

The Allegations

[2] The allegations 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 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.

[4] While the Member said she was “under pressure” to admit the allegations, we inquired during the Hearing what she meant by that. Her answers satisfied us that the pressure the Member experienced were due to the circumstances in which she put herself and not due to the imprecations of either the College or its representatives.

The Evidence

[5] The evidence was tendered by way of an Agreed Statement of Facts. The substantive portion of the text of the Agreed Statement of Facts is reproduced as Appendix “B” to these Reasons.

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 – Professional Misconduct

[7] There were two aspects to Ms Tian’s professional misconduct. First, she practised while suspended. Second, she attempted to obstruct the College’s investigation into her practice.

[8] As to attempting to obstruct the investigation, the same issue arose in *Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Zhang*, 2022 ONCTCMPAO 17 (CanLII). In that case, the College sent an investigator, Mr. Hutchinson, to collect some of Ms Zhang’s health history files as part of an investigation into her professional conduct. The relevant facts were set out in the Reasons:

33. Mr. Hutchinson selected 15 health history files with corresponding receipts and her appointment book. He placed these inside his briefcase. Ms Zhang became very agitated at this point.

34. Ms Zhang contacted the police when told that Mr. Hutchinson would be collecting her practice records. She made a number of accusations to the police, including that he was robbing her, that he had followed her into her bedroom and washroom, that he had made her suicidal and that she was scared by his presence. She attempted to physically remove his briefcase, which contained her patients’ records, from his hands and, for a period of time, blocked the

exit when he refused to return these records to her. Mr. Hutchinson audio-recorded most of this interaction.

[9] That attempted obstruction was one of the reasons the Discipline Committee in Ms Zhang's case decided to revoke her licence to practice.

Penalty and Costs Submissions

[10] The Member and the College agreed on a joint submission on penalty and costs. The Joint Submission was signed by the Member on June 21, 2024 and the substantive portion of the Joint Submission is as follows:

1. Ms. Tian will be required to appear before a panel of the Discipline Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the "College") immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and the text of the reprimand to appear on the public register of the College.
2. The Registrar of the College will be directed to revoke Ms. Tian's Certificate of Registration effective immediately.
3. Ms. Tian shall pay the College costs in the amount of \$4,000 thirty (30) days following the date of the Order of the Discipline Committee.

Penalty and Costs Decision

[11] After considering the joint submission and the submissions of the parties, the Panel decided to accept the Joint Submission, and therefore made an order in the terms of the Joint Submission. However, on costs, we varied the parties' agreement slightly, and gave the Member 90 days (rather than 30 days) to pay the \$4,000 in costs, from the date of our order.

[12] The Member waived her right to appeal the reprimand portion of the penalty, and so the reprimand ordered by the Panel was delivered at the conclusion of the hearing.

Reasons for Penalty and Costs Decision

[13] We were required to accept the joint submission unless to do would bring the administration of justice into disrepute or be contrary to the public interest: *R v Anthony-Cook*, 2016 SCC 43; *Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Xu*, 2020 ONCTCMAPO 12.

[14] We concluded that the joint submission would not bring the administration of justice into disrepute or be contrary to the public interest. It was an appropriate disposition, given the facts admitted. Because of how Ms. Tian persistently practised while suspended and failed to cooperate with a College investigation, the proposed penalty was in the public interest.

[15] On costs, we understood from College counsel that the Member had presented evidence of financial difficulties. We therefore gave her 90 days to pay the \$4,000 in costs, which was the amount to which the parties had agreed.

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

Date: September 27, 2024

Signed:

A handwritten signature in black ink, appearing to read "Mark Handelman", written in a cursive style.

Mark Handelman
Akari Yokokawa
Judy Cohen

SCHEDULE "A"

STATEMENT OF SPECIFIED ALLEGATIONS

1. Ms. Xiaoyun Tian ("Ms. Tian") was registered with the College of Traditional Chinese Medicine and Acupuncturists of Ontario (the "College") from February 25, 2014 as an acupuncturist ("R. Ac.").

Practising While Suspended

2. Ms. Tian's certificate of registration was suspended on May 14, 2021. On April 21, 2022, Ms. Tian resigned her certificate of registration.
3. During the period of her suspension, Ms. Tian continued to:
 - a. Treat patients, including with acupuncture;
 - b. Hold herself out to her patients and the public as an R. Ac. and member of the College;
 - c. Issue invoices or receipts to patients indicating that Ms. Tian was an R. Ac. and member of the College, with knowledge that the receipts would be submitted to insurance companies;
 - d. Receive remuneration from patients after providing the patient with treatment.
4. It is alleged that this conduct constitutes professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 in that, Ms. Tian:
 - a. Performed a controlled act that Ms. Tian was not authorized to perform, contrary to section 1(10) of *Ontario Regulation 318/12*;
 - b. Signed or issued, in her professional capacity, a document that Ms. Tian knew contained a false or misleading statement, contrary to section 1(26) of *Ontario Regulation 318/12*;
 - c. Used a term, title or designation in respect of Ms. Tian's practice that was not authorized by the College, contrary to section 1(32) of *Ontario Regulation 318/12*;
 - d. Performed a controlled act when not authorized to do so contrary to section 27(1) of the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, which is an act of professional misconduct under section 1(39) of *Ontario Regulation 318/12*;
 - e. Practised the profession while her certificate of registration was suspended, contrary to section 1(42) of *Ontario Regulation 318/12*;

- f. Directly benefited from the practice of the profession while her certificate of registration was suspended without making full disclosure to the College of the nature of the benefit to be obtained and without obtaining prior approval from the Executive Committee, contrary to section 1(43) of *Ontario Regulation 318/12*;
- g. Engaged in conduct 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*;
- h. Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to section 1(49) of *Ontario Regulation 318/12*.

Obstruction and Failure to Cooperate

- 5. On or around June 2, 2022, an investigator of the College attended Ms. Tian's clinic to obtain clinic records and interview Ms. Tian.
- 6. Upon being presented with the Appointment of Investigator dated January 27, 2022, Ms. Tian:
 - a. Refused to allow the College investigator access to her clinic;
 - b. Refused to be interviewed by the College investigator; and
 - c. Refused to provide her clinic and patient records to the College investigator.
- 7. Ms. Tian was contacted by the College with respect to this investigation in writing on or around October 12, 2022 and February 8, 2023 requesting a response. Ms. Tian did not respond to the College.
- 8. It is alleged that this conduct constitutes professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 in that, Ms. Tian:
 - a. Failed 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*;
 - b. Obstructed an investigator and withheld or concealed from her documents relevant to the investigation contrary to section 76(3) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, which is an act of professional misconduct under section 1(39) of *Ontario Regulation 318/12*;
 - c. Failed to cooperate with an investigator contrary to section 76(3.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18, which is an act of professional misconduct under section 1(39) of *Ontario Regulation 318/12*;

- d. Engaged in conduct 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*;

Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to section 1(49) of *Ontario Regulation 318/12*

SCHEDULE B

AGREED STATEMENT OF FACTS

BACKGROUND

1. Ms. Xiaoyun Tian (“Ms. Tian”) was registered with the College of Traditional Chinese Medicine and Acupuncturists of Ontario (the “College”) as a Registered Acupuncturist (“R. Ac.”) on February 25, 2014.
2. Ms. Tian’s primary practice location prior to her suspension was a home-based clinic located at 50 Bonis Avenue in Scarborough, Ontario (the “Clinic”).
3. Ms. Tian failed to submit her 2021-2022 Registration Renewal and payment, due on April 1, 2021. She received a Notice of Intention to Suspend letter from the College on April 8, 2021.
4. On May 14, 2021, the Registrar of the College notified Ms. Tian that her certificate of registration had been administratively suspended, effective immediately.
5. Ms. Tian resigned from the College on April 21, 2022. Ms. Tian is currently retired and is no longer working.

INVESTIGATION

6. On October 21, 2021, the College was informed by a member of the public that Ms. Tian was continuing to provide acupuncture treatments despite her suspension.

7. On October 28, 2021, the College requested that Barker Hutchinson & Associates Ltd. (“Barker Hutchinson”) conduct a preliminary inquiry to ascertain whether Ms. Tian was practicing.

Preliminary Investigation

8. On October 31, 2021, Shanna Yee, an investigator at Barker Hutchinson (“Ms. Yee”), called Ms. Tian and was able to schedule an acupuncture appointment with her on November 5, 2021, at 12:30 pm, at the Clinic. During this call, Ms. Yee asked Ms. Tian whether she was accepting new acupuncture patients. Ms. Tian answered, “Yes” to the question. Ms. Yee stated that she suffered from stomach aches. Ms. Tian detailed a treatment plan, explaining that she would insert approximately 3 needles into Ms. Yee’s stomach and approximately 8 needles into her legs. Ms. Tian recommended two to three 60-minute treatments. Ms. Tian asked Ms. Yee whether she had insurance coverage and stated that the cost would be \$75.00 for a 60-minute acupuncture treatment.

9. On November 3, 2021, Ms. Yee called Ms. Tian to cancel her appointment scheduled for November 5, 2021.

10. In light of the information set out in the Preliminary Inquiry Memo, on January 27, 2022, the Registrar of the College issued an Appointment of Investigator for Barker Hutchinson to inquire into and examine the conduct or actions of Ms. Tian (the “AOI”), pursuant to sections 75 to 79 of the *Health Professions Procedural Code* (the “Code”).

Undercover Investigation

11. On February 1, 2022, the College requested that Barker Hutchinson contact Ms. Tian in an undercover capacity to inquire about her services and book an appointment for an acupuncture treatment.

12. On March 24, 2022, Ms. Yee called Ms. Tian and arranged an appointment for April 2, 2022, at 12:30 pm.

13. On April 2, 2022, Ms. Yee arrived at the Clinic under the alias of “Nicole Wang.” Ms. Tian greeted Ms. Yee and led her to the treatment area in the basement of the Clinic.

14. Ms. Yee told Ms. Tian that she was looking for treatment to help with her stomach aches. Ms. Tian offered Ms. Yee a course of treatment involving the insertion of approximately 8-10 needles in various parts of her body followed by an acupuncture massage.

15. Ms. Tian asked Ms. Yee if she wanted to try a couple of needles first and offered to remove the needles and proceed with a massage if Ms. Yee did not like it. Ms. Yee asked if there was any other treatment Ms. Tian could offer. Ms. Tian said she could provide a “massage”, which Ms. Yee agreed to. Ms. Tian then provided the Investigator with a 60-minute acupuncture treatment.

16. At the end of the treatment, Ms. Tian provided Ms. Yee with an “Invoice for Services”, which included Ms. Tian’s name, contact number, and College registration number. The invoice identified the service as “Acupuncture Treatment” and identified Ms. Tian as an “Acupuncturist (R.Ac)”.

17. Ms. Tian recommended a 60-minute treatment once or twice a week to Ms. Yee. Ms. Tian also stated that she practices seven days a week.

Record Collection

18. On June 2, 2022, Lisa Tucker (“Ms. Tucker”), an investigator at Barker Hutchinson, arrived at the Clinic and introduced herself as an investigator to Ms. Tian. Ms. Tucker provided Ms. Tian with the Notice Package and a copy of the AOI.

19. Ms. Tian stepped onto her front porch and shut the front door. Ms. Tian stated that she did not understand Ms. Tucker’s attendance because she had “retired and was no longer practicing.” Ms. Tucker reviewed the documents and the applicable sections of the *Code* before explaining that her attendance was related to Ms. Tian’s conduct prior to her resignation from the College. Ms. Tian responded that she had retired, and Ms. Tucker had no right to be there, and this is her home, and no one comes inside, not even police, without her permission.

20. Ms. Tucker reviewed the Code again and explained the College’s investigation process to Ms. Tian. Ms. Tucker asked Ms. Tian if this was the address where she practiced acupuncture to which she replied, “Yes”. Ms. Tucker explained that she would only need to access the treatment space. Ms. Tian declined access to the treatment space.

21. Ms. Tian stated she had an important “Zoom” meeting to attend and questioned why Ms. Tucker had shown up unannounced. Ms. Tucker explained the investigation process to Ms. Tian. Ms. Tian declined access again to the Clinic.

22. Ms. Tucker explained the consequences of failing to co-operate with the College’s investigation and directed Ms. Tian to the relevant sections of the *Code*.

23. Ms. Tucker suggested that Ms. Tian could bring her patient files outside, which Ms. Tian declined. Ms. Tian also declined to share her treatment notes, appointment books, and receipt records with Ms. Tucker.

24. Ms. Tucker offered to call the College to confirm the investigation and the reason for her attendance. Ms. Tian declined.

25. Ms. Tucker asked Ms. Tian the following questions:

- (a) Did she understand that Ms. Tucker was there on behalf of the College to collect patient records?
- (b) Was Ms. Tian refusing access to her patients' records?
- (c) Was Ms. Tian refusing to allow Ms. Tucker access to her appointment books?
- (d) Was Ms. Tian refusing to co-operate with an investigation of the College?
- (e) Did Ms. Tian understand that there could be further consequences for not co-operating with a College investigator, including monetary fines?

26. Ms. Tian responded, "Yes" to each question. She further stated she is no longer working and that the College can "go away."

27. On June 13, 2022, Ms. Tucker issued a report setting out her findings with respect to Ms. Tian's misconduct. The account provided in this Investigation Report and its Exhibits is true and accurate.

Ms. Tian continued to practice

28. On May 25, 2022, the College received an email from an insurer inquiring whether Ms. Tian was authorized to practice between May 14, 2021 and April 20, 2022.

29. Later on May 25, 2022, the College informed the insurer that, as a suspended member, Ms. Tian was not authorized to perform controlled acts.

30. On June 9, 2022, the insurer provided the College with a reimbursement request. The request indicated that Ms. Tian provided the client with 60-minute acupuncture treatments at the Clinic on the following dates:

- (a) October 24, 2021
- (b) October 30, 2021
- (c) November 7, 2021
- (d) November 14, 2021
- (e) November 21, 2021
- (f) December 12, 2021
- (g) December 30, 2021.

31. The receipt included Ms. Tian's name, contact number, and College registration number. It also identified Ms. Tian as an "Acupuncturist (R.Ac)" and was signed by Ms. Tian.

Response to Investigation

32. Ms. Tian failed to respond to College correspondence on March 24, 2023, September 13, 2023, and October 12, 2022.

ADMISSION TO ALLEGATIONS

Practicing while under suspension

33. By engaging in the conduct described in paragraphs 8 to 17 and paragraphs 28 to 31, Ms. Tian practiced traditional Chinese medicine and acupuncture while suspended, performed a controlled act, and held herself out to be an active member of the College while suspended.

34. With respect to the allegations set out in the Notice of Hearing dated September 8, 2023, Ms. Tian acknowledges and pleads that the facts set out in paragraphs 8 to 17 and paragraphs 28 to 31 above constitute the following acts of professional misconduct:

- (a) Performed a controlled act that Ms. Tian was not authorized to perform, contrary to section 1(10) of *Ontario Regulation 318/12*;
- (b) Signed or issued, in her professional capacity, a document that Ms. Tian knew contained a false or misleading statement, contrary to section 1 (26) of *Ontario Regulation 318/12*;
- (c) Used a term, title or designation in respect of Ms. Tian's practice that was not authorized by the College, contrary to section 1 (32) of *Ontario Regulation 318/12*;
- (d) Performed a controlled act when not authorized to do so contrary to section 27(1) of the *Regulated Health Professions Act, 1991, S.O. 1991, c. 18*, which is an act of professional misconduct under section 1 (39) of *Ontario Regulation 318/12*;
- (e) Practiced the profession while Ms. Tian's certificate of registration was suspended, contrary to section 1(42) of *Ontario Regulation 318/12*;
- (f) Directly benefited from the practice of the profession while Ms. Tian's certificate of registration was suspended without making full disclosure to the College of the nature of the benefit to be obtained and without obtaining prior approval from the Executive Committee, contrary to section 1 (43) of *Ontario Regulation 318/12*.

Failure to cooperate with the investigation

35. By engaging in the conduct described in paragraphs 18-27 and 32, Ms. Tian obstructed the College investigation and failed to cooperate with the investigator, Ms. Tucker, by refusing access to the Clinic, refusing access to her patient records, and refusing access to her appointment books.

36. With respect to the allegations set out in the Notice of Hearing dated September 8, 2023, Ms. Tian acknowledges and pleads that the facts set out in paragraphs 18-27 and 32 above constitute the following acts of professional misconduct:

- (a) Obstructed an investigator and withheld or concealed from the investigator documents relevant to the investigation contrary to section 76(3) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, which is an act of professional misconduct under section 1(39) of *Ontario Regulation 318/12*;
- (b) Failed to cooperate with an investigator contrary to section 76(3.1) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, which is an act of professional misconduct under section 1 (39) of *Ontario Regulation 318/12*;
- (c) Failed 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*;
- (d) Engaged in conduct 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*;

- (e) Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to section 1(49) of *Ontario Regulation 318/12*.