uncontested jurisdiction over all such conduct.

If the Legislature decided to adopt the approach we recommend for a legal continuance of the Board, it would require an amendment to continue the BDDT-N as follows:

"The Board of Directors of Drugless Therapy-Naturopathy appointed under the Drugless Practitioners Act is continued under the name College of Naturopaths and Homeopaths of Ontario in English and Ordre des naturopathes et des homeopaths de l' Ontario in French."

In addition, an amendment to **ss. 3(1)** of the *Drugless Practitioners Act* would be required to permit an increase in the size of the Board beyond five persons upon proclamation of Schedule P, but before the Transition Council is activated. This amendment would likely take the form of a consequential amendment under Bill 171.

Joint College of Naturopaths and Homeopaths

The BDDT-N has been meeting regularly with the Ontario Homeopathic Association and the Ontario College of Homeopathic Medicine and we are committed to working together to establish an effective regulatory college for the two professions. The BDDT-N, having already established entry to practice and registration requirements as well as standards of practice, guidelines and policies for professional practice, is in a position to support the transition of the homeopathic profession to regulation. We will continue to work towards this, but are still of the view that separate colleges for each profession would be a faster and more effective way of regulating the registrants of each. A separate College of Naturopathy would assure the public that regulation of the profession will continue uninterrupted, with assurances of expanded protection under the RHPA. Having the two professions regulated under separate colleges will also make the distinctions between the two professions more evident. Each profession is at a different stage in its development and neither has a history of structural integration in the past (unlike, for example, audiologists and speech language pathologists had before they became one College in 1993). The Board is also concerned that the proclamation of the *Naturopathy and Homeopathy Act, 2006* might be delayed if the necessary regulation development for one group fell significantly behind schedule.

Conclusion

The BDDT-N applauds the current government and the Minister of Health and Long-Term Care for their commitment to providing an effective regulatory structure for the naturopathic profession under the RHPA, thereby ensuring enhanced protection for the public.