

**DISCIPLINE COMMITTEE OF THE  
COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND  
ACUPUNCTURISTS OF ONTARIO**

**IN THE MATTER OF  
the *Regulated Health Professions Act, 1991, S.O. 1991, c.  
18, and the *Traditional Chinese Medicine Act, S.O. 2006,  
c.27****

**PANEL:** Henry Maeots Chairperson, Public Member  
Yuqi Yang Professional Member  
Martial Moreau Public Member

**BETWEEN:**

**THE COLLEGE OF TRADITIONAL  
CHINESE MEDICINE PRACTITIONERS  
AND ACUPUNCTURISTS OF ONTARIO** ( Jaan Lilles and Kelly Hayden  
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**-and-** ( Michelle Chen  
( for George Li  
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**GEORGE LI** ( Andrea Gonsalves  
( Independent Legal Counsel

Dates of Hearing: April 24, 25, 27; May 1, 2,  
4, 5, 19, 30; June 6, 12; July 14, 24, 25;  
August 3, 24, 25; September 5, 8, 11, 12; and  
December 12, 2017

**DECISION AND REASONS FOR DECISION**

This matter came on for hearing beginning on April 24, 2017 and continuing over 22 days to December 12, 2017, before a panel of the Discipline Committee (the “Panel”) at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

## PUBLICATION BAN

At the request of the College, the Panel made an order prohibiting the publication and/or broadcasting of the names of all patients identified in this hearing, as well as any information that could disclose the patients' identities.

## THE ALLEGATIONS

Allegations of professional misconduct against George Li (the "**Member**" or "**Mr. Li**") were referred to the Discipline Committee of the College, in accordance with section 26(1) of the *Health Professions Procedural Code* ("**Code**"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18 ("**RHPA**"). They were set out in the Amended Notice of Hearing dated June 1, 2017, and are as follows:

IT IS ALLEGED THAT you are guilty of professional misconduct under the *Traditional Chinese Medicine Act* (the "**Act**"), S.O. 2006, c. 27 and the Regulations thereto, all as amended.

THE ALLEGATIONS of professional misconduct are that Mr. Li is guilty of:

1. Submitting an account or charge for services that the member knows or ought to know is false or misleading, contrary to Sections 1(19) of *Ontario Regulation 318/12*;
2. Charging a fee that would be regarded by members as excessive in relation to the service provided, contrary to Section 1(20) of *Ontario Regulation 318/12*;
3. Failing to itemize an account for professional products or services while practicing the profession, contrary to Section 1(22) of *Ontario Regulation 318/12*.
4. Breaching, without reasonable cause, an agreement with a patient or a patient's authorized representative relating to professional services for the patient or fees for such services, contrary to Section 1(24) of *Ontario Regulation 318/12*.
5. Failing to keep records in accordance with the standards of the profession, contrary to Section 1(25) of *Ontario Regulation 318/12*.
6. Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement, contrary to Section 1(26) of *Ontario Regulation 318/12*.
7. Falsifying a record relating to the member's practice, contrary to Section 1(27) of *Ontario Regulation 318/12*.

8. 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 the profession as disgraceful, dishonourable or unprofessional, contrary to Section 1(48) of *Ontario Regulation 318/12*.

The particulars of the allegations appended at Schedule “A” to the Amended Notice of Hearing are as follows:

1. At all material times, Mr. George Li has been a member of the College in the grandparent class. Mr. Li’s primary practice address is located at 1049-100 Mornelle Court, Toronto, Ontario, M1E 4X2.
2. In respect of patient N.S., in or around October, 2013 Mr. Li sold a package of 20 acupuncture sessions for \$300. Mr. Li charged N.S. \$300. He performed acupuncture on three occasions on October 26, 28 and November 9, 2013.
3. Mr. Li represented that all of the money would be refunded by Greenshield Canada.
4. Mr. Li opened an account on behalf of N.S. with Greenshield but no refunds were ever processed. Mr. Li submitted an invoice to Greenshield Canada that represented that he had treated N.S. on 20 occasions. This document was false and misleading.
5. *Withdrawn*
6. In respect of numerous patients charts reviewed by the College, there were numerous record keeping deficiencies contrary to the record keeping standards.
7. In respect of numerous patient charts reviewed by the College, Mr. Li falsified records in that he submitted insurance data for treatments that he did not perform.

## **MEMBER’S POSITION**

At the outset of the hearing, the Member entered his plea and denied all allegations of professional misconduct contained in the Amended Notice of Hearing.

## **OVERVIEW**

Mr. Li is a Traditional Chinese Medicine (“TCM”) Practitioner and Acupuncturist. He has engaged in TCM work for over 40 years and he became registered with the College on July 11,

2013. At the time of the events at issue in this case, Mr. Li practised out of his own clinic on Bloor St. W. in Toronto, close to the University of Toronto. Many of his patients at that time were students at the University of Toronto. The allegations relate to events and patients at the Bloor St. clinic, although Mr. Li also maintained another practice site at 1049 – 100 Mornelle Court, Toronto.

In 2014 the College received two complaints regarding the Member. One complaint was submitted by Green Shield Canada (“GSC”), a company that administers group benefits plans, including plans provided to certain groups of students at the University of Toronto. The other complaint was submitted by N.S., who was a graduate student at the University of Toronto at the time. N.S. was a member of a GSC student group benefits plan and a former patient of Mr. Li.

The GSC complaint, dated August 19, 2014, related to alleged improper use of the University of Toronto graduate students benefit plan through suspected improper billings originating from Mr. Li. GSC had requested information from Mr. Li to substantiate the claims of 31 students who had submitted to GSC claims for reimbursement in respect of treatments performed by Mr. Li. GSC had noted that each claim was based on the purported receipt of 20 treatments over a short period of time, and each one was for \$300.00 – the maximum allowed by the plan for TCM treatments in a school year. GSC had concerns that the claims information submitted by Mr. Li for the 31 patients was deficient in that various records were missing, such as consent forms, treatment plans, preliminary assessment records and billing records. GSC therefore placed a hold on all claims submitted by Mr. Li’s student patients and complained to the College that, in their view, Mr. Li had failed to uphold the standard of practice of the College regarding record keeping.

N.S.’s complaint, dated October 9, 2014, alleged that Mr. Li had sold her a package of 20 acupuncture treatment for \$300.00 and had assured her she would receive full reimbursement from GSC shortly after submission of her claim. She alleged that after receiving only five acupuncture treatments, she learned that GSC had placed her claim on hold due to problems with the service provider, Mr. Li. Fearing she would not be reimbursed by GSC she stopped her treatments with Mr. Li and sought a refund for her outstanding treatments. She was unsuccessful in doing so and thereafter complained to the College.

As a result of the two complaints, the College launched an investigation of Mr. Li, in the course of which College investigators developed concerns regarding Mr. Li’s record keeping. Those concerns led to the issuance of a Notice of Hearing (which was amended during the hearing), and a hearing into the allegations of professional misconduct against the Member.

At the hearing, the Panel heard testimony from several witnesses. The College called: Michele Madore, a representative of GSC; N.S., a complainant and former patient of Mr. Li; Allan Mak, Registrar and CEO of the College; Richard Kwan who was qualified as an expert by the Panel to provide evidence on behalf of the College regarding standards of practice of record keeping; and Mr. Graham Ospreay who was qualified as an expert by the Panel to provide evidence on behalf of the College regarding forensic document examination. The Member testified in his own defence and also called as witnesses: Jing (Lilly) Wang, Mr. Li’s former receptionist; and J.X., mother of a young patient of Mr. Li.

As set out above, there are eight allegations of professional misconduct against the Member in the Amended Notice of Hearing. Having considered the evidence, the Panel has concluded that allegations 1, 3, 4, 5, 6, 7 and 8 in the Amended Notice of Hearing have been proven on a balance of probabilities, based on clear, convincing and cogent evidence. The Panel finds that allegation number 2 has not been proven.

## **SUMMARY OF KEY EVIDENCE**

### *i. Testimony of Michele Madore*

Michele Madore, the Supervisor of the Benefits Management & Investigation Services Team of GSC, gave evidence as a representative of GSC, one of the two complainants in the proceeding. She testified that GSC is a not-for-profit organization that administers health care benefits on behalf of plan sponsors – one of which is the University of Toronto. She explained that GSC derives no financial benefit from denying claims as it only receives a fee for a claim that is processed and paid.

Ms. Madore's department began to investigate Mr. Li after GSC had received a tip identifying some common elements between Mr. Li and another service provider who was under investigation. Specifically, Mr. Li and the other service provider under investigation were suspected of improperly billing services to university plan members, who were maxing out the benefits available under their plan in a very short period of time. For the university plan members there was generally an overall maximum of 20 treatments per school year for which reimbursement could be claimed, with a maximum dollar amount of between \$15.00 and \$30.00 per treatment. As a result of the patterns that were identified, GSC suspended the processing of claims submitted by Mr. Li's patients, pending investigation by Ms. Madore's department. In February 2014, in the course of that investigation, GSC asked Mr. Li to provide treatment records for 31 plan members who had submitted claims in respect of treatments provided by Mr. Li. As part of its request, GSC attached the claim forms submitted by the 31 plan members, which contained a signed authorization to release to GSC information GSC deemed necessary to adjudicate the submitted claims.

Ms. Madore testified that GSC only ever received from Mr. Li 7 of the 31 patient files it had requested. As GSC was unable to verify that the claimed services were rendered by Mr. Li, GSC did not pay out the claims. Upon review of the files received, GSC identified a number of record-keeping deficiencies, according to GSC's understanding of the College's standards. As neither GSC nor Ms. Madore purports to be an expert in the College's record keeping requirements, GSC submitted a formal complaint to the College on August 19, 2014, summarizing its request to Mr. Li, his response, supporting documentation, and GSC's findings.

Ms. Madore testified that N.S. was not part of GSC's initial review as N.S.'s claim submission was not received until March 2014, after GSC had asked Mr. Li for the 31 patient files. An internal communications log indicated a claim had been received from N.S. in January, 2014 but GSC was unable to locate it. N.S. was therefore asked to resubmit her claim after she had contacted GSC to inquire about the status of her claim.

*ii. Testimony of N.S.*

N.S. testified that she was a full-time student, studying for a Masters degree at the University of Toronto, at the time she became a patient of Mr. Li in the fall of 2013. She sought treatment for a herniated disc in her spine. She recalled filling in one of Mr. Li's patient consent forms (referred to as "Form G") and signing it but, as she did not recognize the date entered on the form as being in her handwriting, she could not confirm whether she attended Mr. Li's clinic on the date indicated, Saturday September 14, 2013. She stated that she had reason to dispute the date as she recalled having been at her parent's house on that date.

N.S. testified that Mr. Li offered her a package of 20 acupuncture treatments at the price of \$300.00, her maximum coverage under her student insurance plan, and assured her she would be reimbursed by GSC within a short period of time – approximately one week.

N.S. testified with certainty that she had not attended for any treatments with Mr. Li between September 16, 2013 and October 23, 2013. She recalled that the first treatment she received from Mr. Li occurred on October 26, 2013. On that day, in order to enable Mr. Li to set up an account for her through GSC's website, she provided Mr. Li with her student number and created a password. She testified that the first acupuncture session lasted between 15 and 30 minutes, as did all of her subsequent acupuncture sessions. October 26, 2013 was a Saturday, on which N.S. did not have a scheduled class. She testified that she did not recall specifically but that the appointment may have occurred at any time during that day.

N.S. testified that her second treatment occurred on October 28, 2013. As that date was a Monday on which she had courses throughout the day, the acupuncture session would have occurred in the evening. She further testified that she had regularly scheduled classes between 10:00 a.m. and 12:00 p.m. on Mondays and Wednesdays in the fall of 2013, which she routinely attended. A syllabus for one of N.S.'s courses at the University of Toronto from the fall of 2013 was entered into evidence at the hearing, and shows that she had regularly scheduled classes on Mondays and Wednesdays from 10:00 a.m. to 12:00 p.m. that semester. The College also tendered as an exhibit a transcript from the University of Toronto which showed N.S. had achieved a grade of A- for that course.

N.S. testified that her third acupuncture treatment with Mr. Li occurred on October 30, 2013. On that day she also received a massage treatment at Mr. Li's clinic from Jinsong Li, an associate of Mr. Li. The Member recommended to N.S. a package of massage treatments at a price of \$500.00. She indicated that she was interested, provided she was first reimbursed by GSC for the payment she had made for the acupuncture package, as she was on a limited student budget.

N.S. testified that her fourth treatment with the Member was on November 2, 2013 when she again received both acupuncture and massage.

N.S. testified that her fifth and final treatment with the Member was on November 9, 2013. She denied receiving any treatment on November 6, 2013, although there was some documentation in the evidence indicating that a treatment had been scheduled for that date. N.S. discontinued treatment with Mr. Li as of November 9, 2013 because of the time constraints of her studies and

because she had not yet received reimbursement for the claim she had submitted to GSC about two weeks prior.

When N.S. contacted GSC to inquire about the status of her claim, she was advised by GSC that there was a problem with the service provider. She then contacted Mr. Li and requested that he reimburse her. In her testimony N.S. identified e-mails between herself and Mr. Li's office in which she requested a refund of monies she had paid to him that had not been reimbursed by GSC.

N.S. testified that, based on an e-mail she received in April 2014 from Mr. Li's receptionist at the time, Yansong (Sherry) Song, N.S. understood that Mr. Li would refund her payment, provided she showed that GSC was not going to reimburse her.

N.S. testified about another e-mail she received from Sherry on May 8, 2014 in which Sherry asked her to confirm that she would re-pay Mr. Li if he gave her a refund and GSC eventually paid out on her claim. N.S. testified that she agreed and anticipated a refund from Mr. Li. When she did not receive a refund, N.S. again followed-up with Sherry. She testified that she then received another e-mail from Sherry in which Sherry asked her to confirm her treatment details and set out the five appointments N.S. had with Mr. Li. Those appointment dates were consistent with the dates N.S. gave in her evidence, as summarized above. N.S. testified that she confirmed to Sherry that the list of appointments set out by Sherry in her e-mail was correct.

N.S. testified that on June 12, 2014, Sherry again e-mailed her, this time providing a breakdown of services with a total charge of \$275.00, and showing \$25.00 to be refunded to N.S. She testified that this was the first time she had received a cost breakdown in such manner. She testified that she had not agreed to those payments ahead of time. In response, N.S. set out her account of what Mr. Li had told her and the services he had provided. Specifically, she stated that she owed Mr. Li for five acupuncture treatments at \$13.50 each. In an effort to reach resolution, she was prepared to pay for the two massage treatments at the package price she had been offered of \$41.66 per treatment, although she did not have a chance to purchase that package before GSC indicated it would not reimburse claims for Mr. Li's services. On this basis, she offered to allow Mr. Li to retain \$150.83 from the \$300.00, with a balance of \$149.17 to be returned. She then received an e-mail from Mr. Li in which he stated that he would "follow [her] calculation". However, N.S. testified, that she never received a refund from Mr. Li.

### *iii. Testimony of Richard Kwan*

Mr. Kwan was qualified as an expert in the standards of practice for TCM and acupuncture with respect to record keeping.

In his testimony, Mr. Kwan referenced various College publications, which he reviewed in forming his opinion. Those publications included the College's Standards of Practice, Jurisprudence Course Handbook, Safety Program Handbook and Record Keeping Policy. He testified that while the College's Record Keeping Policy sets out in more detail the College's record keeping requirements, it is consistent with the Standard of Practice and Jurisprudence Handbook, and effectively establishes the same requirements.

Mr. Kwan testified that the College's standards require practitioners to keep complete and contemporaneous records, which include an appointment log containing the time and duration of

the appointment, a patient health summary, patient health records and patient billing records. Patient records must also contain consent to treatment documenting that the practitioner has explained clearly to the patient any possible reactions to and risks of the treatment provided. The patient records, he testified, must also contain consent to collect or release information.

Mr. Kwan testified that a patient health record must also include follow-up treatment notes for every visit documenting the patient's progress, reaction to treatment, and any modification to treatment. Such notes must be made immediately after the treatment.

Billing records, he stated, must be kept as part of the patient file and include an invoice with the date of service, fee charged and the practitioner's name.

Mr. Kwan testified that Mr. Li had provided no records in respect of two patients and as such Mr. Li did not meet the standard of practice. With respect to the patient files which were provided by Mr. Li, Mr. Kwan identified deficiencies that caused, in his opinion, the records to fall below the standard of practice. He identified examples of patient files for which: the consent to treatment did not list any possible risks or side effects; there was no consent to treatment; there was no signature on the consent form; there was no consent to collect or release information; and/or the documentation of follow-up treatments did not include a progress inquiry, TCM diagnosis, patient's reaction to treatment, modification to treatment plan and the identity of the practitioner who performed the treatments.

Mr. Kwan also opined that Mr. Li's billing records failed to meet the standard of practice as they did not identify the duration of treatment, did not contain proof of payment for eleven patients and indicated that four patients had issued cheques for payment in advance of services being provided.

It was Mr. Kwan's opinion that Mr. Li fell below the standard of practice due to his failure to maintain records in accordance with the College's Record Keeping Policy and written Standards of Practice. Mr. Kwan testified that in forming his opinion, he had reference to the Record Keeping Policy published by the College in November, 2015 – approximately two years after the records in issue were created. His opinion was based on the assumption that the November 2015 policy was the same as the policy that was available and applicable to the Member in 2013. Mr. Kwan further testified that notwithstanding what Record Keeping Policy was in effect at the relevant time, the College's record keeping guidelines were also set out in the Jurisprudence Handbook and Safety Manual.

#### *iv. Testimony of Allan Mak*

Mr. Mak, the current Registrar and CEO of the College, was the College's Director of Administration and Professional Practice at the time of the events in issue. His role at that time was to oversee the intake and investigation of complaints. In that capacity, Mr. Mak was involved in the investigation of the two complaints at issue in this case.

Mr. Mak testified that Mr. Li became a registered member of the College in July, 2013. In order to do so, Mr. Li was required to, and did, pass the College's Jurisprudence and Safety tests. He testified that the Jurisprudence test was based on the Jurisprudence Handbook which was published by the College in August, 2012 and contains a section on record keeping. Likewise, he testified, the Safety test was based on the Safety Manual which describes record keeping requirements. He

explained that the College approved a Record Keeping Policy which was published on its website in December, 2013. The College republished the policy on its website in November, 2015. Mr. Mak testified that the contents of the policy had not changed in November 2015 – the only difference between the November 2015 version and the December 2013 was the College logo on the front page.

Mr. Mak testified that he, along with two former College employees, met with Mr. Li on December 12, 2014, as part of the investigation of N.S.'s complaint. At that time, according to Mr. Mak, Mr. Li stated that N.S. had received 24 or 25 acupuncture treatments and that N.S. still owed him money for treatments which had not been paid for. Mr. Mak testified that at another meeting with Mr. Li on May 8, 2015, Mr. Li stated that N.S. had received 20 treatments.

Mr. Mak testified that Mr. Li submitted to the College on four occasions patient records that the College requested in the investigation. He stated that when he and two other College employees attended at Mr. Li's home on April 15, 2015 to obtain patient files with respect to the patients identified in GSC's complaint, as well as N.S., they collected 7 original patient files from Mr. Li, which were the only ones available from Mr. Li at that time. Mr. Mak asked Mr. Li to produce the remaining files.

Mr. Mak stated that Mr. Li had provided to the College an additional 4 patient files on April 20, 2015, and on June 2, 2015 the College received an additional 18 patient files. He also testified that Mr. Li delivered to the College, upon its request, 32 original patient files on January 19, 2016 – the 31 files originally requested by GSC and the file of N.S. The College conducted an analysis of these patient files and prepared a summary of their compliance with the College's record keeping requirements, according to the views of the College investigators. Mr. Mak testified that the record keeping standards were set out in the Jurisprudence Handbook and Safety Manual.

Mr. Mak also testified that he advised Mr. Li, when asked by him on May 8, 2015, that GSC had the authority to request patient files from him as a service provider.

*v. Testimony of Graham Ospreay*

Mr. Ospreay was qualified by the Panel to give expert opinion evidence in the area of forensic document examination and handwriting analysis. The College provided to him 30 patient charts, including that of N.S., received from Mr. Li, containing mostly original records. He testified that, in his opinion, the original handwritten treatment record entries pertaining to different treatment days were made in one sitting as opposed to independently on different days corresponding with the purported date of entry. He testified that when entries are made over a period of time and different writing instruments are used, you expect to see differences in ink and line quality. He explained that factors such as the surface used, speed and pen pressure contribute to variation in line quality. He described the methodologies which allowed him to draw his conclusions, including visual microscopic examination, spectral analysis, infrared technology and "Kinder Print" devices.

Mr. Ospreay testified that it was very unlikely that another explanation could account for his findings.

*vi. Testimony of George Li*

Mr. Li testified that N.S. first came to his clinic on September 14, 2013 to inquire about treatment for acute back pain she was suffering as a result of a herniated disk. He stated that he administered the initial treatment that same day and booked subsequent treatment sessions for her on Mondays, Wednesdays and Saturdays, from September 16, 2013 to October 23, 2013, from 10:30 a.m. to 10:45 a.m. He explained that as N.S.'s plan allowed her coverage at \$15.00 per treatment for a total of \$300.00 and that as she did not want to exceed that maximum, he would limit the treatment to 15 minutes at a fee of \$13.50 plus tax per treatment for 20 treatments. He advised her that the short treatments may not be effective but N.S. said she wanted to give it a try. He testified that N.S. told him if she were not happy with the effect she would stop. Mr. Li advised her that his clinic could also provide massage treatment but it is not included in her plan. N.S. did not want massage at that time.

Mr. Li testified that on October 26, 2013, as the accumulated fees were approaching the \$300.00 maximum, N.S. complained that the acupuncture treatments were not as effective as she had expected. Mi Li said that he offered a longer treatment for the remaining sessions, with "hold needle" method, but that he was not going to charge her any extra fees for doing so. He stated that N.S. agreed to his suggestion and also asked for massage for which she promised to pay the \$80.00 fee he had quoted to her. Mr. Li testified that on each of October 26, 28 and 30, 2013, he administered extended acupuncture to N.S. lasting one hour with hold needle. As well, he testified that N.S. received massage from registered massage therapist Jinsong Li on October 28 and 30, 2013.

Mr. Li testified that on or about October 26, 2013 he asked his assistant Sherry to ask N.S. for a cheque in the amount of \$305.10 for the 20 acupuncture treatments that were coming to an end. He received the cheque on October 30, 2013, the date on which he provided the last acupuncture treatment to N.S., and deposited it the same evening.

Mr. Li testified that he also treated N.S. on November 2, 2013 at which time N.S. also received massage at his clinic from Mr. Jinsong Li. On that day, Mr. Li testified, he gave N.S. the original invoice for the previous 20 acupuncture treatments. He advised N.S. that she would need to fill out a claim form for GSC and enclose the invoice, as well as a copy of her cheque, with her submission to GSC.

Another appointment was scheduled for November 6, 2013 but was cancelled by N.S. and a new date, November 9, 2013, was set. Mr. Li testified that he was not sure why that appointment appears on his treatment records. After November 9, 2013, N.S. stopped seeing Mr. Li for treatment. Mr. Li testified that he charged N.S. \$60.00 for each of the one-hour November appointments but N.S. did not pay him for those, saying she would pay him after she received her reimbursement.

Mr. Li testified that N.S. left a completed 4-page GSC "General Claims Submission" form at his office on or after October 30, 2013. The forms listed each of the 20 acupuncture treatments he provided to N.S., with individual dates. Each page was signed and dated by N.S. Mr. Li verified that the forms were properly filled in, signed and dated. Through his assistant Sherry, Mr. Li urged N.S. to provide him with a copy of her cancelled cheque for inclusion in the package he would be

forwarding to GSC on her behalf. N.S. e-mailed a copy of the cancelled cheque to Mr. Li on December 20, 2013 and Mr. Li mailed the claim package to GSC on December 21, 2013. On April 3, 2014 N.S. e-mailed Sherry advising that her claim had been officially and irrevocably rejected. N.S. asked for a refund in that e-mail, alleging that Li's Clinic had assured her that the insurance company would reimburse her and that she had paid Mr. Li before services were provided. N.S. asked for a refund from Mr. Li.

Mr. Li testified that neither he nor Sherry promised a refund to N.S. on April 9, 2014.

Regarding an e-mail Sherry sent to N.S. dated May 8, 2014, Mr. Li testified that he thinks Sherry drafted the e-mail which stated, in part "...Please make a promise that if you receive reimbursement from GSC, you will return the money that you receive from Mr. Li". He stated that N.S. responded by e-mail on May 10, 2014, agreeing to make arrangements to pay him in full if GSC accepted her claim for reimbursement.

Mr. Li stated that he sent an e-mail to Sherry on June 5, 2014 asking Sherry how he could provide a refund to N.S. because N.S. was persistently disturbing Sherry at her new job by contacting her about the refund. He stated that Sherry requested that he issue a refund to stop this conduct. After discussion with Sherry, Mr. Li decided he was going to charge N.S. for only the one-hour treatments, which would result in a partial refund. He proposed to charge her for 3 one-hour treatments, 2 of which had occurred after October 30, 2013. However, once the massage treatments were included in the total charged, N.S. would owe him money. Therefore, Mr. Li testified, he decided to charge N.S. for only 2 one-hour treatments. He stated he made his calculation as follows: the first treatment was charged at the non-package rate of \$60.00 and the second at \$55.00 plus 2 massage treatments at \$80.00 each, for a total of \$275.00, resulting in a refund to N.S. of \$25.00 from the \$300.00 she had originally paid. In a July 8, 2014 e-mail to N.S. he stated that if she disagreed, he was willing to go along with the price that she would accept. However, he added, the massage fees would need to be worked out between N.S. and the RMT, Jinsong Li. He testified that if N.S. accepted his offer of zero payment for the acupuncture treatments but agreed to remain responsible for the \$160.00 massage fee, he was willing to give a refund \$140.00, the difference between N.S.'s \$300.00 payment to him and the massage fees owing. However, N.S. had requested a refund of \$149.17. She had shown her calculations in her e-mail to Mr. Li on June 14, 2014. That email listed 5 acupuncture treatments at \$13.50 each plus 2 massages at the package rate initially offered to her of \$41.66, totalling \$150.83, resulting in a refund of \$149.17. He testified that N.S. indicated in her July 18, 2014 e-mail to him that she would not budge from her \$149.17 refund request. In the same e-mail, he testified, N.S. revealed that she had contacted the police regarding Mr. Li. This caused Mr. Li to stop any further negotiations with N.S.

Mr. Li testified that he did not have two of the thirty-two files requested by the College. He explained that one was for a patient whose name the College had confused with a different person and the other may have been removed from his desk by the patient during his last visit.

Mr. Li explained his refusal to send to GSC the patient records it had requested. He sought but did not obtain clear advice from the College about his obligations. He was concerned that the consent on the GSC claims form was not sufficient to authorize him to forward the files requested. He sent requests to the 31 patients whose files he had been asked to send to GSC to give their written consent for him to do so. However, he received replies from only 7 patients. He forwarded those

7 files to GSC. Of the others, some had left the country and some refused to provide written consent.

Mr. Li testified about two patients from whom he had received payment cheques before their treatments were completed. He explained that in those cases he had completed 17 and 18 of the 20 treatment package at the time he deposited the cheques. In one instance, he explained, the patient had asked him to cash the cheque before completion of the full series of treatments so that her parents would deposit funds for the following month into her account, as her parents had her on a budget and monitored her account. In the other case, he received a cheque after 11 treatments but did not cash it until 17 of the 20 treatments were completed. That patient gave reasons similar to the other patient.

Mr. Li testified that the record keeping policy of November 2015 that Mr. Kwan relied upon in forming his opinion should not apply to these two patients' records as these billing records were created in 2013. Further, he argued, that to ignore the fact that he had completed more than 10 treatments before accepting payment and to focus on the few that had not been provided before he received cheques for payment was "not fair to me".

Regarding a third patient, Mr. Li testified that while he had received the cheque for payment on July 13, 2013, after three or four treatments, he did not cash the cheque until August 19, the date of the 20<sup>th</sup> (final) treatment.

Mr. Li testified regarding the absence of notations of patients' reactions to treatment in his patient records. He explained that if the patient had no comment, he did not make a note of such. Also, in response to his representative's question as to why his records do not identify the name of the practitioner giving each treatment, he stated that he was the only practitioner in his clinic and his name and registration number are printed on his forms, "so why do I need to write down George Li, 1804 every single time again".

***vii. Testimony of Jing (Lily) Wang***

Ms. Wang testified that she was Mr. Li's receptionist from 2010 until December, 2012. When asked to confirm that Mr. Li's patient consent form for acupuncture treatment did not contain a warning of possible bleeding and bruising, she agreed. She testified that patients were advised verbally regarding such risks.

As the allegations of professional misconduct relate to events arising after she stopped working for Mr. Li, Ms. Wang was not able to provide the Panel with further information relevant to the decision it had to make in this case.

***viii. Testimony of J.X.***

J.X. testified that she is the mother of J.S., a student patient of Mr. Li. She testified that she observed Mr. Li write notes during and after treatments. When asked by Mr. Li's representative what Mr. Li wrote she replied "How would I know but every time he was writing something. I did not look at the notes". When asked by the Member's representative for her opinion about Mr. Li's English, J.X. answered that his English was not an issue for simple conversations but that he was not competent to discuss complex issues of insurance reimbursement.

On cross-examination J.X. agreed with College counsel that it would be “impossible” for a student to attend treatment at the same time each day, three times per week for several weeks.

*ix. Jinsong Li*

Mr. Li sought to call Jinsong Li as a witness. Jinsong Li is a Registered Massage Therapist who worked part-time at Mr. Li’s clinic. Both parties agreed that he provided massage therapy to N.S on two occasions.

Prior to Jinsong Li’s testimony, the Panel had issued an order, pursuant to its authority under section 12 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, requiring Jinsong Li to bring his patient chart for N.S. to the hearing. When he arrived at the hearing to give his testimony, Jinsong Li did not have N.S.’s patient file. Jinsong Li refused to recognize the authority of the Panel in this regard and insisted that the College provide written consent from N.S. before he would produce her file. The Panel determined that it was appropriate that Jinsong Li be given the opportunity to obtain legal advice. While the parties were in the process of canvassing an alternate date on which Jinsong Li could testify after obtaining legal advice, and once he had produced his chart for N.S., Mr. Li decided to withdraw the witness.

*x. Sonyang (Sherry) Song*

Mr. Li and his representative represented throughout the hearing that Ms. Song would be called as a witness and hearing days were scheduled so that she could give evidence. However, ultimately, Mr. Li did not call Ms. Song as a witness or seek a summons compelling her to attend at the hearing to give evidence.

## **SUBMISSIONS OF THE PARTIES**

Both parties made detailed written and oral submissions which the Panel reviewed and considered carefully. The Panel also received oral and written advice at the conclusion of the hearing from its independent legal counsel to which both parties had an opportunity to make submissions in response.

The parties were largely in agreement with respect to the general legal principles applicable to this hearing, such as the burden and standard of proof and the relevant factors to consider in assessing credibility.

The College acknowledged that it bore the burden of proof, and that it had to prove the allegations on the balance of probabilities, based on clear, convincing and cogent evidence.

A summary of the parties’ position on each of the allegations follows.

***Allegations 1, 6 and 7: Whether Mr. Li falsified a record relating to his practice; whether Mr. Li submitted an account for services that he knew or ought to have known was false***

*or misleading; and whether Mr. Li signed or issued a document that he knew or ought to have known contained a false or misleading statement*

### **College's Submissions**

College Counsel submitted that creating notes for events that did not happen, or had not happened on the date recorded, constitutes falsification of records as does incorrectly indicating the timing that particular events occurred.

He acknowledged that a finding that someone falsified a record requires proof of an intention to mislead and that such intent will be established where a member's evidence as to a particular state of affairs is rejected and evidence of mistaken belief in that state of affairs is not accepted. He submitted that Mr. Li made no attempt to suggest that his records had been created by accident or through carelessness. Mr. Li offered no evidence of mistaken belief. Rather, College Counsel argued, Mr. Li testified that the treatments occurred as reflected in his records. As such, if the Panel finds Mr. Li's records do not reflect actual treatments, he urged the Panel to find that intent is established and that this allegation of professional misconduct is made out.

College Counsel submitted that Mr. Li and N.S. had agreed in their testimony that no treatment was performed on November 6, 2013 but there was a detailed note of treatment that date in Mr. Li's chart. As Mr. Li was unwilling to answer questions on cross-examination relating to this entry, he urged the Panel to conclude that Mr. Li knowingly created a treatment record for a treatment that did not occur.

College Counsel submitted that Mr. Li was inconsistent in his answers relating to the number of treatments he administered to N.S. His treatment records reflect that he administered 22 acupuncture treatments to N.S. but the account he submitted to GSC itemized 20 acupuncture treatments. There are also two calendars available on N.S.'s patient chart which document in one case 20 acupuncture treatments and in the other case 22 sessions. N.S.'s testimony was that she received only 5 acupuncture treatments from Mr. Li. College Counsel also reminded the Panel that Mr. Li's e-mail to Sherry dated June 5, 2014 was consistent with N.S.'s evidence that she received 5 acupuncture treatments from Mr. Li, commencing on October 26, 2013. He argued that if the Panel accepts N.S.'s version of events, then Mr. Li's records in respect of the 17 treatments purportedly performed from September 14, 2013 to October 23, 2013 were falsified. In such event the invoice that Mr. Li issued and submitted to GSC was also false in that it purported to be an account for services which were not provided.

College Counsel further submitted that, based on Mr. Osprey's evidence, all of Mr. Li's treatment entries in respect of N.S. were made at one sitting rather than at the time of 22 purported treatments. He submitted that Mr. Li's actions were intentional in knowingly creating and submitting treatment and billing records for services he did not perform, thus making out this allegation of professional misconduct vis-a-vis N.S.

College Counsel also submitted that if the Panel finds that the records for Mr. Li's patients other than N.S. were made at one sitting (consistent with Mr. Osprey's opinion), then the Panel must also find that Mr. Li did not make the entries shortly after treatment as he testified. College Counsel submitted that in the face of this inconsistency, and in the absence of an explanation from Mr. Li,

there is sufficient evidence for the Panel to conclude that Mr. Li altered or created his patient records in response to the College's request that he produce the records.

College Counsel submitted that the circumstances of how Mr. Li provided patient charts to GSC and to the College give rise to suspicion. The College had notified Mr. Li of GSC's complaint in December, 2014 and asked him to provide records for the 31 patients on GSC's list. Mr. Li testified that he contacted those patients to seek their consent and received consent from only 7. He only ever provided 7 charts to GSC, even though Mr. Mak had advised him that GSC had the authority to request the information. College Counsel argued that Mr. Li's untimely response to the College's request for patient records also supports a finding that the records ultimately submitted were prepared at one sitting. Even then, two of the patient files were never submitted.

College Counsel submitted that Mr. Li was also unable to respond to the College's request for records in a timely fashion. When visited by College representatives at his house on April 15, 2015, Mr. Li was able to produce only the 7 files he had already provided to GSC, claiming the balance were in storage. Several days later he produced 4 additional charts and another 18 charts 6 weeks later. College Counsel submitted that as Mr. Li had recently contacted each of the 31 patients to seek their signed consent, it stands to reason that if the charts were available, Mr. Li would have produced them at the time of the College's request. Combined with Mr. Ospreay's evidence, and the evidence that Mr. Li had fabricated N.S.'s charts, these circumstances allow the Panel to draw the conclusion that Mr. Li's records were created in response to the College's investigation and were fabricated.

College Counsel submitted that, at the very least, Mr. Li did not make the entries on the dates indicated on the treatment records, and that this constituted falsification of records.

College Counsel asked the Panel to draw a distinction between this case and one in which the practitioner provided an explanation for why the treatment entries were made on a different date than indicated. He acknowledged that re-writing patient records after receiving a request from the College may not constitute fraud where there is no intent to mislead the College, for example where the practitioner admitted to re-writing the record in order to provide a legible copy to the College. In this regard he cited *College of Physicians and Surgeons of Ontario v. ALS*, 2001 ONCPSD 27. He also referred the Panel to *College of Physicians and Surgeons of Ontario v. Zhuk*, 2003 ONCPSD wherein the Discipline Committee of that College accepted the member's evidence in respect of the material facts of the patient visits, although additional details were added to the charts afterwards. In contrast, College Counsel submitted, Mr. Li claimed to have made his patient chart entries contemporaneously with the date indicated on the record. He submitted that if the Panel finds this is not true, then intent has been established as there is no explanation to the contrary. In any event, he submitted, re-writing a page may constitute disgraceful, dishonourable and unprofessional conduct, even absent intent to mislead.

College Counsel asked the Panel to find that Mr. Li issued and submitted accounts for services that were known to Mr. Li to be false and that in the absence of any evidence of mistaken belief, intent has been demonstrated and that the allegation of professional misconduct in respect of the charts of patients other than N.S. has been made out.

### **Member's Submissions**

The Member denied falsifying any patient's record, including N.S.'s. He relies on his own testimony as well as documentary evidence which show that N.S. submitted two claim forms to GSC that listed 20 treatments. These claim forms contain a declaration attested to by N.S. which stated: "By signing this claim form and/or submitting receipts, I agree that the information provided on this form is complete and accurate." The Member challenged N.S.'s credibility and asserted that N.S. had received the treatments listed in her patient record. The Member also questioned the authenticity of the entry for a November 6, 2013 treatment of N.S. as no original of the relevant record was available at the hearing.

The Member's representative submitted that Mr. Li's evidence refutes Mr. Ospreay's opinion. She submitted that Mr. Li testified that he made the entries in the patient records after or shortly after each treatment. She submitted that Mr. Ospreay's opinion is also contradicted by the evidence of witness J.X. who testified that she had observed Mr. Li make notes in her daughter's record during and after treatment. The Member's representative submitted that Mr. Li could not therefore have made the multiple entries in the daughter's record in one sitting. She did submit however that Mr. Li did copy some patients' records after becoming a member of the College in order to conform to the requirements of new forms and to meet professional standards. She added that Mr. Li also retained the previous forms for the patients whose records he had amended.

As to Mr. Li's delay in providing records to GSC and the College, the Member testified that he had done his best to comply with GSC's request for patient records while attempting to respect his patients' privacy as he did not believe GSC had sufficient authority to require him to produce the patient files. His representative submitted that subsequent to the events at issue, GSC had revised the consent statement on their claim form (General Claim Submission Form) which added and clearly expressed consent for the submission of medical records to GSC for the purpose of administering claims. Evidence was presented of a version of the form in 2013 and as revised in 2015. The earlier version stated, in part, "By signing this claim form and/or submitting actual receipts, I agree that the information provided is complete and accurate. I understand that the information provided by me to Green Shield Canada about myself and my dependents, will be used by Green Shield Canada for claims adjudication and any other services necessary in the administration of our benefits which may include the exchange of information with other parties to administer this benefit claim". The form as revised in 2015 contained, in addition to the above, a new paragraph which stated "I further authorize Green Shield Canada to obtain and exchange information with other parties, such as health practitioners or insurers, in order to confirm the accuracy of the submitted claim(s) information. In the event of suspected fraudulent activity pertaining to claims submitted on behalf of myself and/or my dependents, I acknowledge and agree to the disclosure of this information to relevant parties, such as the Plan Sponsor, regulatory and law enforcement agencies".

Mr. Li testified that he made several attempts to seek advice from the College about his obligations without receiving a clear response. He therefore attempted to contact the patients whose files had been requested by GSC but received written consent from only 7 of them.

The Member's representative submitted that the "confirmatory evidence" that the College relies upon to support N.S.'s testimony regarding her class days and hours, namely N.S.'s course syllabus, is inconclusive, as it does not contain the name of the student.

The Member's representative argued further that the June 5, 2014 email from Mr. Li to Sherry should not be seen as an acknowledgement that N.S. received only 5 treatments – rather the email was sent in the course of negotiations between the Member and N.S. and should be viewed in that context.

The Member did not dispute that there were no records in evidence at this hearing for two persons the College had requested. In one instance, Mr. Li testified, the College confused the name on the file requested with another patient at his other clinic and who had a different insurance plan. Mr. Li admitted that he has not been able to find the file for the other patient whose file was requested by the College, and he suspects that the patient may have removed the file from his desk when it was left unattended on his desk, after the patient's final treatment.

***Allegation 2: Whether Mr. Li charged a fee that would be regarded by members as excessive in relation to the service provided***

**College's Submissions**

College Counsel submitted that N.S. testified that she paid \$300.00 for a package of 20 acupuncture treatments which were to cost \$15.00 (\$13.50 plus tax) each. This is also the price reflected in Mr. Li's invoice. She testified that she received 5 of these treatments. College Counsel submitted that as Mr. Li did not refund N.S. any money for the treatments she had not received, N.S. effectively paid \$60.00 per acupuncture treatment. Massage treatment was to be negotiated with and paid separately to the provider. College Counsel submitted that although Mr. Li's evidence was that the cost of a "not holding needle" treatment is \$13.50 plus tax and the cost of a one-hour treatment was \$60.00 for the first time and \$55.00 for subsequent treatments, N.S. neither received nor agreed to pay for one-hour treatments. He submitted that the price of \$60.00 per treatment is excessive in relation to the service provided and constitutes professional misconduct.

**Member's Submissions**

The Member does not dispute that no refund was issued. His representative submitted, however, that the Member had never guaranteed N.S. that GSC would reimburse her. Panel was referred to "Form G Client Record" which N.S. signed and which contains the statement "I am responsible for confirming whether any private health insurance I may have will reimburse the cost". His representative argued that anything Mr. Li and N.S. discussed about a refund was a negotiation, which ultimately fell through, and therefore Mr. Li is not bound by what he offered.

***Allegations 3 and 4: Whether Mr. Li failed to itemize an account for professional services while practising the profession; Whether Mr. Li breached an agreement with a patient relating to fees or professional services for the patient***

**College's Submissions**

College Counsel alleged that Mr. Li breached his assurance to N.S. that she would receive from GSC reimbursement for the \$300.00 she had paid him for 20 acupuncture treatments. College Counsel argued that when she was unable to obtain reimbursement from GSC, N.S. was entitled to a refund from Mr. Li for the treatments not provided. By not providing the refund, he argued, Mr. Li breached his agreement with N.S.

In addition, College Counsel submitted, the email correspondence among N.S., Mr. Li and Sherry demonstrates that Mr. Li failed to itemize an account for professional services and breached an agreement with N.S. Specifically, he argued, N.S. wrote to Sherry on April 9, 2014, instructing her where to send a cheque for her refund, "as per our conversation today". N.S. again wrote a follow-up e-mail on April 29, 2014. In response, the e-mail of May 8, 2014 from Sherry asked N.S. to confirm her agreement with terms they had discussed on the phone, which N.S. did. College Counsel asked the Panel to conclude that, in the absence of a clear explanation to the contrary from Mr. Li, N.S.'s e-mails regarding the status of her refund and in the face of Sherry's failure to testify, an agreement was struck for Mr. Li to provide N.S. with a refund, which was never sent.

College Counsel submitted that N.S. responded to a request from Sherry dated June 13, 2014 to confirm N.S.'s treatment fees in the total amount of \$275.00, including a charge for two acupuncture treatments and two massage treatments by outlining her understanding of the correct charges based on the package rates she had agreed to pay. On N.S.'s calculation, the total owing was \$150.83, with a balance to be returned of \$149.17. Mr. Li, College Counsel submitted, responded on July 8, 2014, stating that the price for acupuncture was \$13.50 plus tax as indicated on N.S.'s invoice, but also that her treatments were over 30 minutes and cost \$60.00 for the first time and \$55.00 for follow-up treatments. College Counsel submitted that this was inconsistent with what was listed on the invoice, with what N.S. had agreed to pay, and with the treatment N.S. actually received. He also submitted that Mr. Li's e-mail failed to identify how many treatments had been rendered and at what price.

College Counsel submitted that in his e-mail of July 8, 2014 Mr. Li had indicated he would follow N.S.'s calculation. In subsequent e-mails, he noted, N.S. expressed clearly her understanding that Mr. Li would be providing her with a refund of \$149.17, as she had calculated. N.S. inquired multiple times in the months thereafter as no refund had come, but Mr. Li made no attempt to contact N.S. to explain why he was not providing a refund.

College Counsel submitted that Mr. Li's failure to agree on a fee with N.S., and his failure to provide N.S. a refund or to offer an itemized accounting for his ultimate fee to N.S., constitute breach of an agreement with a patient, in respect of professional service and that this allegation of professional misconduct has been made out.

### **Member's Submissions**

The Member's representative submitted that neither Mr. Li nor any employee at his clinic gave N.S. a guarantee that she would be reimbursed by GSC. Likewise, she submitted, Mr. Li never promised N.S. a refund if GSC failed to reimburse her.

She submitted that Ms. Jing Wang had testified that Mr. Li expressly instructed his staff not to give any guarantee of insurance reimbursement. Also, she submitted, N.S. had signed a Client Record form which declares on the bottom that she is "aware that Acupuncture fees are not covered by OHIP, and that [she is] responsible for confirming whether any private health insurance [she] may have will reimburse her." The Member's representative submitted that by signing the Client Record form, N.S. assumed full responsibility for her own insurance.

The Member's representative also submitted that it would have been unreasonable for Mr. Li or anyone in his clinic to give insurance payout guarantees after GSC had put on hold many of Mr. Li's patients' insurance claims.

While Mr. Li did assist many of his clients to prepare insurance claims, his representative submitted that such actions do not imply a guarantee of insurance reimbursement.

The Member's representative submitted that Mr. Li never promised N.S. a refund if GSC failed to reimburse her. She submitted that the only evidence tendered by the College to substantiate this allegation was the testimony of N.S., and evidence of negotiations between Mr. Li and N.S. She submitted that as the negotiations eventually fell apart, any offer by either party should be invalidated.

While she described Sherry's offer to "make some arrangement" if GSC did reject N.S.'s claim, such precondition was never met as N.S.'s claim had been suspended and not denied.

#### ***Allegation 5: Whether Mr. Li failed to keep appropriate records in contravention of the standards of practice of the profession***

### **College's Submissions**

College Counsel submitted that the College's Standards of Practice (5) – Record Keeping requires that members have the knowledge, skills and judgement to create and maintain a daily appointment log, patient files, and billing and other records that document the treatment of the patient. Members are required to produce records that are accurate, complete, legible and timely. He submitted that the College's standards with respect to record keeping are recorded in the Jurisprudence Handbook and the Safety Manual, as well as the Record Keeping Policy which was published by the College on December 6, 2013 and again in November, 2015, with identical content, aside from the College's updated logo.

College Counsel referenced the Jurisprudence Handbook, which contains the requirements that a practitioner's patient files must include a treatment plan, progress notes and consent to treatment.

College Counsel also referenced the Record Keeping Policy, which details that members must maintain a daily appointment log and a confidential patient file that contains a patient health

summary, a patient health record and billing records. The health record must contain follow-up treatment notes which include the patient's reaction to treatment and treatment modification plans. Billing records must be kept as part of the patient file and must include an invoice with the date of service, fee charged and the practitioner's name. The patient record must also contain the patient's consent to treatment, documenting that the practitioner has clearly explained any possible reactions and risks, and consent to collect and release information.

College Counsel submitted that the Record Keeping Policy and Safety Manual further provided that entries made to the patient record must be accurate and made at the time of consultation or immediately after. He stated that Mr. Li's patient records failed to meet the College's standards in particular as they lack the proper consent to treatment and documentation of appropriate follow-up treatment.

College Counsel submitted that Mr. Kwan's unchallenged opinion was that Mr. Li's charts fell below the standards of the profession with respect to record keeping, as they lacked the elements contained in the College's guidelines and policies. Mr. Kwan opined that practitioners are required to document the treatment, assessment and progress of the patient immediately after the treatment.

College Counsel submitted that Mr. Li produced no patient records for two patients, thus also failing to meet the standard by not maintaining and safeguarding a patient's record.

College Counsel submitted that Mr. Li testified that he had copied information from one record to another and provided refunds to patients who had paid him in cash so that they could pay by cheque which they could submit with their claim as proof of payment in seeking reimbursement. College Counsel submitted that, by failing to amend his records to reflect the change in method of payment, Mr. Li's actions rendered the record inaccurate.

College Counsel submitted that, in light of Mr. Ospreay's evidence, Mr. Li completed treatment records for each patient at one sitting, rather than contemporaneously with the dates indicated. He submitted that this also falls below the standard.

### **Member's Submissions**

The Member's representative submitted that the opinion of Mr. Kwan is irrelevant to Mr. Li's practice in 2013 and should be given no weight as it is based on the College's Record Keeping Policy published in 2015. She further submitted that the Record Keeping Policy published by the College in December 2013 also is irrelevant as it was unknown to the Member and was published after the records in issue had been established. The Member's representative submitted that the Member had not been notified by the College about the 2013 Record Keeping Policy nor had they trained him with regards to it. She submitted that given that the Record Keeping Policy has no recursive force, it is reasonable to expect a grace period during which all records in question could be completed to meet the policy's requirements. She submitted that Mr. Li has satisfied all record-keeping standards since being registered as a member of the College in July 2013 and that he has met the standards contained in the Jurisprudence and Safety handbooks.

***Allegation 8: Whether Mr. Li's conduct was disgraceful, dishonourable or unprofessional***

**College's Submissions**

College Counsel submitted that even where the same conduct forms the grounds for multiple allegations of professional misconduct, an allegation that a member was in breach of a standard of practice or committed disgraceful, dishonourable or unprofessional conduct is a separate basis upon which a finding of professional misconduct may be made, as it requires a different legal nexus between the misconduct and the allegation. He cited *Carruthers v. College of Nurses of Ontario*, (1996), 31 OR (3d) 377 in support of this proposition. Accordingly, he submitted, even if the facts relied on to support this allegation were the same as those relied on to support the other allegations of misconduct, this allegation could be made out. In this case, however, he argued, there are additional elements of Mr. Li's conduct that, taken with the acts of professional misconduct, justify a finding on this allegation.

Specifically, College Counsel argued, Mr. Li induced N.S. to purchase a package of acupuncture treatments on the promise that she would receive reimbursement. When she did not, he indicated she would receive a refund but refused to provide her with one and largely ignored her repeated requests to be repaid. Treating a patient in this manner, he submitted, is dishonourable and jeopardizes the public confidence in the profession. In addition, Mr. Li's demonstrated disregard for the authority of the College and his professional obligations constitutes disgraceful, dishonourable and unprofessional conduct. He submitted that Mr. Li was consistently difficult in his dealings with the College and repeatedly accused College staff of lying and deliberately concealing documents. He submitted that Mr. Li's disregard for the College's authority placed his patients at risk and reflects a lack of integrity and responsibility in the provision of health care, harming the reputation of both the Member and the College. He submitted that this allegation is also supported by Mr. Li's refusal to provide information to GSC despite the College's assurance that he should do so to enable GSC to verify that services had been rendered and allow his patients to receive reimbursement.

**Member's Submissions**

Although the Member did not make submissions specific to this allegation, the Panel accepts that the Member denies this allegation, as he confirmed at the outset of the hearing his denial of all the allegations.

***Submissions on Assessment of Credibility***

N.S. and Mr. Li gave fundamentally different accounts of the acupuncture treatments Mr. Li provided to N.S., particularly in terms of the number of treatments. Thus, the Panel was required to assess the credibility of the two main non-expert witnesses (Mr. Li and N.S.). Based on his submissions, Mr. Li does not appear to challenge the credibility of Mr. Mak, Ms. Madore and the two expert witnesses, Mr. Kwan and Mr. Ospreay, although Mr. Li disagrees with the conclusions arrived at by the expert witnesses.

College counsel submitted that in assessing witness credibility the Panel is required to consider the general integrity and intelligence of the witness, the witness' powers to observe and the

witness' capacity to remember. In addition, he stated, it is important to determine whether the witness is honestly endeavouring to tell the truth, whether he/she is sincere and frank or whether he/she is biased, reticent and evasive. He submitted that, although demeanour may not be relied on as the only indicator of credibility, demeanour evidence is relevant to a witness' credibility in conjunction with an assessment of all their evidence and in the full context of the hearing. He cited *R v. Schauman*, [2006] OJ no. 3425 (SCJ), where the court held that testimony that has a disingenuous tone, accompanied by embellishment and evasion, may cause the trier of fact to conclude the witness is not credible. He also cited *College of Physicians and Surgeons (Ontario) v Alvarez*, 1993 ONCPSD 24 and argued that a witness' testimony may be found not credible in circumstances where the testimony is inherently implausible and where the witness appeared reluctant to provide relevant information.

The Panel considered these legal principles. The Panel also considered inconsistencies in a witness' evidence, in light of the totality of the evidence, including corroborative and confirmatory evidence. The Panel's credibility findings are set out further below in these Reasons.

### **College's Submissions**

College Counsel submitted that the evidence of N.S. should be preferred over the evidence of Mr. Li. He characterized N.S. as being forthright and having a clear recollection of all important events. In contrast, he submitted, Mr. Li was evasive, reticent and argumentative, and his evidence changed throughout his testimony.

College Counsel submitted that there were no significant internal inconsistencies in N.S.'s evidence. She was forthright about details she could not confirm and clear about those she could. She readily admitted during cross-examination that she submitted an invoice to GSC which listed 20 treatments, rather than 5. She explained that although in hindsight she should have raised a question about the number of treatments listed in the invoice, she had student debt at the time and was more concerned that the invoice accurately set out the fees she had paid to Mr. Li.

College Counsel submitted that confirmatory evidence of N.S.'s testimony is supplied by GSC's confirmation that N.S.'s account was opened on October 26, 2013 and by N.S.'s syllabus. N.S. was unlikely to have attended Mr. Li's clinic for treatment at the times he claimed, as those times conflicted with her course hours.

College Counsel also submitted that the Panel can draw an adverse inference from the failure of the Member to call Sherry to testify and from the withdrawal of Jinsong Li after he refused to produce his records for N.S. The College relied on *BHP Billiton Diamonds Inc and PSAC (Chalifoux), Re*, 2008 CarswellNat 6620. In that decision the labour arbitrator stated:

The general rule on adverse inference is that where a party fails to adduce evidence, either through witnesses or by documents, which it would naturally be expected to bring before the trier-of-fact, an unfavourable inference may be drawn against that party. The unfavourable or "adverse" inference which may be drawn from the omission is that the evidence, if called, would have been injurious to, or at least not supportive of, that party's case.

College Counsel submitted that such an inference is warranted in respect of Mr. Li's decision not to call Sherry as a witness. Sherry was Mr. Li's receptionist and was purported to have relevant evidence with respect to Mr. Li and N.S. Mr. Li testified that key conversations occurred between Sherry and N.S. as his English was limited. Mr. Li also referred to various other testimony that Sherry would provide in support of his version of events, including:

- that she did not promise N.S. a refund and that she authored an e-mail proposing a refund without Mr. Li's authorization;
- that N.S. caused her to lose her job as a result of harassment;
- that N.S.'s understanding of the cost of the treatments she received was incorrect; and
- that Mr. Li asked her to confirm the number of treatments on the invoice with N.S.

College Counsel submitted that Mr. Li failed to provide any legitimate explanation as to the failure to call her to testify. Although Mr. Li's representative advised the Panel that Sherry was not available on the dates set aside in September, 2017, no reason was offered as to why she could not testify on a different date or why Mr. Li did not ask the Panel to issue a summons and compel her to testify.

College Counsel submitted that, in the circumstances, the Panel may draw an inference that Sherry's testimony would have been damaging to Mr. Li. Thus, to the extent that N.S. gave testimony which was contradictory to that of Mr. Li, and Sherry was purported to have evidence supporting Mr. Li's version of events, N.S.'s evidence should be preferred.

College Counsel submitted that an adverse inference can also be drawn as a result of Jinsong Li's failure to produce N.S.'s patient records as ordered. He cited *Hazelton Lanes Inc v 1707590 Ontario Ltd.*, 2014 ONCA 793 in which the Ontario Court of Appeal considered a witness's refusal to produce requested documents, concluding that:

Where the requested documents may have been of some evidence – generally to Faraci's credibility – much more modest directions for production would have sufficed. If such documents were not produced, then it would have been open to the trial judge to draw an adverse inference from their non-production.

College Counsel submitted that as Jinsong Li was the RMT who treated N.S. on two occasions, he was in possession of key evidence regarding the timing and circumstances of N.S.'s appointments at Mr. Li's clinic and his treatment records likely contain information relevant to the issues in dispute. Once called, Jinsong Li refused to provide the Panel with the complainant's patient chart, in breach of the Panel's Order, claiming he was not able to disclose the chart without the patient's written consent. It was only after it became clear that he would not be permitted to testify without N.S.'s chart that the Member withdrew the witness, even though the Panel had indicated a willingness to grant Jinsong Li sufficient time to obtain legal advice regarding his duty to provide the documents ordered. He submitted that, in the circumstances, the Panel may draw the inference that the medical chart evidence would have been damaging to Mr. Li and would not support his version of events in respect of the massage therapy sessions provided by Jinsong Li to N.S.

College Counsel submitted that Mr. Li's evidence was inconsistent, contradictory and at times incomprehensible. He was consistently evasive, responding at length to simple questions without offering a direct answer. Under cross-examination, Mr. Li often responded to College Counsel's questions by himself asking questions of College Counsel as well as of the Panel. In response to a question about why he had made a note of a treatment for N.S. on November 6, 2013, which both parties agreed had been cancelled, Mr. Li refused to answer questions about the document, stating "I disagree that this note is fraudulent. I don't have the original document as a base of evidence". He continued "So, without the original document in support I can't answer anything about this". However, when asked to confirm his handwriting on the document, he responded "It is mine but I'm not sure if anyone had changed it".

College Counsel submitted that Mr. Li was often inconsistent in his testimony. By way of example, during his oral submissions, College Counsel referred the Panel to Mr. Li's testimony that he had received a blank cheque from N.S. in September, 2013, but that N.S. retrieved it and gave him another blank cheque on October 30, 2014, yet in cross-examination he testified that N.S. had never given him a blank cheque, although he had informed her that she could do so. He had told N.S. that she could complete the date and amount information on the cheque when treatments had stopped. Counsel also submitted that the evidence showed several versions of how Mr. Li calculated his fees to N.S.

College Counsel submitted that Mr. Li's behaviour, in blaming the College for the "ransacking" of his records and losing them and alleging that N.S. was a "plant" by GSC to "set him up", also undermines the credibility and reliability of his testimony.

### **Member's Submissions**

The Member's representative submitted that N.S. was not a credible witness. She submitted that on October 30, 2013, N.S. filled in, verified and signed four pages of the GSC claim form, declaring the accuracy of each of the twenty treatments recorded on that form. She submitted that N.S. did so again on March 12, 2014, when she submitted a one-page claim form confirming the accuracy of the 20 treatments listed on the invoice, along with the invoice.

The Member's representative submitted that N.S. adjusted her testimony to fit the documentary evidence. For example, while N.S. initially acknowledged that she had first visited Mr. Li on September 14, 2013, she later denied the accuracy of that date and stated that she did not write that date on the "Form G". Counsel questioned her independent memory of October 26, 2013 as the date her GSC account was setup, alleging it was revealed to her by GSC the evening before she testified to that fact.

The Member's representative questioned the verity of N.S.'s claim that she communicated directly with Mr. Li in English, without the assistance of Sherry, when they discussed the treatment and insurance, as described in N.S.'s complaint letter. She submitted that it would not have been possible for Mr. Li to conduct in English the complex discussions described by N.S. She referred to the report of the College investigator in which he had written that "Mr. Li's English was very limited".

The Member's representative submitted that it was difficult to accept N.S.'s testimony that, after she initially met Mr. Li, whether on September 14, 2013, or later that month, she waited until October 26, 2013 to start treatment, as she had admitted that her back pain was so severe that she had to walk with a cane.

The Member's representative submitted that N.S. was "vengeful enough to twist the truth". She referred the Panel to N.S.'s admission in her testimony that she was angry. The Member's representative submitted that the anger was evidenced by N.S.'s persistent e-mails and phone calls asking for a refund. She submitted that N.S. was so angry at Mr. Li for refusing to give a refund in the amount she requested that she called the police to initiate a criminal investigation.

The Member's representative submitted that N.S.'s course syllabus, which showed classes on Mondays and Wednesdays in conflict with Mr. Li's schedule of appointments for N.S. from 10:00 to 10:30 a.m. on such days, was inconclusive. She also challenged the reliability of "an unofficial and unnamed transcript" claiming that an unnamed person took the course. She submitted that even given the benefit of doubt as to the authenticity of the syllabus and university transcript, it was possible for N.S. to visit Mr. Li's clinic between 10:00 a.m. and 10:30 a.m. for a 15-minute treatment and to then attend her 10:00 a.m. to 12:00 p.m. classes without losing much time. She submitted that it was also possible for N.S. to miss classes on the excuse of medical appointments.

The Member's representative submitted that Mr. Li's credibility was supported by the consistency of his evidence and by character evidence. She submitted that Mr. Li always insisted that he gave N.S. 20 treatments. She submitted that Mr. Li's integrity was supported by the evidence of Jin Wang who had worked for Mr. Li for two years prior.

The Member's representative submitted that Mr. Li's integrity was further evidenced by the initiative he took in reporting to police possible insurance fraud by fellow practitioners.

## **DECISION**

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities, based upon clear, cogent and convincing evidence

Having considered the evidence, and the onus and standard of proof, the Panel finds that the Member has committed professional misconduct alleged in each of allegations 1, 3, 4, 5, 6, 7, and 8 of the Amended Notice of Hearing. The Panel finds that allegation number 2 has not been proven.

## **REASONS FOR DECISION**

### ***Credibility of N.S. and Mr. Li***

The Panel found N.S. to be an intelligent graduate student who had cause to recall the treatments she had received from Mr. Li in 2013 for a painful back condition, whereas Mr. Li, who was maintaining two practice sites at the time, would not have been as likely to recall the details of his interactions with a single patient from four years prior.

It is reasonable to believe N.S.'s testimony that she was unable to attend Mr. Li's clinic at the same times on three days per week for several weeks, as she had scheduled classes that conflicted with the treatment sessions which Mr. Li claimed to have provided. Witness J.X., the mother of a student patient of Mr. Li, also testified that it would be "impossible" for a student to attend a schedule of appointments at the same time and day for several weeks.

The Panel found that N.S. was sincere and frank in her testimony. She readily admitted that she had submitted an invoice to GSC which listed 20 treatments rather than 5, explaining that she was more concerned, as a student on a budget, in recovering the monies she had paid to Mr. Li than the accuracy of the claim form. She was also forthright about details she could not confirm, such as the date in September 2013 that she first consulted Mr. Li.

Confirmatory evidence from Ms. Madore, the course's syllabus and N.S.'s university transcript confirm her recollection of the date on which her GSC account was opened and of her class schedule in the fall of 2013. There is no basis on which to conclude that the syllabus and/or transcript submitted in evidence were misleading or fraudulent or that there was any collusion between GSC and N.S. The Panel concluded it was very unlikely that she would forego classes each week for the number of weeks that Mr. Li claimed he had provided treatment to N.S.

On the other hand, the Panel found Mr. Li to be very evasive and argumentative throughout his testimony. Although he was directed several times by the Panel during cross-examination to respond directly to questions he was asked and reminded that he would have a chance to expand or clarify his answers when his representative conducted her re-examination, he persisted in giving lengthy and unclear responses. He often responded to questions asked of him by asking questions of both College Counsel and the Panel. At times he refused outright to answer questions if he was not provided with original documents rather than photocopies, even though he acknowledged his signature on the photocopies.

Although Mr. Li alleged key conversations took place between N.S. and Sherry rather than between N.S. and himself directly, he did not call Sherry as a witness to confirm his version of events and conversations where his account differed from that of N.S. The Panel offered to accommodate Sherry's availability but ultimately she was not called by Mr. Li. The Panel finds that the failure of the Member to adduce evidence from witnesses whom he claimed have relevant evidence and who had been scheduled to testify, warrants an adverse inference that the evidence, if called, would have been injurious to, or at least not supportive of, the Member's case, as argued by College Counsel, relying on *BHP Billiton Diamonds Inc., supra*. The Panel concludes, on a balance of probabilities, that the testimony of Sherry would likely not have supported Mr. Li's version of conversations and events. Likewise, supported by the decision in *Hazelton Lanes Inc., supra*, wherein the Court ruled that "where the requested documents may be of some evidence" and such documents were not produced, it is open to the trial judge to draw an adverse inference from their non-production, the Panel infers from Mr. Li's withdrawal of Jinsong Li as a witness after the Panel insisted he make N.S.'s records available at the hearing, that such records would not support the version of events and/or communications to which Mr. Li testified.

Mr. Li's allegations of the College losing files, "ransacking" his records and of collusion between N.S. and GSC to "set him up" lack any evidentiary basis, are unreasonable and undermine the credibility and reliability of his evidence.

For all the above reasons, the Panel find the testimony of N.S. more credible and reliable than that of Mr. Li. Where their testimony conflicts, the Panel prefers the evidence of N.S.

***Allegation 1: Whether Mr. Li submitted an account or charge for services that he knew or ought to have known was false or misleading***

Having found the testimony of N.S. to be more credible and reliable than Mr. Li's, the Panel accepts N.S.'s evidence and finds that Mr. Li provided five acupuncture treatments to N.S. rather than the 20 treatments that he listed on the invoice he gave to her. Mr. Li did not offer any evidence of mistaken belief or submit that his records had been created by accident or through carelessness. Instead, he testified that his records correctly reflect the treatments supplied. As such, the Panel finds that Mr. Li intended to mislead, as he knew that his records do not reflect the treatment he actually provided. The Panel finds that by creating an invoice that listed 20 treatments that had not all been provided and providing it to N.S. and GSC, Mr. Li submitted to N.S. and GSC an account or charge for services that he knew or ought to have known was false or misleading.

While the Panel finds, in accordance with the expert opinion of Mr. Ospreay, that Mr. Li created records for his other patients at single sittings rather than on the dates that the treatments were purported to have been performed, the Panel was not presented with evidence to show that the actual number of treatments provided may have contradicted the number of treatments entered into those patients' treatment files. Thus, in relation to Mr. Li's patients other than N.S., the Panel finds the College has not met its burden of proving that Mr. Li submitted accounts or charges for services that he knew were false or misleading.

***Allegation 2: Whether Mr. Li charged a fee that would be regarded by members as excessive in relation to the service provided***

The Panel was unable to clearly determine the fees Mr. Li ultimately charged to N.S. from the many different versions offered. Having found that Mr. Li did not provide the 20 treatments that N.S. paid for, and as he did not give a refund for the services he did not perform, N.S. in effect paid an amount per treatment that exceeds the agreed amount. Accepting N.S.'s testimony that she received only 5 treatments for the \$300.00 fee that she paid, results in an effective fee of \$60.00 per treatment session. While such was not the rate first agreed to between N.S. and Mr. Li, the Panel concludes that the rate of \$60.00 per session, some of which were extended or "hold needle" sessions, and which closely corresponds to Mr. Li's posted fee schedule for non-package sessions, would not likely be seen as excessive by other members of the College. The Panel also notes that the College did not provide any evidentiary basis (such as, for example, fees charged by other practitioners for similar services, or an industry standard price range) to establish that the fee charged by Mr. Li is excessive.

***Allegation 3: Whether Mr. Li failed to itemize an account for professional products or services while practising the profession***

Mr. Li issued an invoice to N.S. listing 20 treatments at \$13.50 each (plus taxes). However, the Panel has found that Mr. Li did not provide 20 treatments to N.S., and therefore that invoice was inaccurate. There was no other evidence that Mr. Li provided N.S. with a clear, itemized account for the professional services he provided to her. To the contrary, his communications to N.S. about

the fees for his services were unclear and confusing. For instance, in his e-mail of July 8, 2014 to N.S., Mr. Li wrote that his invoice price was \$13.50 plus taxes (or \$15.26 total) for acupuncture, but for “holding treatment” sessions lasting more than 30 minutes his rate was \$60.00 for the first time and \$55.00 for follow up treatments. He wrote in that same e-mail that if N.S. did not confirm his treatment, “it is okay and I’m not discussing anymore. I will follow your calculation”. Mr. Li did not provide to N.S. a clear and definitive final accounting of his fee calculations for the treatments he performed for her.

The Panel therefore finds that Mr. Li failed to itemize an account for professional services while practising the profession.

***Allegation 4: Whether Mr. Li breached, without reasonable cause, an agreement with a patient or a patient’s authorized representative relating to professional services or fees for such services***

Both parties agree that N.S. agreed to pay N.S. \$300.00 for 20 acupuncture treatments. N.S. testified that Mr. Li “assured” her that she would be reimbursed by GSC for that amount but Mr. Li denied that he or his office had assured N.S. that she would be reimbursed by him in the event GSC failed to do so. In the absence of testimony to clarify the use of the term “assurance” or “assured” the Panel finds that such term, as commonly used, does not constitute a pledge or guarantee of payment in the event of non-payment by GSC.

However, the Panel finds that on the basis of Sherry’s e-mail to N.S. on May 8, 2014, asking N.S. to confirm her agreement with the terms discussed, and Mr. Li’s e-mail to N.S. on July 8, 2014 wherein he indicated he would follow N.S.’s calculations for a refund, an agreement was reached to settle the dispute over payment. As N.S. did not receive that refund or any other payment as reimbursement, the Panel finds that Mr. Li breached an agreement with his patient relating to fees or professional services for the patient.

***Allegation 5: Whether Mr. Li failed to keep records in accordance with the standards of the profession***

Mr. Kwan’s expert opinion was that Mr. Li’s charts fell below the standards of the profession with respect to record keeping, as they lacked the elements outlined in the College’s guidelines and policies and did not consistently document the treatment, assessment and progress of the patient immediately after the treatment.

While the Member’s position was that he should not be held to standards that were not in effect and available to him in 2013, the Panel accepts Mr. Mak’s evidence that the version of the Record Keeping Policy as published on the College website in November 2015, and to which Mr. Kwan referred in forming his opinion, was identical to the 2013 version except for the College logo. In addition, the Panel heard and viewed evidence that the record keeping standards of the College are also specified in the Safety Manual and in the Jurisprudence Handbook, both courses that Mr. Li took and passed by written exams, at least one of which he wrote in English, prior to the events in issue. Consequently, the College’s record-keeping standards at the relevant time were clear.

In addition the Panel accepts the expert opinion of Mr. Osprey that Mr. Li’s treatment records for each patient were completed in one sitting rather than contemporaneously with the dates indicated,

contrary to the standard. The Panel considered the evidence of J.X. who testified that she had observed Mr. Li make an entry into her daughter's file after a treatment. The Member's representative submitted that this invalidates Mr. Ospreay's opinion that J.X.'s daughter's records were written at one sitting. The Panel, however, did not give weight to this argument in its deliberations as J.X. did not identify the file or the nature of the entry.

Also, Mr. Li admitted that he had copied information from one record to another but failed to record that he did so. Again, this falls short of the College's record keeping standards.

In support of this allegation the College also argued that Mr. Li failed to produce records for two patients. However, the Panel notes that the College had confused one patient's name with another in seeking one of the records from Mr. Li and the Panel accepts that the other record may, in the circumstances, reasonably have been removed by the patient, after his final treatment by Mr. Li, when the record had remained unattended by Mr. Li but in the presence of the patient. The Panel therefore fails to give any weight to this argument advanced by the College to support its allegation.

In his review of Mr. Li's records, the College's expert Mr. Kwan identified several instances in which the records were missing information required to meet the College's record keeping standards as recorded in the Record Keeping Policy, the Jurisprudence Course Handbook and the Safety Program Manual.

The deficiencies in patient files identified in Mr. Kwan's report included the following:

- no consent form in the files of 10 patients;
- no patient signatures on the consent to treatment documents in the files of 3 patients;
- no consent to collect or release information in the files of 21 patients;
- copies of proof of payment with invoice were missing from the files of 11 patients;
- notes of follow-up treatments were missing from all patient files reviewed.

In addition, Mr. Kwan's report noted that the consent section of the patient records he reviewed did not list possible risks, side effects or consequences associated with any potential treatments.

Mr. Kwan noted that the files of four patients indicated payment had been issued in advance of treatments. Further, the billing records did not clearly indicate the duration of each treatment and the professional fees varied from patient to patient.

Mr. Kwan also found that each patient's acupuncture prescription was the same treatment without proper assessment and modification of treatment.

Finally, Mr. Kwan noted that each patient's follow-up failed to include a progress inquiry, TCM diagnosis, treatment plan modifications, patient's reaction to treatment and the identity of the provider of the treatment.

The Panel accepts Mr. Kwan's opinion and finds that the standards of the profession for record keeping include specific requirements for the documentation of informed patient consent (including possible risks, side effects or consequences associated with any potential treatments), consent to collect or release information, documentation of proof of payments, documentation of

follow-up treatments and other requirements as set out in the Record Keeping Policy, the Jurisprudence Course Handbook and the Safety Program Manual. The Panel further accepts Mr. Kwan's opinion and finds on the evidence that Mr. Li failed to keep appropriate records in contravention of the standards of practice of the profession.

***Allegation 6: Whether Mr. Li signed or issued, in his professional capacity, a document that he knew or ought to have known contained a false or misleading statement***

As already stated, the Panel found N.S. to be more credible than Mr. Li and accepts her testimony that she received only five acupuncture treatments from Mr. Li. That fact, and Mr. Li's lengthy delays in providing the College with the patient records requested, has led the Panel to conclude, consistent with Mr. Ospreay's opinion, that Mr. Li wrote all entries in N.S.'s treatment record at one sitting. The Panel finds that Mr. Li did so in order to support his claim that he provided 20 treatments to N.S. Mr. Li thus issued to the patient, to GSC and to the College a document that he knew contained a false or misleading statement.

While the Panel accepts that the treatment records of Mr. Li's other patients in evidence at the hearing were also created at one sitting for each, the Panel finds that the College failed to tender evidence to establish that the contents of those treatment records were false or misleading, whether because the records were inconsistent with the number of treatments Mr. Li provided to each patient or otherwise. Thus, the Panel finds that the College has not met its burden of proving that Mr. Li issued documents that he knew or ought to have known contained a false or misleading statement in respect of his patients other than N.S.

***Allegation 7: Whether Mr. Li falsified a record relating to his practice***

Mr. Li and N.S. both agreed that Mr. Li provided no treatment to N.S. on November 6, 2013. However, Mr. Li made a treatment entry into N.S.'s record for that date. Mr. Li did not offer an explanation as to his reason for doing so. Indeed, he refused to do so, claiming he could not provide an explanation without seeing the original document (although he did confirm that his signature appeared on the copy that was entered into evidence). This fact alone establishes that Mr. Li falsified a record relating to his practice.

In addition, Mr. Li issued an invoice for services that showed he provided 20 treatments to N.S. whereas the Panel accepted the testimony of N.S. that she had received only five treatments from Mr. Li. Thus, the Panel finds that Mr. Li falsified the records in respect of the other treatments he purportedly performed for N.S. In the absence of any other reasonable explanation by Mr. Li, the Panel finds that he intentionally falsified those records to justify his invoice. In addition, having accepted Mr. Ospreay's finding that all the patient records he reviewed (including N.S.'s records) had been created at single sittings, the Panel finds that Mr. Li falsified his records for N.S. by entering the notes for treatments he did provide to N.S. on a date other than the date on which the treatments were provided.

With respect to Mr. Li's other patients, the Panel having accepted Mr. Ospreay's opinion also finds that Mr. Li entered notes of treatments in the other patient files presented on a date or dates other than the date on which treatments were provided, and finds that this constitutes falsification of a record. However, as noted in the Panel's findings with respect to allegation 6, no evidence was

tendered to support any allegation that the treatment records for patients other than N.S. contained any false or misleading statements regarding the treatment that Mr. Li actually provided.

***Allegation 8: Whether Mr. Li's engaged in or performed an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional***

The Panel finds, based on the findings regarding allegations 1, 3, 4, 5, 6 and 7, that Mr. Li's actions constitute behaviour that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.

The Panel finds that members of the profession would reasonably regard Mr. Li's actions in submitting an account for services that was intentionally misleading, to be both disgraceful and dishonourable. Mr. Li's conduct in this respect demonstrates moral failing, falls well below the standards the public expects of professionals, and shames both the Member and the profession.

The Panel also finds that Mr. Li's failure to obtain and record many of the items of information required to meet the record keeping standards of the College is at least unprofessional. This conduct was not a mere error in judgment. Mr. Li demonstrated a persistent disregard for his professional obligations with respect to record keeping, which are necessary to ensure patient safety and to permit the College to regulate its members effectively.

The Panel finds that Mr. Li's failure to abide by the agreement he reached with N.S. regarding the fees due to him, constitutes unprofessional and dishonourable behaviour. Mr. Li's dishonest behaviour fails to live up to the traits of good judgment and responsibility that the public rightly expects of those privileged to practice in this profession, and he should have recognized that a failure to abide by an agreement with his patient as to fees is unacceptable.

The Panel finds that Mr. Li's conduct in falsifying record entries to indicate treatments that in fact had not been performed, and in misrepresenting the dates that the entries were made, by making them at one sitting, demonstrates unprofessional, dishonourable and disgraceful behaviour. Again, treatment records serve an important function for patient safety and effective regulation by the College. Falsifying such records is a serious matter, and it calls into question Mr. Li's moral fitness and his ability and willingness to discharge the obligations that members of the College are expected to meet.

The Panel therefore finds that the evidence submitted, establishes, as outlined above, acts and conduct performed by Mr. Li that the profession would reasonably regard as disgraceful, dishonourable and unprofessional.

I, Henry Maeots, sign this Decision as Chairperson of the panel and on behalf of the panel members listed below.

Date: March 7, 2018

Signed:

A handwritten signature in black ink, appearing to read "H. Maeots". The signature is written in a cursive, somewhat stylized font.

Panel Members

Henry Maeots, Chair  
Yuqi Yang  
Martial Moreau