

**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*

Date: **March 4, 2024**

Indexed as: **Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Chanpheng Anousaya, 2024 ONCTCMPAO 25**

Panel:	Kevin Ho	Chair, Public Member
	Iftikhar Choudhry	Public Member
	Justin Lee	Professional Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO	(Anastasia-Maria Hountalas for the (College (((
-and-	(((
CHANPHENG ANOUSAYA	(Self-represented (((Andrea Gonsalves (Independent Legal Counsel ((Date of Hearing: February 5, 2024 (

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 February 5, 2024, via videoconference. The Panel announced its decision on the misconduct allegations and its order as to penalty and costs orally at the hearing. These are the Panel’s reasons for the decision.

[2] The member, Chanpheng Anousaya (the “**Member**”), was present. He was not represented by legal counsel but was assisted at the hearing by a friend. In addition, a Lao-English interpreter participated in the hearing to assist the Member.

Publication Ban

[3] The College sought an order banning the publication of the names of the patients (both identified as the “**Patient**” in the Notices of Hearings) referred to during the hearing or in documents filed at the hearing commencing, or any information that would disclose the identity of the patients. The College’s request was made pursuant to s 45(3) of the Health Professions Procedural Code (the “**Code**”) being Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c 18. The request was based on the grounds that personal or other matters, including the patients’ personal health information, may be disclosed at the hearing of such a nature that the harm created by disclosing the identity of the patients would outweigh the desirability of adhering to the principle that hearings be open to the public. The Member consented to the request.

[4] The Panel was satisfied that the order sought was appropriate. There is a strong public interest in the openness of College discipline proceedings but the individual patients involved also have a strong privacy interest, particularly in cases involving sexual abuse allegations. The order sought is limited in scope—the hearing remained open to the public and the only restriction on public access is on the publication of information that could identify the patient. The desirability of maintaining the privacy of the patients, and avoiding public disclosure of their identities, outweighs the public interest in revealing their identities, where all other information about this proceeding is publicly available.

Combining Two Notices of Hearing

[5] This hearing concerned two Notices of Hearing, both dated November 16, 2022. The Notice of Hearing in matter 4-0068 relates to a patient who will be referred to as “**Patient A**” in these reasons. The Notice of Hearing in matter 5-0093 relates to a patient who will be referred to as “**Patient B**” in these reasons.

[6] At the outset of the hearing, the College brought a motion pursuant to s 9.1(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, to combine the two Notices of Hearing. College counsel explained that both Notices of Hearing relate to abuse of a patient and they were the subject of parallel criminal findings. The Member was charged criminally in connection the incidents that form the basis of the two Notices of Hearing. The criminal charges were combined in a single information and they were heard together by the Ontario Court of Justice. The College intended to call the same evidence in support of both Notices of Hearing. College counsel that for

those reasons, it would be appropriate and expeditious to combine both hearings so they can be dealt with together.

[7] The Member consented to the request.

[8] The Panel was satisfied that combining the two proceedings into a single hearing would promote efficiency and would be in the interests of justice, without causing any unfairness or prejudice to either party. Accordingly, the Panel granted the order requested.

The Allegations

[9] In the two Notices of Hearing, the Registrant is alleged to be guilty of professional misconduct pursuant to ss 51(1)(a), 51(1)(b.1), and 51(1)(c) of the Code. Identical allegations are set out in the two Notices of Hearing, as follows:

1. It is alleged that the [conduct set out in each Notice of Hearing] constitutes professional misconduct pursuant to section 51(1)(a) of the *Health Professions Procedural Code* (the “Code”), being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “RHPA”) (the member has been found guilty of an offence that is relevant to the member’s suitability to practice);
2. It is further alleged that the conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Code (the member has sexually abused a patient, more specifically touching or behaviour of a sexual nature by the member towards the patient);
3. It is further alleged that the conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and 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);
 - b. Paragraph 2 (Abusing a patient or a patient’s representative verbally, physically, psychologically or emotionally);
 - c. Paragraph 3 (Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose except, i. with the informed consent of the patient or the patient’s authorized representative); and/or
 - d. 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).

[10] The factual particulars of the allegations are set out in a Statement of Allegations appended to each Notice of Hearing. In Notice of Hearing 4-0068, the particulars are as follows:

The Member

1. Chanpheng Anousaya (the “Member”) became a Grandparented member (R. TCMP, R.Ac) of the College of Traditional Chinese Medicine Practitioners and

Acupuncturists of Ontario (the “College”) on or about January 17, 2014. He transferred to the General class (R. TCMP, R. Ac) on or about February 8, 2018.

2. At all material times, the Member was practising out of his home in Hamilton, Ontario.

Sexual Abuse of a Patient

3. It is alleged that, during the course of a treatment session with a female patient ([Patient A]) on or about October 5, 2017, the Member did one or more of the following:
 - a. Touched and/or caressed the Patient’s back and/or hair without consent; and/or
 - b. Touched the Patient’s genitals over her underwear and gown.
4. It is further alleged that, during the course of a treatment session with the Patient on or about October 10, 2017, the Member did one or more of the following:
 - a. Touched the Patient’s genitals over her underwear and gown; and/or
 - b. Kissed the Patient’s leg from her ankle to her hip.
5. It is alleged that the conduct in paragraphs 3 and/or 4 was of a sexual nature and not of a clinical nature appropriate to the service provided.

Conviction for Sexual Assault

6. It is further alleged that on or about October 22, 2021, the Member pleaded guilty to and was convicted of sexual assault under section 271 of the Criminal Code in relation to his conduct with [Patient A].
7. It is alleged that on or about November 1, 2021, the Member was sentenced to a 12-month conditional sentence for his conviction of sexual assault in relation to his conduct with [Patient B]. The Member has not appealed the conviction or the sentence.

[11] In Notice of Hearing 5-0093, the particulars are as follows:

The Member

1. Chanpheng Anousaya (the “Member”) became a Grandparented member (R. TCMP, R. Ac) of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”) on or about January 17, 2014. He transferred to the General class (R. TCMP, R. Ac) on or about February 8, 2018.
2. At all material times, the Member was practicing out of his home in Hamilton, Ontario.

Sexual Abuse of a Patient

3. It is alleged that, during the course of a treatment session with a female patient [(Patient B)] on or about December 11, 2018, the Member did one or more of the following:
 - a. Told the Patient that she looked nineteen or words to that effect;

- b. Told the Patient that she was cute or words to that effect;
 - c. Sang “You Are My Sunshine” to the Patient;
 - d. Kissed the Patient’s hand and/or cheek;
 - e. Attempted to kiss the Patient on the lips, but ultimately kissed the Patient on the side of the mouth because the Patient moved her face away;
 - f. Touched the Patient’s stomach and/or chest between her breasts, over her bra, without consent;
 - g. Touched the Patient’s breasts, under her bra, without consent; and/or
 - h. Leaned over the Patient such that she was pinned against the treatment table while he touched her breasts, under her bra, without consent and/or stated, “I am old enough to be your father” or words to that effect.
4. It is alleged that the conduct in paragraph 3 was of a sexual nature and not of a clinical nature appropriate to the service provided.

Conviction for Sexual Assault

5. It is further alleged that on or about October 22, 2021, the Member pleaded guilty to and was convicted of sexual assault under section 271 of the Criminal Code in relation to his conduct with [Patient B].
6. It is alleged that on or about November 1, 2021, the Member was sentenced to a 12-month conditional sentence for his conviction of sexual assault in relation to his conduct with [Patient B]. The Member has not appealed the conviction or the sentence.

Member’s Position

[12] The Member admitted to 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

[13] Although the Member admitted to the allegations, the parties did not arrive at an agreed statement of fact. No witnesses were called to testify at the hearing. The College tendered a number of documents as exhibits and relied exclusively on that documentary record. The Member accepted the exhibits tendered by the College and did not tender any further evidence.

[14] The following documents tendered by the College were marked as exhibits in the hearing:

1. A certified copy of Information No. 4711-998-19-11490-00. This exhibit provided evidence that:

- a. Charges were laid against the Member on two counts:¹ (a) that the Member sexually assaulted Patient A on or about December 11, 2018, contrary to s. 271 of the *Criminal Code*, and (b) that the Member sexually assaulted Patient B on or about October 5 and October 10, 2017, contrary to s. 271 of the *Criminal Code*;
 - b. The Member pleading guilty to the two counts; and
 - c. The Member was sentenced by the Ontario Court of Justice on November 1, 2021, to a 12-month conditional sentence for each count, with the sentences to run concurrently;
2. A certified copy of an Adult Conditional Sentence Order dated November 1, 2021, imposed by the Ontario Court of Justice in respect of the two sexual assault convictions, which sets out the terms of the conditional sentence order;
 3. A certified copy of an Order to Comply with *Sex Offender Information Registration Act* dated November 21, 2021, and signed by the sentencing judge;
 4. A certified copy of the transcript of the sentencing proceedings that took place on November 1, 2021, in the Ontario Court of Justice relating to the criminal charges against the Member, which includes victim impact statements of Patient A and Patient B;
 5. An agreed statement of fact between the Crown and the Member, which provided the basis for the Member's guilty plea and the sentence imposed on him in the criminal court; and
 6. A certificate of the College's registrar confirming the Member's registration history with the College, which establishes that he was a member of the College at the time of the incidents alleged in the two Notices of Hearing.

Decision of the Panel

[15] The Panel accepted the Member's admissions of professional misconduct. In addition, the Panel was satisfied that the evidence tendered by the College proved each of the allegations in each Notice of Hearing on a balance of probabilities. Accordingly, the Panel made findings of professional misconduct as alleged in both Notices of Hearing.

Reasons for Decision

[16] A member's admissions to the allegations of professional misconduct carries significant weight in a determination of whether the College has met its burden of proving allegations of professional misconduct. However, on its own a member's admission is not sufficient; the College must also tender evidence to prove the misconduct alleged.

[17] In addition to the Member's admissions of professional misconduct in both Notices of Hearing, the College tendered compelling evidence that the Member committed the alleged acts of misconduct. The Member was found guilty of sexual assault in criminal proceedings relating to

¹ Other matters that are not relevant to this Discipline hearing were redacted from the Information and other exhibits.

the same conduct that formed the basis of the allegations in this discipline proceeding. That finding of guilt was based on the criminal standard of beyond a reasonable doubt.

[18] The agreed statement of facts that supported the Member's guilty plea and the finding of guilt set out the agreement of the Member and the Crown that on October 5, 2017, the Member did the following to Patient A:

- a. touched her back and hair; and
- b. placed his hand on her vaginal area over her clothing;

[19] Further, the agreed statement of facts set out that on October 10, 2017, the Member did the following to Patient A:

- a. kissed her leg from her ankle to her hip; and
- b. touched her vagina over her clothing again.

[20] With respect to Patient B, the Member and the Crown agreed in the agreed statement of facts that on December 11, 2018, the Member did the following:

- a. made a number of remarks to her, including that she looked nineteen and that she was cute;
- b. Sang "You Are My Sunshine" to her;
- c. Kissed her cheek and hand;
- d. Attempted to kiss her mouth, but made contact with the edge of her lips and cheek because she turned her face away to avoid him;
- e. Touched her stomach between her breasts over her bra; and
- f. Slid his hands under her clothing and pinned her to the table while he touched her breasts and said he was old enough to be her father, such that she had to push him off.

[21] Having regard to that finding of guilt and the agreed statement of facts the Member entered into with the College in the criminal proceedings, the Panel was satisfied that the Member engaged in the acts of professional misconduct set out in the two Notices of Hearing.

[22] With respect to allegation 1 in each Notice of Hearing, the Member was found guilty of sexually assaulting his patients during acupuncture treatment sessions. These are undoubtedly offences relevant to the Member's suitability to practice.

[23] With respect to allegation 2, the evidence established that the Member sexually abused each of Patient A and Patient B as that term is defined in s 1(3) of the Code. He touched and caressed Patient A's back, touched her genitals, and kissed her leg, all without her consent. This touching was of a sexual nature and not of a clinical nature appropriate to the service provided. Similarly, the Member kisses Patient B's hand and cheek, attempted to kiss her lips, and touched her stomach and touched her breasts, under her bra, including while pinning her to the treatment

table, all without consent. Again, this touching was of a sexual nature and not of a clinical nature appropriate to the service provided.

[24] With respect to allegation 3:

- a. It is unquestionably a standard of practice of the profession that members do not sexually abuse their patients. Such conduct is so notorious and egregious that further evidence proving it is a standard of practice is not necessary. However, at the relevant time this standard of practice was also set out in Standard of Practice 6: Prohibition of a Sexual Relationship with a Patient. The College proved that the Member engaged in professional misconduct contrary to paragraph 1 of Regulation 318/12 by contravening the standards of practice of the profession.
- b. Paragraph 2 of Regulation 318/12 makes it an act of professional misconduct for a member to abuse a patient physically. As explained above, the Panel found that the Member sexually abused Patient A and Patient B through touching of a sexual nature. This is a form of physical abuse and the Panel found the College proved allegation 3b.
- c. Under paragraph 3 of Regulation 318/12, it is an act of professional misconduct for a member to do anything to a patient for a therapeutic purpose without the patient's consent. The Member's sexual abuse of Patient A and Patient B was during the course of treatment sessions and he did not have their consent. This allegation was proven.
- d. Finally, the Panel had no hesitation in concluding that the Member's actions would reasonably be regarded by other members of the profession as disgraceful, dishonourable, and unprofessional. The Member's conduct lacked integrity and abused the trust between patient and practitioner.

Penalty and Costs Submissions

[25] The College presented the Panel with a proposed order as to penalty and costs, and tendered an affidavit of Ryan Chu, which provided evidence as to the costs the College incurred in respect of this matter.

[26] The College sought an order as follows:

- a. a public reprimand with the fact and text of the reprimand to appear on the College's public register;
- b. revocation of the Member's certificate of registration, effective immediately;
- c. an order requiring the Member to reimburse the College for any amount paid for funding for therapy and counseling to the patients, up to the maximum allowable amount (\$17,370.00 per patient or \$34,740.00 total);
- d. an order requiring the Member to pay security for funding for therapy and counseling provided to Patient A in the amount of \$8,000.00, within 30 days of the date of the Discipline Committee's order;

- e. an order requiring the Member to pay security for funding for therapy and counseling provided to Patient B in the amount of \$3,000.00, within 30 days of the date of the Discipline Committee's order; and
- f. an order that the Member pay costs to the College in the amount of \$34,605.56, payable within 30 days of the Discipline Committee's order.

[27] College counsel made submissions in support of the order sought by the College. She argued that a reprimand and revocation of the Member's certificate of registration are mandatory in this case pursuant to ss 51(5) and 51(5.2) of the Code because the sexual abuse included, for Patient A, touching of a sexual nature of the patient's genital area and, for Patient B, touching of a sexual nature of the patient's breast. These components of the proposed penalty also serve the functions of specific and general deterrence. The reprimand has a remediation element and revocation helps maintain public confidence in the profession's ability to self-regulate. The terms of the proposed order requiring the Member to reimburse the College for therapy and counselling funding provided to the patients, and to pay security for that funding, ensures that the Member—whose conduct is the cause of any need for such funding—is responsible for paying the associated costs. College counsel's noted that the Member's guilty plea and lack of a prior discipline history are mitigating factors. On the other hand, the nature of the misconduct is a significant aggravating factor.

[28] With respect to costs, the College sought an order that the Member pay approximately two-thirds of the College's actual costs, estimated at a total of \$51,908.35. College counsel relied on the decision of the Divisional Court in *Bayfield v College of Physiotherapists of Ontario*, 2014 ONSC 6570 (Div Ct) in support of a general principle that an award of costs on that scale is appropriate where the regulator has been substantially successful in proving allegations of professional misconduct. College counsel argued that the costs incurred by the College are reasonable and fall within the categories listed in s. 53.1 of the Code.

[29] The Member did not provide a proposal or make submissions at the hearing on the issues of penalty and costs. However, in response to questioning from the Chair, he indicated that he was "okay" with the cost order sought by the College.

Penalty and Costs Decision

[30] The Panel made an order as follows, which was announced orally on the record at the hearing:

1. The Member shall appear before a Panel of the Discipline Committee to receive a public reprimand, the fact and text of which shall be recorded and published on the College public register;
2. The Member's certificate of registration shall be revoked, effective immediately;
3. The Member shall reimburse the College for any amount paid for funding for therapy and counselling to Patient A and Patient B, up to the maximum allowable amount (\$17,370.00 per patient or \$34,740.00 total);

4. an order requiring the Member to pay security for funding for therapy and counseling provided to Patient A in the amount of \$8,000.00, within 30 days of the date of the Discipline Committee's order;
5. an order requiring the Member to pay security for funding for therapy and counseling provided to Patient B in the amount of \$3,000.00, within 30 days of the date of the Discipline Committee's order; and
6. The Member shall pay costs to the College in the amount of \$34,605.56, payable within 30 days of the Discipline Committee's order.

Reasons for Penalty and Costs Decision

[31] The Member was found guilty of professional misconduct and the Panel had the responsibility of determining the appropriate order to impose as a result of that finding, within the jurisdiction granted to it under the Code, and having regard to (a) the objectives of public protection, maintaining public confidence in the profession's ability to self-regulate, specific deterrence, general deterrence and, where appropriate, rehabilitation/mediation, (b) the aggravating and mitigating factors, and (c) the proportionality principle. The Member's misconduct, sexual abuse of two patients, is an egregious offence by any measure, and cannot be countenanced. Although the Member had resigned from the profession by the time of the hearing, the Member was guilty of professional misconduct engaged in during the time he was registered with the College, and therefore he continues to be subject to the jurisdiction of the College, including the Discipline Committee's authority to order revocation of his certificate of registration. See: *College of Nurses of Ontario v Dumchin*, 2016 ONSC 626 (Div Ct). Public protection and deterrence are important principles in this case.

[32] Pursuant to ss. 51(5) and 51(5.2), the Panel was required to order revocation of the Member's certificate of registration. Revocation is the most significant rebuke of a member's professional misconduct, and sends a message of deterrence both to this Member and more generally to the profession. It also provides the strongest form of public protection. In addition, the Panel was required to order that the Member receive a reprimand. The Panel delivered the reprimand to the Member after the hearing and conveyed to him its denunciation of his conduct and the shame it cast on him and, by extension, the profession.


[33] The Panel was deeply concerned about the harm the Member's conduct caused to Patient A and Patient B. The patients described this harm in their victim impact statements in the criminal proceedings against the Member, a transcript of which was included in the evidence before the Panel. The Panel agreed with the College that any amount incurred by the College in funding therapy and counseling for the patients is the direct result of the Member's conduct and, as such, he should be solely responsible for the associated costs. Accordingly, the Panel had no hesitation in ordering the Member to reimburse the College for amounts paid for funding for therapy and counseling for the Patients, up to the maximum allowable amount as set out above.

[34] With respect to costs, the Ontario Divisional Court has affirmed that it is appropriate for a regulatory body to impose an order requiring a member to repay two-thirds of its actual costs when the College is successful in proving allegations of professional misconduct.

[35] The Panel asked the Member on multiple occasions during the hearing whether he had any issues or concerns with the proposed costs and the corresponding proposed timeline for payment of same. The Member did not express any concerns. Therefore, the Panel found it was appropriate that the Member pay costs in the amount of \$34,605.56, within 30 days of the Discipline Committee's order.

I, Kevin Ho, sign this decision as Chair of the Panel and on behalf of the Panel members listed below.

Date: March 4, 2024

Signed: 
Kevin Ho, Chair
Iftikhar Choudhry
Justin Lee