

[2] Diana Turevski (the “Member”) did not attend or participate and was not represented despite having received notice of the proceeding and the hearing date. An Affidavit of Service dated November 18, 2017 and signed by Process Server Norman Ng was entered as an exhibit to the Panel.

The Allegations

[3] Allegations of professional misconduct against the Member were referred to the Discipline Committee of the College, in accordance with Section 26(1) of the *Health Professions Procedural Code* (the “Code”), which is Schedule 2 to the *Regulated Health Professions Act, 1991, S.O. 1991, C. 18* (the “RHPA”).

[4] The allegations were set out in a Notice of Hearing, dated November 2, 2017. The allegations in the Notice of Hearing are that the Member engaged in the following acts of professional misconduct:

1. Submitting an account or charge for services that the Member knew or ought to have known was false or misleading, contrary to Sections 1(19) of *Ontario Regulation 318/12*;
2. Signing or issuing, in her professional capacity, a document that the Member knew or ought to have known contained a false or misleading statement, contrary to Section 1(26) of *Ontario Regulation 318/12*;
3. Falsifying a record relating to her practice, contrary to Section 1(27) of *Ontario Regulation 318/12*;
4. Failing to reply appropriately and within a reasonable time to a written inquiry or request from the College, contrary to Section 1(47) of *Ontario Regulation 318/12*;
5. Failing to cooperate with an investigation contrary to Section 76 (3.1) of the *Health Professions Procedural Code*; and
6. 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 are that:

1. On or about March 15, 2015, investigator S.S. attended at the Member’s practice location, Total Family Wellness, 855 Alness St. Unit #5, and was offered the opportunity to have a claim submitted to Great-West Life Insurance on his behalf for acupuncture that would not be performed, in exchange for a percentage (50%) of the proceeds received from Great-West Life Insurance.

2. The Member signed and issued a false receipt in respect of 9 acupuncture treatments purportedly provided to investigator S.S. between October 24, 2015 and November 28, 2015 at \$70.00 each for a total of \$630.00, which was submitted to Great-West Life Insurance on or about January 4, 2016.
3. The Member did not render acupuncture services to investigator S.S. between October 24, 2015 and November 28, 2015.
4. On or about May 31, 2016, the Member submitted a document to Great-West Life falsely representing that the Member met with and provided acupuncture treatment to investigator S.S. on 9 dates between October 24, 2015 and November 28, 2015.
5. The Member falsified treatment records for 9 acupuncture services purportedly provided to investigator S.S. between October 24, 2015 and November 28, 2015.
6. Between January 5, 2017 and June 5, 2017, the Member refused to provide information requested by the College, including:
 - a) confirmation of whether the Member was currently practicing;
 - b) confirmation of the Member's practice address;
 - c) confirmation and details of any current employer, and the name, address and telephone number of the locations the Member practices from;
 - d) information relating to any current charges against the Member, and currently existing conditions, terms, orders, directions or agreements, relating to the Member's custody or release, in respect of a federal, provincial or other offence;
 - e) the nature of the criminal investigation against the Member; and
 - f) information relating to an employee of the Member's clinic who was charged criminally.

Member's Position

- [5] At the outset of the hearing, the Panel Chair entered a plea of not guilty on the absent Member's behalf, denying all of the allegations of professional misconduct contained in the Notice of Hearing.

Overview

- [6] The Member was registered as an Acupuncturist (R.Ac) with the College, in the Grand parented Class, from May 2013 until her resignation in December 2017. Her business forms indicate her place of operation as the "Total Family Wellness" clinic at 855 Alness St. in Toronto. She was referred to the Discipline Committee in November 2017 to face allegations of professional misconduct relating to fraud and failure to co-operate with the College in its investigation of a complaint from an insurance company regarding suspected false billings.

- [7] Despite having notice of these proceedings, the Member did not appear at the hearing conducted on June 6, 2018 nor did she communicate any reason for her absence. The matter proceeded as a contested hearing in the Member's absence.
- [8] The College characterized the alleged offences as being of two types: fraud and non-co-operation with the College's investigation.
- [9] The College presented the Panel with both documentary evidence and witness testimony in support of its position that the Member had signed and issued a false claim for services to an undercover police officer. The College tendered documentary evidence including, among other things, the Member's records of treatment of the undercover officer as well as claim forms apparently prepared by the Member and submitted by her to Great-West Life in respect of that treatment. The undercover police officer however testified at the hearing and indicated that he had not received any of the services claimed nor had he ever met the Member.
- [10] With respect to the allegations of non-co-operation, College counsel provided the Panel with correspondence from the College's Manager of Professional Practice which sought information from the Member. This correspondence initially received responses from the Member's counsel but then proceeded to be ultimately unanswered.
- [11] For the reasons set out below, the Panel is satisfied that the evidence presented by the College constitutes proof, on a balance of probabilities, that the misconduct alleged in the Notice of Hearing occurred and the Panel finds accordingly.

The Evidence

- [12] The College called three witnesses to testify in support of its case.

Garry Schmidt

- [13] The first witness called by the College was Bradley Garry Schmidt, former Manager of Special Investigations of Great-West Life Insurance Company (now retired). Mr. Schmidt had been a police officer for approximately 20 years prior to joining Great-West Life. He filed a complaint with the College in respect of the Member's conduct in October 2016.
- [14] Prior to retiring from Great-West Life at the end of 2017, Mr. Schmidt was in charge of an investigation into allegedly improper health claims emanating from a clinic in the Yonge & Steeles area of Toronto (the "Yonge & Steeles Clinic"). The Member is not alleged to be professionally affiliated with the Yonge & Steeles Clinic.
- [15] Mr. Schmidt testified that, in 2015, his unit was engaged in an investigation of the Member and associated clinics as a result of information received from informants. The investigation revealed suspicious claiming patterns which led him to believe that claims were being made in respect of services that had not actually been provided. Information obtained by Mr. Schmidt also caused him to believe that the amount paid for services vis-à-vis Great-West Life was being split between a representative at the Yonge & Steeles Clinic and various individual claimants. Pursuant to this investigation, Great-West Life created a "dummy" insurance plan and provided a corresponding account number to the York Regional Police to

facilitate the tracking of claims which were to be submitted by an undercover officer. The officer operated using an alias (“S.S.”) and posed as a patient.

- [16] In January of 2016, a claim dated December 3, 2015 was received to the dummy plan in the amount of \$630.00¹ (the “Claim”). A cheque dated January 11, 2016 was issued by Great-West Life in response to the Claim.
- [17] A record from Great-West Life detailing the services claimed for and containing a copy of the benefits cheque that was paid as a result was made an exhibit.² The record provided by Great-West Life particularizes nine payments of \$70.00, all for acupuncture services between October 24, 2015 and November 28, 2015. These acupuncture services, Mr. Schmidt testified, were supposedly provided by the Member via the Member’s clinic, Total Family Wellness, located at 855 Alness Street, Unit 5, Toronto.
- [18] Mr. Schmidt testified that the Claim and payment were respectively made by - and issued to - the undercover police officer who had been posing as a patient.
- [19] On May 23, 2016, Mr. Schmidt sent a letter to the Member enclosing a Great West Life questionnaire that he uses while undertaking post claim reviews.³ Mr. Schmidt testified that the Member responded to that letter enclosing an answered copy of the questionnaire⁴, clinical notes, and an invoice for services purportedly provided from October 2015 to November 2015. The documents Mr. Schmidt referred to in this regard bear a stamp with the Member’s College registration number and a signature.

Serguei Barmakov

- [20] The College’s second witness was Officer Serguei Barmakov. He is a York Region Detective Constable and currently stationed in the Intelligence Group. He has been in that role for the last four years and has spent a total of 12 years with the York Regional police.
- [21] Detective Barmakov testified about his work as an undercover operator on a fraud matter being led by the Service’s fraud bureau. He was assigned to walk into the Yonge & Steeles Clinic and make contact with an individual named “Bella”. He was to present himself as being cash strapped and looking to convert his insurance benefits into money.
- [22] Detective Barmakov testified that, in November of 2015 he attended at the Yonge & Steeles Clinic on multiple occasions under his S.S. alias and ultimately, on November 19, 2015, made contact with an individual named Bella. He provided Bella details of his health insurance benefits with Great-West Life and filled out and signed, but did not date, a number of undated forms including extended healthcare expense statement sheets. He testified that he was told his details would be provided to a “friendly” clinic on Alness St. and that he would be that clinic’s patient. The officer testified that he recalled seeing a logo resembling the logo of the Member’s clinic when he was filling out a blank spreadsheet. He also testified

¹ Exhibit 5.
² Exhibit 7.
³ Exhibit 8.
⁴ See Exhibit 9.

in respect of an invoice from the “Total Family Wellness Clinic” at 855 Alness St., Toronto which identified the name of his alias in the “patient” field. He stated that the invoice listed the provider of acupuncture services on nine dates from October 24, 2015 until November 28, 2015 as the Member - Ms. Turevski.

- [23] Detective Barmakov stated that Bella told him that no further action was required on his part. He was told he would receive a cheque and that, upon receipt, he would owe 50% of its value to Bella. Detective Barmakov concluded his testimony by confirming that he did in fact receive a cheque from Great-West Life and that he returned and provided cash to Bella as they had discussed.
- [24] He testified that he has never met the Member and never attended for any services at the Member’s clinic.

Michele Pieragostini

- [25] The College’s third and final witness was Michele Pieragostini. Ms. Pieragostini is the Manager of Professional Practice at the College. She testified that the Member joined the College in May of 2013 and resigned effective December 11, 2017.
- [26] The Member’s practice details on file with the College indicate that she practices at Total Family Wellness at 855 Alness Street in Toronto.
- [27] Ms. Pieragostini testified that the College received a complaint from Great-West Life dated October 26, 2016 related to a concern that the Member had verified a claim for services to an undercover operator which had not actually been provided. On November 18, 2016 Ms. Pieragostini sent a letter to the Member advising of an investigation into whether the Member had committed professional misconduct as set out in the letter of complaint received from Mr. Schmidt and Great-West Life in October of 2016.⁵
- [28] On December 23, 2016, Ms. Pieragostini received a response to her letter from counsel, Rita Levin, indicating that Ms. Levin was acting for the Member.⁶ Ms. Levin asked that the College hold off in its investigation given that the Member was at potential risk of criminal prosecution by the York Regional Police. Ms. Levin also represented that Total Family Wellness had been closed by the police and that an employee had been criminally charged.
- [29] On January 5, 2017, Ms. Pieragostini responded to Ms. Levin and sought information pursuant to the College By-Laws in the nature of notification of any charges or details of any investigation involving the Member.
- [30] On February 1, 2017, Ms. Levin responded indicating that the Member was not under charge.
- [31] On February 3, 2017, Ms. Pieragostini sent an email to Ms. Levin asking for the Member to update her practice information given, among other things, the representations contained in Ms. Levin’s previous letter regarding the closure of the clinic on Alness Street. Ms.

⁵ Exhibit 13.

⁶ Exhibit 14.

Pieragostini sent further correspondence to Ms. Levin and the Member on February 10, 2017 and March 2, 2017 requesting information in relation to the Member's practice. No responses were received.

- [32] On June 2, 2017, the College was advised that Ms. Levin no longer acted for the Member. On June 5, 2017, Ms. Pieragostini wrote to the Member again requesting updated practice information. No response was received.
- [33] As the College was unable to proceed without the requested information, the matter was referred to the ICRC which subsequently referred the matter for a Discipline Hearing.
- [34] The Member did not attend the hearing or call any witnesses in her defence.

Submissions of Counsel

- [35] Although Ms. Turevski is no longer a member of the College, the College submitted that it retains jurisdiction over Ms. Turevski in respect of professional conduct that is alleged to have occurred during the time she was a member. The College cited Section 14(1) of the Code which states that "a person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 76."

Allegations 1-3 in the Notice of Hearing

- [36] The College submitted that with regard to allegations #1, #2 and #3 in the Notice of Hearing, the evidence of Detective Barmakov establishes that the Member did not provide him with acupuncture treatment at any time, nor did they ever meet. The College argued that, based on the evidence of Mr. Schmidt and the exhibits submitted, the Member nevertheless issued, signed and submitted to Great-West Life an invoice containing charges for nine acupuncture treatments purportedly provided to Detective Barmakov's alias between October 24, 2015 and November 28, 2015. Further, the College submitted, the Member signed and submitted a questionnaire falsely representing that she provided nine acupuncture treatments to Detective Barmakov's alias and issued, signed and submitted to Great-West Life treatment records which falsely represented that she provided nine acupuncture treatments to Detective Barmakov's alias.
- [37] College counsel submitted that each of these documents, signed by the Member, contained information that the Member knew to be false.
- [38] The College submitted that, to find a member falsified a record, the Panel must be satisfied that there is proof of an intention to mislead. College counsel went on to note that there is no evidence of mistaken belief in this case. On the evidence, the College argued that no treatment was provided by the Member to Detective Barmakov. As such, there can be no mistake that the Member signed a document explicitly and falsely representing that the services were provided and did so with the intention to mislead.

Allegation 4 in the Notice of Hearing

[39] With respect to allegation #4, the College referred the Panel to Section 1(47) of the *Professional Misconduct Regulation*, O. Reg. 318/12, which requires members of the College to respond appropriately and within a reasonable time to a written inquiry or request from the College. It was Ms. Pieragostini's evidence that the College sent the Member and her counsel a total of 5 letters and emails between February 3, 2017 and June 5, 2017, without receiving an appropriate response. This resulted in an approximate nine month delay of this matter. The College cited *Tadros v College of Physicians and Surgeons of Ontario*⁷, wherein the panel accepted the member's admission that in failing to respond to a written inquiry for six months the member had failed to respond appropriately. In its decision, the panel in that matter wrote "failure to respond in a timely fashion is disrespectful to the College's process of self-regulation and hinders its ability to protect the public...as well, lengthy investigations may potentially put the public at risk".

[40] College counsel asserted that, given the Member has provided no explanation or response, the resulting delay constitutes a failure to appropriately respond within a reasonable period of time and is thereby an act of professional misconduct.

Allegation 5 in the Notice of Hearing

[41] Addressing allegation #5, College counsel cited Section 76(3.1) of the *Code* which requires members to co-operate fully with an investigator appointed under the *Code*. Pursuant to the Code, investigators are permitted to make reasonable inquiries of a member who is subject to an investigation on matters relevant to the investigation. The Panel was also advised by College counsel that the Member was also obligated to provide the information sought pursuant to Section 170 of the College's By-Law and her obligations under the Professional Misconduct Regulation. College counsel submitted that the evidence of Ms. Pieragostini establishes that information was requested of the Member on several occasions, without response. The Panel was shown a letter from the College to the Member, dated June 5, 2017, which summarized the information sought as follows:

1. Any information relating to any current charges.
2. Any information relating to any currently existing conditions, terms, orders, directions or agreements, relating to the custody or release in respect of a provincial, federal or other offence.
3. If no charges have been laid, the nature of the investigation by police.
4. Confirmation and details of any current employer, and/or if self-employed, the name, address and phone number of the locations you practice from (excluding addresses of individual clients) and effective date. If the information on file remains current, please confirm.
5. Advise if you are currently practising.

⁷ 2010 ONCPSD 19.

[42] College counsel asked the Panel to conclude that the Member's failure to provide the information sought constitutes non-co-operation with the Member's obligations under the Code.

Allegation 6 in the Notice of Hearing

[43] Regarding allegation #6, 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. College counsel cited *Devgan v College of Physicians and Surgeons*⁸ and *College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v Canon (2015)*. In both cases the panels accepted the Colleges' submissions that if the panels found the member guilty of the individual allegations in the respective notices of hearing, then the panels could also find that the conduct set out in those allegations, taken together, would support a finding that the member had committed acts which are disgraceful, dishonourable and unprofessional.

Decision

[44] The College bears the onus of proving the allegations in the Notice of Hearing on a balance of probabilities based upon clear, cogent and convincing evidence.

[45] Having considered the evidence and the onus and standard of proof, the Panel finds that the Member is guilty of professional misconduct as alleged in paragraphs 1, 2, 3, 4, 5, and 6 of the Notice of Hearing.

Reasons for Decision

[46] Although no evidence was presented to the Panel on behalf of the Member to dispute the testimony of the College's witnesses and the witnesses were not subjected to cross-examination, the Panel has assessed the credibility and reliability of the evidence it heard. In doing so, the Panel considered the ability of each witness to hear and observe, their ability to remember, their self-interest in the outcome of the hearing, inconsistencies in and as between their testimony, and their demeanor when testifying.

[47] All three witnesses were experienced in their roles and appeared devoid of any apparent bias. They responded to questions from both counsel and the Panel in a direct fashion and without hesitation.

[48] Mr. Schmidt's testimony was consistent with the evidence heard from the other two witnesses as well as the forms that were submitted as exhibits. Detective Barmakov, a veteran police investigator, was also consistent in the manner in which he testified about events and exhibits. Ms. Pieragostini's evidence was consistent with the evidence of Mr. Schmidt and

⁸ 2005 CarswellOnt 342.

Detective Barmakov as well as with the information contained in the documents entered as exhibits during her testimony.

[49] The Panel found the testimony of all three witnesses to be credible, consistent and reliable.

Allegation 1: Submitting an account or charge for services that the Member knew or ought to have known was false or misleading, contrary to Sections 1(19) of *Ontario Regulation 318/12*

[50] The Panel heard Detective Barmakov testify that the Member did not provide him with any acupuncture treatment. Yet, based on the evidence of Mr. Schmidt and the exhibits submitted, the Panel is satisfied that the Member signed, issued and submitted an invoice to Great-West Life containing charges for nine acupuncture treatments to Detective Barmakov's alias.

[51] The Panel found such evidence to be convincing of the Member's misconduct as set out in allegation 1.

Allegation 2: Signing or issuing, in her professional capacity, a document that the Member knew or ought to have known contained a false or misleading statement, contrary to Section 1(26) of *Ontario Regulation 318/12*

[52] The Panel finds that the Member not only submitted a false invoice for treatments not received by Detective Barmakov, but she also returned a questionnaire to confirm the accuracy of her false invoice and thereby once again represented that she had provided the nine treatments in issue.

[53] The Panel finds that these actions prove allegation 2.

Allegation 3: Falsifying a record relating to her practice, contrary to Section 1(27) of *Ontario Regulation 318/12*

[54] The Panel accepts the evidence of Detective Barmakov in which he denies receipt of any acupuncture treatments from the Member. Accordingly, the treatment records submitted from the Member falsely represent nine acupuncture treatments to Detective Barmakov that did not occur. As such, the Panel finds that allegation 3 is proven.

Allegation 4: Failing to reply appropriately and within a reasonable time to a written inquiry or request from the College, contrary to Section 1(47) of *Ontario Regulation 318/12*

[55] The Panel accepts the testimony of Ms. Pieragostini, supported by the exhibits submitted of her correspondence between the College, the Member and her Counsel. The absence of responses, without explanation - leading to a nine month delay in referring the matter to discipline - sufficiently demonstrates to the Panel's satisfaction that the Member is guilty of allegation 4.

Allegation 5: Failing to cooperate with an investigation contrary to Section 76 (3.1) of the *Health Professions Procedural Code*

[56] The Panel finds that the Member's failure to respond, without reason, to requests for information from the College regarding a complaint the College was investigating constitutes non-co-operation with the Member's obligations under the Code. The Panel finds that allegation 5 is proven.

Allegation 6: 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*

[57] The Panel concludes that, having found that allegations #1, #2, #3, #4, and #5 have been proven, the Member engaged in conduct that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional. The Panel finds accordingly.



July 6, 2018
Date

Chair, Discipline Panel