

**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**

Decision Date: **June 3, 2022**

Indexed as: **Ontario (College of Traditional Chinese Medicine
Practitioners & Acupuncturists of Ontario) v CHEUNG,
2022 ON CTCMPAO 15**

Panel:	Iftikhar Choudry	Chairperson, Public Member
	Judy Cohen	Public Member
	Justin Lee	Professional Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO	(
	(Anastasia-Maria Hountalas for the
	(College
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-and-	(
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	(
SEN CHING CHEUNG	(
	(Lisa Hamilton for the Member
	(Sen Ching Cheung
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	(Ted Marrocco
	(Independent Legal Counsel

Date of Hearing: June 3, 2022

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Traditional Chinese Medicine Practitioners and Acupuncturists (the “College”), on June 3, 2022, via videoconference.

The Allegations

[2] The allegations were set out in a Statement of Allegations appended to the Notice of Hearing dated July 12, 2021, Exhibit 1 on the hearing, and were as follows:

The Member

1. At all material times Sen Ching Cheung was a member of the College (the “Member”).

Failure to Comply with Quality Assurance Committee

Quality Assurance Program Requirements

2. All members of the College are required to comply with the requirements of the College’s Quality Assurance program. Those requirements include the following:
 - a. participating in self-assessment, continuing education and completing 15 hours of professional development activities each calendar year;
 - b. keeping accurate and complete records of the registrant’s participation in self-assessment, continuing education and professional development activities and submitting those records to the Quality Assurance Committee if requested; and
 - c. cooperating with peer and practice assessments when selected to do so.
3. The requirements of the Quality Assurance program are set out in sections 4 through 7 of Ontario Regulation 28/13, under the *Traditional Chinese Medicine Act*, 2006, and sections 80 through 82 of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act*, 1991.

Notification of requirement to submit 2017 Quality Assurance Program Documents

4. On or about November 15, 2017, the Quality Assurance Committee and/or the College notified the Member that she had been selected to submit her 2017 Self-Assessment and Professional Development forms (the “Documents”), in accordance with s. 6(2) of Regulation 28/13, no later than February 16, 2018.
5. The Member failed to submit the Documents by February 16, 2018.
6. On or about February 21, 2018, the Quality Assurance Committee provided the Member with another opportunity to submit the Documents by March 23, 2018.
7. The Member failed to submit the Documents by March 23, 2018.

Notification of participation in Peer and Practice Requirements

8. On or about April 8, 2019, the Quality Assurance Committee notified the Member that, pursuant to s. 7(2)(b) of Regulation 28/13, she was required to participate in a Peer and Practice Assessment. The Member was told to submit specified documents and a conflict of interest declaration regarding assigned assessors (collectively the “Additional Documents”) by no later than May 13, 2019, in preparation for the upcoming assessment.
9. The Member failed to submit the Additional Documents by May 13, 2019.
10. On or about May 14, 2019, the Quality Assurance Committee provided the Member with another opportunity to submit the Additional Documents by May 24, 2019, and advised her that if she did not submit the Additional Documents by that date, the Quality Assurance Committee would refer her matter to the Inquires, Complaints and Reports Committee.
11. The Member failed to submit the Additional Documents by May 24, 2019.

Misconduct Alleged

12. It is alleged that the Member engaged in professional misconduct pursuant to:
 - a. subsection 51(b.0.1) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act*, 1991 (Failing to co-operate with the Quality Assurance Committee); and/or
 - b. Paragraph 39 of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act*, 2006 (Contravening, by act or omission, a provision of the Act, the RHPA, or the regulations under either of those Acts); and/or
 - c. Paragraph 47 of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act*, 2006 (Failing to reply appropriately and within a reasonable time to a written inquiry or request from the College); and/or
 - d. Paragraph 48 of section of 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act*, 2006 (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).

Member’s Position

[3] The Member admitted the allegations in the Notice of Hearing. The Panel conducted a plea inquiry and was satisfied that the Member’s admissions were voluntary, informed, and unequivocal.

The Evidence

[4] The evidence was tendered by way of an Agreed Statement of Facts which was made Exhibit 2 on the hearing. The substantive portion of the Agreed Statement of Facts is reproduced below, without the referenced attachments:

The Member

1. At all material times Sen Ching “Janet” Cheung was a member of the College (the “Member”). A copy of the Member’s profile from the public register is attached as **Tab “A”**.
2. The Member became a Grandparented member of the College (R. Ac) in September 2013. She transferred to the General class (R. Ac) in October 2017.
3. The home address provided by the Member to the College is [redacted]. The business address provided by the Member to the College is J Wellness Inc. at 14A-10 West Pearce Street in Richmond Hill, Ontario (the “Clinic”). The email address provided by the Member to the College is [redacted].
4. It is agreed that the Member is responsible for providing current contact information to the College.

Failure to Comply with Quality Assurance Committee

Quality Assurance Program Requirements

5. It is agreed that all members of the College are required to comply with the requirements of the College’s Quality Assurance program. Those requirements include the following:
 - (a) participating in self-assessment, continuing education and completing 15 hours of professional development activities each calendar year;
 - (b) keeping accurate and complete records of the member’s participation in self-assessment, continuing education and professional development activities and submitting those records to the Quality Assurance Committee if requested; and
 - (c) cooperating with peer and practice assessments when selected to do so.
6. The requirements of the Quality Assurance program are set out in sections 4 through 7 of Ontario Regulation 28/13 (the “Quality Assurance Regulation”), under the *Traditional Chinese Medicine Act*, 2006, and sections 80 through 82 of the Health Professions Procedural Code (the “Code”), being Schedule 2 to the *Regulated Health Professions Act*, 1991 (the “RHPA”). A copy of the relevant excerpts of the Quality Assurance Regulation and Code are attached as **Tab “B”**.

Notification of requirement to submit 2017 Quality Assurance Program Documents

7. It is agreed that on or about November 15, 2017, the Quality Assurance Committee notified the Member that she had been selected to submit her 2017 Self-Assessment and Professional Development forms (the “Documents”), in accordance with section 6(2) of the Quality Assurance Regulation, no later than February 16, 2018. This correspondence was delivered by regular mail to the Member’s home and by email. A copy of this correspondence is attached as **Tab “C”**.

8. It is agreed that on or about January 15, 2018, the Quality Assurance Committee sent a reminder notice to the Member that the Documents were due no later than February 16, 2018. This correspondence was delivered by regular mail to the Member's home and by email. A copy of this correspondence is attached as **Tab "D"**.
9. It is agreed that the Member failed to submit the Documents by February 16, 2018.
10. It is agreed that on or about February 21, 2018, the Quality Assurance Committee provided the Member with another opportunity to submit the Documents by March 23, 2018. This correspondence was delivered by regular mail to the Member's home and by email. A copy of this correspondence is attached as **Tab "E"**.
11. It is agreed that the Member failed to submit the Documents by March 23, 2018.

Notification of participation in Peer and Practice Requirements

12. It is agreed that on or about March 28 and 29, 2018 respectively, the Quality Assurance Coordinator attempted to contact the Member at both of the phone numbers on file with the College. On both occasions, there was no answer and neither number provided the option to leave a voicemail.
13. It is agreed that on or about April 8, 2019, the Quality Assurance Committee notified the Member that, pursuant to section 7(2)(b) of the Quality Assurance Regulation, she was required to participate in a Peer and Practice Assessment. The Member was told to submit specified documents a conflict of interest declaration regarding assigned assessors (collectively the "Additional Documents") by no later than May 10, 2019, in preparation for the upcoming assessment. This correspondence was delivered by regular mail to the Member's home and by email. A copy of this correspondence is attached as **Tab "F"**.
14. It is agreed that on or about May 10, 2019, the Quality Assurance Coordinator attempted to contact the Member at both of the phone numbers on file with the College. There was no answer and neither number provided the option to leave a voicemail.
15. It is agreed that the Member failed to submit the Additional Documents by May 13, 2019.
16. It is agreed that on or about May 14, 2019, the Quality Assurance Coordinator attempted to contact the Member at both of the phone numbers on file with the College. There was no answer and neither number provided the option to leave a voicemail.
17. It is agreed that on or about May 14, 2019, the Quality Assurance Coordinator provided the Member with another opportunity to submit the Additional Documents by May 24, 2019, and advised her that if she did not submit the Additional documents by that date, the Quality Assurance Committee would refer her matter to the Inquiries, Complaints and Reports Committee. This correspondence was delivered by courier to the Member's home and Clinic. A copy of this correspondence and tracking information is attached as **Tab "G"**.
18. The Purolator tracking information indicated that the Quality Assurance Committee's May 14, 2019 correspondence was delivered to an individual at the reception desk at the Member's home on May 15, 2019 at 9:26 AM, and to an individual at the reception desk

of the Member's Clinic on June 3, 2019 at 11:14 AM. A copy of the Purolator tracking information is attached as **Tab "H"**.

19. It is agreed that on or about May 23, 2019, the Quality Assurance Coordinator attempted to contact the Member at both of the phone numbers on file with the College. There was no answer and neither number provided the option to leave a voicemail.
20. It is agreed that the Member failed to submit the Additional Documents by May 24, 2019.
21. It is agreed that on or about May 30, 2019, the Quality Assurance Coordinator attempted to contact the Member at both of the phone numbers on file with the College. There was no answer and neither number provided the option to leave a voicemail.

Professional Misconduct

22. It is agreed that the conduct outlined at 1-21 above (the "Agreed Facts") constitutes professional misconduct pursuant to:
 - a. Subsection 51(b.0.1) of the Code (failing to co-operate with the Quality Assurance Committee); and
 - b. Paragraph 39 of section 1 of Ontario Regulation 318/12 (the "Professional Misconduct Regulation") (Contravening, by act or omission, a provision of the Act, the RHPA, or the regulations under either of those Acts); and
 - c. Paragraph 47 of section 1 of the Professional Misconduct Regulation (Failing to reply appropriately and within a reasonable time to a written inquiry or request from the College); and
 - d. Paragraph 48 of section 1 of the Professional Misconduct Regulation (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).

[5] Regarding Paragraph 48 of the Regulation, counsel for the Member submitted that the Member's conduct would reasonably be regarded as unprofessional, but not disgraceful or dishonourable, given that there was no evidence of deceit or dishonesty. Counsel for the College did not disagree with this submission.

Decision of the Panel

[6] The Panel found that the Member had engaged in professional misconduct as alleged in the Statement of Allegations and as admitted in the Agreed Statement of Facts.

Reasons for Decision

[7] The evidence in the Agreed Statement of Facts established that the Member was repeatedly contacted and given ample opportunities to provide to the Quality Assurance Committee sufficient

information further to the Quality Assurance Programme as required further to the Regulation cited in both the Notice of Hearing and the Agreed Statement of Facts.

[8] Given both the unequivocal evidence and the Member's voluntary admissions, the Panel was satisfied that misconduct was proven as alleged.

Penalty and Costs Submissions

[9] The Member and the College agreed on a joint submission on penalty and costs (the "Joint Submission"). The Joint Submission was signed by the Member on November 9, 2021, and the substantive portion of the Joint Submission is reproduced below:

1. The Member is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.
2. The Registrar is directed to immediately suspend the Member's Certificate of Registration for a period of three (3) months or until the requirements in paragraphs 3(a) and 3(b) below are complete, whichever is longer, commencing on the date of the Discipline Committee's Order.
3. The Registrar is directed to impose the following specified terms, conditions and limitations on the Member's Certificate of Registration:
 - a. Requiring that the Member successfully complete the outstanding Quality Assurance requirements prior to her return to practise;
 - b. Requiring that the Member review the College's Standards of Practice, Policies and Guidelines, and provide proof acceptable to the Registrar of having completed this review, prior to her return to practise; and
 - c. Requiring that the Member successfully complete the PROBE ethics course, at her own expense, within six (6) months of the date of the Order of the Discipline Committee.
4. The Member is required to pay to the College costs in the amount of \$4,000.00 within thirty (30) days of the date of the Discipline Committee's order.

Penalty and Costs Decision

[10] After considering the Joint Submission and the submissions of the parties, the Panel decided to accept the Joint Submission, and therefore made an Order consistent with the terms of the Joint Submission before the conclusion of the hearing on June 3, 2022. A signed copy of that Order was circulated to the parties shortly thereafter.

[11] The Member provided a waiver of appeal which is Exhibit 4 on the hearing. The reprimand ordered by the Panel was accordingly delivered before the conclusion of the hearing.

Reasons for Penalty and Costs Decision

[12] The terms of the Joint Submission are commensurate with the seriousness of the findings made against the Member. These terms were agreed upon between the parties and the Panel would not depart from such an agreement unless to accept it would bring disrepute upon this Tribunal. The terms do not pose any risk of bringing disrepute upon the Tribunal or in any way undermining the public confidence in the College's ability to regulate its members. The Joint Submission accomplishes the deterrence and rehabilitation objectives of penalty and properly takes into account the facts and circumstances of this specific case.

[13] The cost provisions contained in the Joint Submission are also appropriate. Even though this matter was resolved by agreement and saved the College the expense of a contested hearing, numerous steps had to be taken to engage with the Member. These costs are not a penalty but operate to offset the College's expenses in pursuing this matter and ensure that the College's costs are not borne exclusively by the College's other members.

I, Iftikhar Choudry, sign this decision as chairperson of the Panel and on behalf of the Panel members listed below.

Date: October 30, 2022

Signed: _____



Iftikhar Choudry
Judy Cohen
Justin Lee