

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 July 20, 2022 and August 3, 2022, via videoconference.

The Allegations

[2] The allegations against Mr. Kyung Chun Oh (the “Member”) were set out in a Statement of Allegations appended to the Notice of Hearing. The Statement of Allegations is reproduced as Appendix “A” to these reasons.

Member’s Position

[3] The Member did not appear at the outset of the hearing, although properly notified of the hearing date. We waited twenty minutes after the scheduled start time, but the Member did not appear. We decided to proceed in his absence under s. 7 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22.

[4] As a result, the Member was not entitled to further notice of steps in the hearing and was deemed to deny all of the allegations in the Notice of Hearing.

[5] College Counsel, in her closing submissions, stated that she did not ask us to draw any adverse inference because the Member had not appeared. We did not draw any adverse inference. Because the Member did not appear, did not testify, did not cross-examine the College’s witnesses, and did not call any evidence himself, the evidence of the College’s witnesses went unanswered and unchallenged. However, we still assessed the credibility and reliability of the College’s witnesses and their evidence.

The Evidence

[6] The College called four witnesses: the patient, S.K.; his daughter, L.K.; Doctor Evan Ailon; and Ryan Chu, the College’s Manager of Professional Conduct.

[7] At the outset of the hearing, we made a publication ban order, prohibiting the publication of any information that would reveal S.K.’s identity, which included the identity of his daughter L.K. We were satisfied that publication of their identity would pose a serious risk to an important public interest, namely their interest in privacy and, in particular, the privacy of S.K.’s health information. We were satisfied that the order sought was necessary to prevent this risk, and that the benefits of the order outweighed its negative effects.

[8] The College’s first witness was the patient, S.K. He testified with the assistance of a Korean translator.

[9] S.K. testified that his daughter, L.K., recommended that he obtain acupuncture treatments to improve his general health. S.K. agreed and he attended the Member’s clinic on or around February 7, 2020.

[10] S.K. informed the Member that he had had thyroid cancer and had his thyroid removed in 2003 and that he had been taking thyroid medication since that time. S.K. testified that the Member told him that acupuncture could make S.K.'s thyroid grow back.

[11] S.K. also testified that the Member told him to stop taking his thyroid medication while receiving acupuncture treatments over a three-month period because the medication would jeopardize the effectiveness of the acupuncture treatments. S.K. testified that the Member told him about other of his patients who regrew their thyroid when they stopped their medication and received acupuncture, and other patients who did not stop their medication whose acupuncture treatments were not successful.

[12] As a result, S.K. stopped taking his thyroid medication while receiving acupuncture treatments from the Member from early February to when he was admitted to hospital in early June.

[13] After a few weeks without taking his thyroid medication, S.K. testified that he started to feel drowsy and sleepy. He said that he reported this to the Member who informed him that it could be an issue with his kidneys. S.K. testified that he continued to inform the Member of other adverse symptoms that he was experiencing during his visits in March, April and May which grew progressively worse. Such adverse symptoms included ringing in his ears, blurred vision, speech impairment, and a yellowed complexion. S.K. testified that the Member would inform him that his thyroid was growing and that the adverse symptoms were due to issues with his kidney function. He was told to eat more yogurt and protein, reduce his intake of carbohydrates and drink more water.

[14] S.K. testified that the Member never conducted a physical assessment of his thyroid other than touching the side of his neck. S.K. testified that he told the Member that he would feel better right after an acupuncture treatment, but the treatments did not relieve the adverse symptoms that he was experiencing.

[15] S.K. testified that by early June, his symptoms were so severe that his family took him to Emergency at the Credit Valley Hospital and he was admitted. He remained in hospital for almost two weeks. S.K. testified that he was informed by the hospital doctor that he should not have stopped taking his thyroid medication and that the results of his blood test indicated that all of his major organs (i.e. liver, kidneys) had suffered as a result.

[16] S.K. testified that the Member never advised him to get a blood test to check his thyroid levels. S.K. testified that he discussed such a blood test with the Member on two occasions: first, at the beginning of the treatment, the Member told S.K. that, if he did not believe the claim that acupuncture could regrow the thyroid, he could get a blood test after three months. Second, in April, when the Member claimed that S.K.'s thyroid gland was regrowing, he asked the Member if he should obtain a blood test. The Member responded that he could take a blood test in one month's time.

[17] S.K. testified that the Member never informed him that stopping thyroid medication could cause severe side effects and ultimately, death. S.K. testified that had he been made aware of the risks, he would not have stopped taking his thyroid medication.

[18] The events that S.K. describes occurred more than two years ago. S.K. made notes of how he felt after his acupuncture visits to the Member which he referred to in order to refresh his memory. The Panel finds that S.K. has a present memory of the acupuncture visits to be refreshed. The Panel finds S.K. to be a credible witness and accepts the facts in his testimony.

[19] The College's second witness was L.K., S.K.'s daughter. She was also a patient of the Member.

[20] L.K. testified that there was no particular reason why S.K. sought acupuncture treatment. He had no intention of seeking treatment for his thyroid.

[21] L.K. testified that she attended each of her father's acupuncture treatments with the Member. She sat either in the treatment room or outside the curtain and therefore, was able to see the treatment and/or hear the conversation.

[22] L.K. testified that the Member informed her father that he could regrow his thyroid with three months of acupuncture treatments. L.K. testified that the Member told her father that the acupuncture treatments to regrow his thyroid would not be effective if S.K. continued to take his thyroid medication. L.K. testified that the Member did not warn her father of any adverse side effects that may be caused by stopping his thyroid medication which he had been taking since 2003. L.K. testified that the Member told her father that some of his other patients did not believe that he could regrow their thyroid and therefore, did not stop taking their thyroid medication and their treatment was not effective. L.K. testified that, to her knowledge, her father stopped taking his thyroid medication while he received acupuncture treatments from the Member.

[23] L.K. testified that she went with her father three times per week at the Member's clinic. When the lockdown was imposed due to Covid-19, L.K. testified that the Member provided acupuncture treatments to her father at home.

[24] L.K. testified that her father started to tell her that he was experiencing adverse symptoms. L.K. testified that she asked the Member if her father's symptoms were caused by his stopping his thyroid medication, but the Member would respond that her father's thyroid was growing.

[25] L.K. testified that the first symptoms that her father experienced was feeling tired and sleepy. Then he started hearing a ringing in his ears. L.K. testified that her father would tell the Member about these symptoms, but the Member would explain that it is because of his kidneys, or the weather or that his thyroid is still growing.

[26] L.K. testified that the Member never recommended that her father get his symptoms checked out. L.K. testified that, on February 7, the Member told her father that he could get a blood test after the acupuncture treatments were completed in around three months. L.K. testified that her father's symptoms worsened. His face became yellow, he had a hard time walking and he seemed to be suffering from dementia. L.K. testified that his dementia symptoms really scared her.

[27] L.K. testified that her father was taken to Emergency at Credit Valley Hospital on or around June 2, 2020. L.K. testified that the hospital doctor said that her father's symptoms were caused by his stopping his thyroid medication.

[28] L.K. testified that she contacted the Member to tell him what he had done. She provided text messages between herself and the Member in Korean which were translated into English. L.K. testified that the Member admitted in one of his text messages that he “should have told your father earlier to get a blood test at the hospital and take medicine. I am really sorry for making your father fall into critical condition by not doing it.” (See Exhibit 3).

[29] L.K. testified that the Member refunded the amount of the acupuncture treatments but did not give any other compensation. The Panel has reviewed the translated text messages between L.K. and the Member. The Panel has considered the demands L.K. made for compensation from the Member. However, the Panel does not have the power to award any damages to either L.K. or S.K. and therefore, neither can personally gain from our decision. The Panel found L.K. to be a credible witness, that her testimony corroborated the testimony of her father and therefore, the Panel accepts the facts in her testimony.

[30] The College’s third witness was Dr. Evan Ailon. He is currently a doctor practising internal medicine in Nanaimo, British Columbia. Dr. Ailon was presented to the Panel as a participant expert witness, which is one who develops an opinion on the basis of their involvement in the events in question as they unfold. The Panel agrees with the College’s Counsel’s submission that Dr. Ailon meets this test.

[31] Dr. Ailon testified that he completed his undergrad in virology, followed by a four-year degree in medicine, and a four-year residency in internal medicine. Dr. Ailon testified that he does not have experience in traditional Chinese medicine or acupuncture. In early June 2020, when he treated S.K., Dr. Ailon was in his last year of his internal medicine residency.

[32] Dr. Ailon testified that S.K. had significant cognitive decline, low thyroid function and other ailments. Dr. Ailon testified that he was informed that S.K.’s acupuncturist told him to stop taking his thyroid medication. Dr. Ailon testified that a person with no thyroid like S.K. must take thyroid medication. Otherwise, they will develop severe hypothyroidism which can cause life threatening symptoms including cognitive impairment. Dr. Ailon testified that S.K.’s condition was life-threatening and that S.K. would have died if he had not started taking his thyroid medication.

[33] Dr. Ailon testified that there is no literature that suggests that a thyroid can regrow. In S.K.’s case, Dr. Ailon testified that there was no regrowth in S.K.’s thyroid. The Panel finds Dr. Ailon to be a credible witness and accepts the facts in his testimony.

[34] The College’s fourth and final witness was Ryan Chu. Mr. Chu is the College’s Manager of Professional Conduct and oversees the College’s Inquiries, Complaints and Reports Committee (“ICRC”). The Panel finds Mr. Chu to be a credible witness and accepts the documents provided with his testimony.

[35] Mr. Chu presented the Member’s public profile and testified that the Member was first registered on June 1, 2014 and is currently suspended. Mr. Chu testified that he was responsible for compiling the documentation for the College’s investigation in this matter. He presented the Panel with the Member’s responses to the complaint dated February 5, 2021 (Exhibit 6) and June 3, 2021 (Exhibit 7).

[36] In the Member's February 5, 2021 response to the College, he apologized for his actions by stating, "As one of the therapists, I am very sorry that I had been contributed to the cause of this serious health crisis to the patient I was treating...." He goes on to state, "From my clinical experience, I found that acupuncture and medicine affect each other as an antagonist. Generally it takes more time to strength and clean body with acupuncture when patient continues taking medicine. And many case show fast recovery with acupuncture when patient stop taking medicine. So I suggest [S.K.] other choice that can improve his condition fast. But I explained to him after 2 months he must take hormone test to make sure he is alright. Also I explained if he doesn't feeling well while stop taking medicine, he should take medicine again."

[37] In the Member's June 3, 2021 response to the complaint, he states that S.K. was practising Qi for years so he thought S.K. "could choose what will be best for his body from his special training." Lastly, the Member states that he "never told to other patient to stop taking medicine prescribed by doctor."

[38] The Panel has not drawn an adverse inference from the Member's failure to attend the hearing. The Panel finds that the Member's written responses to the College support a finding that he told S.K. to stop taking his thyroid medication.

[39] Mr. Chu presented the Panel with the Member's patient records for S.K. which the Member provided to the College in connection with its investigation (Exhibit 5). The Panel accepted the College Counsel's submission, and advice from Independent Legal Counsel, that such patient records were admissible under Sections 35 and 52 of the *Ontario Evidence Act*.

[40] The Panel notes that, except for a reference to "thyroid cancer (2003)" in the initial Assessment form dated February 7, 2020, there is no reference to a treatment plan that attempts to regrow S.K.'s thyroid, or to the risks associated with that treatment plan, nor to any reported progress of such regrowth. While the treatment notes from March 28 to April 15, 2020 all indicate "feels better", S.K. testified that he would feel short-term relief immediately following an acupuncture treatment but the symptoms that he told the Member about were worsening.

[41] Similarly, the treatment notes from April 18 to May 16, 2020 all indicate "getting improved." However, S.K. testified again that he would feel short-term relief immediately following an acupuncture treatment but his symptoms were getting worse. The treatment notes for April 18, April 25, May 2 and May 16, 2020 indicate "ask to take a blood test." However, S.K.'s testimony was that the Member never recommended that he take a blood test, which was corroborated by L.K.'s testimony.

Findings of Fact

[42] The panel makes the following findings of fact on a balance of probabilities.

[43] The member told S.K. that acupuncture treatment could regrow his thyroid gland and that he should stop taking his thyroid medication to facilitate the purported regrowth. The Member knew or ought to have known that this advice would endanger S.K.'s health, by causing hypothyroidism.

[44] The Member claimed to S.K. that his thyroid gland was regrowing when he knew or ought to have known that there was no indication that it was regrowing, and that thyroid glands did not regrow.

[45] The Member still advised S.K. to continue this course of action even as S.K. developed symptoms that the Member knew or ought to have known were consistent with hypothyroidism.

[46] Ultimately, the course of action recommended by the Member resulted in S.K. being hospitalized. He was fortunate that he survived and has largely recovered.

[47] The Member failed to keep adequate records by failing to record the advice to S.K. that acupuncture could regrow his thyroid gland, or the advice to stop taking his thyroid medicine.

[48] The Panel finds that it is more likely than not that the Member falsified the patient records in two ways.

[49] First, the Member made consistent statements in the patient records to the effect that the S.K. “feels better” and was “getting improved,” but S.K.’s testimony was that he informed the Member that his symptoms were getting progressively worse.

[50] Second, the Member made notations suggesting he recommended that S.K. obtain a blood test, but S.K.’s testimony, which was corroborated by L.K., was that the Member never proactively recommended that S.K. obtain a blood test. Rather, the Member and S.K. discussed blood tests once or twice, and it was actually S.K. who asked questions about the Member’s claims that acupuncture could regrow, or was regrowing, his thyroid. The Member said that S.K. could take a blood test, but never said he should do so immediately, or as a response to the symptoms he was experiencing. As such, on a balance of probabilities, the Member likely added the notations about blood tests after the fact, once he learned that S.K. had become seriously ill as a result of his conduct, and he began to face complaints.

[51] In short, we find that the Member falsified the patient record to minimize his conduct.

Decision of the Panel

[52] The panel found that the Member had engaged in professional misconduct as alleged in the Statement of Allegations.

Reasons for Decision

[53] The findings of fact set out above substantiate the following counts of professional misconduct in the Statement of Allegations.

[54] First, the Member’s failures of record-keeping contravene a standard of practice of the profession, namely the Standard for Record-Keeping.

[55] Second, the Member recommended or provided unnecessary treatment (acupuncture and the cessation of thyroid medicine to regrow a thyroid gland) when the Member knew or ought to know that it was unnecessary.

[56] Third, the Member failed to advise S.K. to consult another member of a health profession where the Member knew or ought to have known that S.K. requires a service that the Member did not have the knowledge, skills or judgment to offer or was beyond his scope of practice. The Member failed to advise S.K. to consult a medical doctor when he learned that S.K. was suffering from symptoms that he knew or ought to have known indicated an urgent medical problem.

[57] Fourth, the Member treated or attempted to treat a condition that he knew or ought to have known that he did not have the knowledge, skills or judgment to treat, namely the lack of a thyroid gland.

[58] Fifth, the Member failed to keep records in accordance with the standards of the profession.

[59] Sixth, the Member falsified a record relating to his practice.

[60] Seventh, the Member made a claim about a remedy, treatment, device or procedure other than a claim that could be supported by reasonable professional opinion (the claim that acupuncture combined with cessation of thyroid medicine could regrow a surgically removed thyroid gland, and the claim that S.K.'s thyroid gland was regrowing).

[61] Eighth, the Member's cumulative conduct was such that the profession would reasonably regard it as disgraceful, dishonourable or unprofessional.

[62] We invite College counsel to make submissions on penalty. Our reasons on that issue will be issued separately.

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

Date: November 1, 2022

Signed: _____



Ryan Longenecker
Judy Cohen
Maureen Morton

APPENDIX “A” – STATEMENT OF ALLEGATIONS

The Member

1. Kyung Chun Oh (the “Member”) became a Grandparented member (R. Ac) of the College on or about June 1, 2014 and transferred to the General class (R. Ac) on or about November 6, 2017.
2. At the material times, the Member worked as an acupuncturist at a clinic in North York, Ontario.

The Patient

3. In or around 2003, the Patient had both of his thyroid removed as a result of thyroid cancer. From in or around 2003 to in or around February 2020, the Patient had been taking thyroid medication daily as his body was unable to produce any thyroid hormone on its own.
4. The Member treated the Patient from in or around February 2020 to in or around June 2020. It is alleged that:
 - a. The Member advised the Patient that acupuncture would help re-grow the Patient’s thyroid glands; and/or
 - b. The Member advised the Patient to stop taking the Patient’s daily thyroid medication while undergoing acupuncture treatment; and/or
 - c. The Member told the Patient that the acupuncture treatment would not be effective if provided while the medication was still being taken; and/or
 - d. The Patient followed the Member’s treatment advice to stop taking the Patient’s thyroid medication.
5. On or about May 2 and/or May 16 and/or June 2, 2020, the Patient advised the Member that the Patient was experiencing problematic symptoms, including tinnitus, blurred vision, swollen eyes, low energy and/or shoulder pain. It is alleged that the Member failed to refer the Patient to another health professional after the Patient presented with symptoms that required such a referral.
6. On or about June 6, 2020, the Patient was suddenly unable to walk or speak properly and was taken to the hospital as a result. The Patient had several manifestations of severe hypothyroidism, including cognitive impairment.

Record-Keeping

7. It is alleged that the Member failed to keep records in accordance with the standards of the profession, in particular by failing to record all information related to the Member’s treatment of the Patient’s thyroid condition.

8. The Patient's treatment records from on or about April 18 and/or April 25 and/or May 2 and/or May 16, 2020 state that the Member recommended that the Patient get a blood test. It is alleged that the Member did not advise the Patient to get a blood test for the purpose of checking the Patient's thyroid hormone levels as described in the Patient's treatment records.

Professional Misconduct Alleged

9. It is alleged that the above conduct constitutes professional misconduct pursuant to one or more of the following: Clause 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the *Regulated Health Professions Act, 1991*, and as defined in one or more of the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006*:
 - a. paragraph 1 (contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, in particular: Standard for Record-Keeping); and/or
 - b. paragraph 7 (recommending or providing unnecessary treatment when the member knows or ought to know that the recommendation or the provision of treatment is unnecessary); and/or
 - c. paragraph 9 (failing to advise a patient or the patient's authorized representative to consult another member of a health profession within the meaning of the Regulated Health Professions Act, 1991, where the member knows or ought to know that the patient requires a service that the member does not have the knowledge, skills or judgment to offer or is beyond his or her scope of practice); and/or
 - d. paragraph 8 (treating or attempting to treat a condition that the member knows or ought to know he or she does not have the knowledge, skills or judgment to treat); and/or
 - e. paragraph 25 (failing to keep records in accordance with the standards of the profession); and/or
 - f. paragraph 27 (falsifying a record relating to the member's practice); and/or
 - g. paragraph 28 (making a claim about a remedy, treatment, device or procedure other than a claim that can be supported as reasonable professional opinion); and/or
 - h. paragraph 48 (engaging in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional).