

**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:** November 7, 2022

**Indexed as:** Ontario (College of Traditional Chinese Medicine  
Practitioners & Acupuncturists of Ontario) v Xiao 2022  
ONCTCMPO 16

<b>Panel:</b>	Kimberley Bishop	Chairperson, Public Member
	Iftikhar Choudry	Public Member
	Hai Su	Professional Member

**BETWEEN:**

<b>THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO</b>	( ( Brianne Westland for the College ( ( ( (
<b>-and-</b>	( ( (
<b>HONGXING XIAO</b>	( Self-represented ( ( ( Fredrick Schumann ( Independent Legal Counsel ( ( Date of Hearing: June 22, 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 22, 2022, via videoconference.

### 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.

### The Evidence

[4] The evidence was tendered by way of an Agreed Statement of Facts. The substantive portion of the Agreed Statement of Facts is reproduced below, without the attachments referred to in the Agreed Statement of Facts:

### BACKGROUND

1. Mr. Hongxing Xiao (“**Mr. Xiao**” or the “**Member**”) is a Registered Acupuncturist (“**R. Ac.**”). He is a grandparented member of the College of Traditional Chinese Medicine and Acupuncturists of Ontario (the “**College**”) and was first registered on October 9, 2013. He holds a General Class Certificate of Registration. The Member is not a Registered Traditional Chinese Medicine Practitioner (“**R. TCMP**”).
2. The Member also goes by the first name “Hank”.
3. The Member is also a Registered Massage Therapist (“**RMT**”) with the College of Massage Therapists of Ontario (“**CMTO**”).
4. On October 14, 2021, the Inquiries, Complaints and Reports Committee (“**ICRC**”) of the College referred Mr. Xiao to the Discipline Committee on the basis that he breached the *Regulated Health Professions Act*, S.O. 1991, c. 18 (the “**RHPA**”) and the *Traditional Chinese Medicine Act*, 2006, S.O. 2006, c. 27 (the “**TCMA**”).
5. This Agreed Statement of Facts is with respect to conduct that took place between January 1, 2014 and March 31, 2020.

## **THE MEMBER'S CONDUCT**

6. Mr. Xiao owns Evergreen Wellness Centre, located at 1205 Hurontario Street, Mississauga, ON ("**Evergreen**"), with his wife through a corporation called Dynateck. Mr. Xiao practiced exclusively at Evergreen.
7. Since at least 2014, Mr. Xiao has been the only male Acupuncturist and RMT working at Evergreen. Previously, a female RMT and Acupuncturist worked at Evergreen, but ceased working at Evergreen around 2020.
8. Mr. Xiao also owns Evergreen Wellness Centre located at 1171 Lakeshore Road East ("**Evergreen Lakeshore**"), and was involved in its management:
  - (a) From March 2017-2018, Mr. Xiao ran Evergreen Lakeshore in a partnership with Ms. [Redacted] ("**HC**") through an Ontario numbered corporation, 1971286.
  - (b) Mr. Xiao had a sexual relationship with HC.
  - (c) The business relationship between Mr. Xiao and HC was terminated in 2018, and the corporation dissolved on May 28, 2019.
  - (d) Mr. Xiao continues to own the building at 1171 Lakeshore Road East.
  - (e) Evergreen Lakeshore is currently run by Ms. Dena Ma, who is a tenant of Mr. Xiao.
9. Evergreen Lakeshore offered only non-RMT massages, as there are no employees who are RMTs or R. Acs.

### **Sexual Services**

10. Mr. Xiao had multiple employees who offered massages, but are not RMTs or Acupuncturists. All of these employees were female.
11. Mr. Xiao's employees offered sexual services to customers in addition to massage. This was done with Mr. Xiao's knowledge.

### **False Receipts**

12. Mr. Xiao regularly issued receipts to customers for acupuncture services purportedly rendered by Mr. Xiao, that Mr. Xiao never rendered:
  - (a) Mr. Xiao frequently issued receipts to customers for acupuncture services purportedly rendered by Mr. Xiao, after the customer received massages and/or sexual services from his employees or from employees at Evergreen Lakeshore;

- (b) Mr Xiao frequently issued receipts to customers for acupuncture services purportedly rendered by Mr. Xiao, to individuals who were never customers at Evergreen or Evergreen Lakeshore.

13. Mr. Xiao issued receipts to customers for acupuncture services purportedly rendered by Mr. Xiao for services and/or dates stipulated by the customer, that did not accurately reflect the type and/or time of the service rendered.

14. These false receipts for acupuncture services were submitted to insurance companies with the knowledge of Mr. Xiao.

### **Record Keeping**

15. Mr. Xiao maintained records in unsecure locations, including file cabinets that were not capable of locking.

16. Mr. Xiao failed to maintain Patient Health History forms and/or treatment notes for all patients.

17. Mr. Xiao failed to maintain accurate and/or complete appointment and billing records of his patients.

18. Mr. Xiao failed to maintain patient health and financial records for a 10 year period from the date of the last patient visit.

## **INVESTIGATIONS CONDUCTED**

### **Equitable Life (2018)**

19. In 2018, Mr. Xiao, Evergreen, and Evergreen Lakeshore were de-listed from the insurer Equitable Life following an undercover insurance investigation into sexual services being offered by Evergreen.

20. In the course of the investigation, the investigator called Evergreen and spoke to Mr. Xiao. The investigator asked Mr. Xiao what the price was for “extras”. Mr. Xiao told the investigator that the investigator would need to speak to the girls. The investigator asked for a “happy ending”. Mr. Xiao said yes.

21. The note from the Equitable Life investigator documenting the call, dated March 13, 2018, is attached as **Tab 1**.

### **Sun Life (2018)**

22. In 2018, Sun Life conducted an undercover investigation at Evergreen. The investigator attended Evergreen on June 28, 2018, to receive a massage by a woman. The investigator was asked by the woman if he wanted a “hand job” and the investigator said he did.

23. The woman confirmed that Evergreen would issue insurance receipts for a massage of \$50, and extras were an additional \$40. The investigator said he needed to leave to get more cash.

24. The investigator spoke with Mr. Xiao at reception. Mr. Xiao confirmed that he would provide a receipt for a \$50 massage when he finished, and the investigator told him he would leave to grab more money to “pay the girl”.

25. The Memorandum from Ms. Hutchinson to the CMTO dated November 8, 2019, containing the Sun Life investigation report dated June 28, 2018, is attached as **Tab 2**. The account provided by Ms. Hutchinson in the Memorandum is true and accurate.

### **CMTO (2019)**

26. The CMTO conducted an investigation into one of their members (“**CMTO Member**”) who practices at Positive Energy Rehabilitation, located at 10-3085 Hurontario Street, Mississauga (“**PER**”). Mr. Xiao does not practice at PER.

27. As part of this investigation, Laura Hutchinson (“**Ms. Hutchinson**”) from Barker Hutchinson attended PER on July 30, 2019. At PER, Ms. Hutchinson observed a stack of receipts signed and stamped by the RMT Member that were otherwise blank, and were on Evergreen letterhead.

28. Ms. Hutchinson also found three completed Evergreen receipts that were signed and stamped by Mr. Xiao.

29. Ms. Hutchinson also went through the RMT Member’s phone and captured a lengthy text message exchange with Mr. Xiao where she sent Mr. Xiao client names, contact information, birthdates, and insurance information, as well as completed PER registration forms. The text messages discussed payments and insurance details for patients and appeared to coordinate invoicing.

30. Some of the text message exchanges coordinate invoicing for services that were not rendered on that date they were invoiced. For example, Ms. Hutchinson observed the following text message from Mr. Xiao to the RMT Member:

[Redacted], female, born on [Redacted], [Redacted] Address: [Redacted]. Empire Life 80% coverage, 300 spinal chiropractor, \$300 naturopath, \$300 chiropractor, the invoices can only be issued for the client as of April 14, because she has changed her job. She has invoices issued for January 3, January 8, January 10, and January 17, January 24, February 11, February 20, February 25, March 4, March 9, and March 12, March 16, March 19, March 23 somewhere else, please avoid these dates. Thank you.

31. To which the RMT Member responded:

For this person, issue [invoices] for osteopath, January 27, February 2, 17, thank you

32. Ms. Hutchinson went to Evergreen afterwards, and did not locate patient files at Evergreen for the patients referenced in the Evergreen invoices found at PER.

33. Ms. Hutchinson conducted Google searches of Evergreen. Some of these posts stated that after receiving services from Mr. Xiao's non-RMT employees, "Hank" at Evergreen would provide a receipt for RMT massages and acupuncture. The posts consistently described Evergreen as "semi-legit", which was described by the posters as a place where one could receive a massage with sexual services, and receive a receipt for insurance purposes. The forum posts described details of sexual services or "extras" provided by Mr. Xiao's employees.

34. At Evergreen, Ms. Hutchinson observed a text message conversation in Mr. Xiao's phone with an unknown number, where the unknown number inquired about an RMT massage, and Mr. Xiao confirmed that Tina or Malisa were available. Mr. Xiao indicated he could do insurance receipts for Massage, Acupuncture, or Osteopathy. The unknown number also asked if he could pay Mr. Xiao to write a receipt for insurance, and then pay cash to the "girl" for "extra". Mr. Xiao asked the unknown number to come to Evergreen to talk. The text message chain also included comments from an unknown number asking if there were "good looking girls" and the age of the girls.

35. On November 14, 2019, the CMTO shared the information about Mr. Xiao from their investigation with the College:

- (a) The Memorandum received from the CMTO dated August 23, 2019 is attached as **Tab 3**. The account provided in this Memorandum is true and accurate.
- (b) The Memorandum written by Laura Hutchinson to the CMTO dated October 3, 2019, is attached as **Tab 4**. The account provided in this Memorandum is true and accurate.
- (c) The Memorandum written by Laura Hutchinson to the CMTO dated October 16, 2019 is attached as **Tab 5**. The account provided in this Memorandum is true and accurate.
- (d) The Memorandum written by Laura Hutchinson to the CMTO dated October 21, 2019 is attached as **Tab 6**. The account provided in this Memorandum is true and accurate.

**Barker Hutchinson Hongxing Xiao Investigation (2020)**

**Duncan Roe**

36. Barker Hutchinson investigator, Duncan MacVicar (“**Mr. MacVicar**”), attended Evergreen under the pseudonym Duncan Roe on February 5, 2020 and requested a 45-minute massage. He paid \$50 for the massage to Mr. Xiao at the front desk. Mr. MacVicar was attended by a woman named Coco. She requested he disrobe to his underwear and socks while she remained in the room.

37. Mr. MacVicar requested a light back massage. Coco told Mr. MacVicar that he could receive a hand job or body glide with his massage. Coco told him it would be \$30-\$40 extra for a hand job. Mr. MacVicar declined.

38. Mr. MacVicar asked Mr. Xiao for an insurance receipt. Mr. Xiao said massages for insurance companies were \$70 (rather than \$50). Mr. MacVicar paid the \$20 difference. Mr. Xiao wrote, signed and stamped a massage therapy receipt. This receipt was false. Mr. Xiao said that Evergreen could also issue insurance receipts to customers for osteopath and acupuncture. The receipt issued to Mr. MacVicar is attached as **Tab 7**.

39. Mr. MacVicar returned to Evergreen on February 6, 2020. Mr. MacVicar asked Mr. Xiao to switch the massage receipt for an acupuncture receipt. Mr. Xiao initially agreed, but then refused because the receipt had already been submitted. Mr. Xiao stated that he would issue Mr. MacVicar an acupuncture receipt for his next massage with Coco.

40. Mr. MacVicar asked Mr. Xiao about the prices for extras with Coco. He told Mr. Xiao that Coco had said a hand job was \$30-40. Mr. Xiao said he did not know, and Mr. MacVicar would need to discuss this with Coco.

**Nicole Wong**

41. Barker Hutchinson investigator, Shanna Yee (“**Ms. Yee**”), attended Evergreen on February 8, 2020 under the pseudonym Nicole Wong. Ms. Yee spoke with Mr. Xiao at the front desk and indicated that she preferred a female therapist. Mr. Xiao asked whether Ms. Yee had insurance, and if she required an insurance receipt. When Ms. Yee told Mr. Xiao that she had used all of her massage therapy benefits for the year, Mr. Xiao told Ms. Yee that he could provide her with an acupuncture receipt.

42. Ms. Yee received a massage from a woman named Melissa. After the massage, Mr. Xiao provided Ms. Yee with a receipt for acupuncture, which he signed. This receipt was false. He asked Ms. Yee to fill out a Health History Form.

43. Ms. Yee told Mr. Xiao that her benefits were expiring at the end of the month and that she had \$250 remaining in acupuncture benefits. Mr. Xiao

provided her with four backdated receipts for acupuncture, which Mr. Xiao told Ms. Yee she could use at a later date for four, thirty-minute massages. These receipts were false. The false receipts issued to Ms. Yee are attached as **Tab 8**.

44. After providing the receipts, Mr. Xiao whited out the date on Ms. Yee's Health History Form, and asked her to fill in January 2, 2020, which is the date of the earliest back-dated receipt.

#### **Evergreen Record Collection by Laura Hutchinson**

45. Ms. Hutchinson, attended Evergreen on February 18, 2020 to collect Mr. Xiao's client files.

46. At Evergreen, Ms. Hutchinson found physical patient files stored in file cabinets, as well as electronic filing. Only one of Mr. Xiao's two filing cabinets were capable of locking. Mr. Xiao uses CM Soft (an electronic service) for more recent appointment and billing history and treatment notes. Not all clients were located in CM Soft.

47. Receipts in Mr. Xiao's receipt book were not chronological. Mr. Xiao maintained inconsistent records of his employees' appointments.

48. Ms. Hutchinson searched Mr. Xiao's phone, and located the following exchange:

Unknown: Hi is this a full body erotic massage?

Mr. Xiao: Yes 1171 Lakeshore road east

49. Ms. Hutchinson found a bag of Durex condoms in the filing cabinet.

50. Ms. Hutchinson also observed the following suspicious behaviour: Mr. Xiao's phone rang, and when the male voice on the other end asked if Lu was available, Mr. Xiao promptly hung up the phone. When a man entered Evergreen and went to the front desk, Mr. Xiao told the man they were busy, and the man left. Ms. Hutchinson observed women and men using Evergreen's back entrance.

51. The following statements are true based on Ms. Hutchinson's analysis of Mr. Xiao's client files:

- (a) Mr. Xiao's appointment records did not always match the dates of treatments documented on receipts;
- (b) Not all of Mr. Xiao's patient files included health history forms or treatment notes, and Mr. Xiao admitted he did not always fill out treatment notes;
- (c) Corrections on Mr. Xiao's patient files had been made with white out, including the dates of some forms;



- (d) Some of Mr. Xiao's health history forms were incomplete, or completed with 2 different colour pens;
- (e) One of Mr. Xiao's patients denied attending Evergreen for treatment at all;
- (f) A patient Mr. Xiao stated he treated told the investigator that he only saw female practitioners at Evergreen, and saw several different female practitioners. The patient stated that he made his appointments with a male, and paid and received a receipt from a male for his insurer; and
- (g) Some of Mr. Xiao's patient records were located in the wrong patient files.

52. Generally, Evergreen's appointments were recorded inconsistently and were disorganized:

- (a) Prior to 2018 Mr. Xiao recorded all appointments on paper;
- (b) Post 2018, Mr. Xiao recorded his appointments in CM Soft;
- (c) Walk in clients for Mr. Xiao's employees were recorded on loose paper;
- (d) Employee appointment records should be recorded in the collected appointment book;
- (e) Many previous employee appointment records had either been thrown out or misplaced;
- (f) Employees were identified by initials, some of whom changed their names on different days, and some of whom Mr. Xiao did not know; and
- (g) Client names were often not written for the appointments.

53. The appointments of the undercover investigators under Duncan Roe and Nicole Wong were listed under the names of the employees who provided them with a massage. Both had been issued insurance receipts.

#### **Attendance at Evergreen Lakeshore**

54. Ms. Hutchinson attended Evergreen Lakeshore on February 18, 2020. Evergreen Lakeshore is currently run by Dana Ma, who leases the space from Mr. Xiao.

55. While touring the clinic, Ms. Hutchinson observed personal lubricant in a drawer. She also observed many business cards for Evergreen.

## **Interview with Mr. Xiao**

### *Evergreen*

56. Ms. Hutchinson interviewed Mr. Xiao on March 10, 2020 and August 6, 2020. At the outset of the interview, Mr. Xiao confirmed that he did not require an interpreter.

57. Mr. Xiao confirmed to Ms. Hutchinson that he provided massage therapy, acupuncture and osteopathy at Evergreen, and his employees provided only non-RMT massage. Mr. Xiao provided a list of employees, but stated that there were additional temporary workers of whom Mr. Xiao did not keep a records of employment. Mr. Xiao confirmed that no other male has worked at Evergreen since 2013 or 2014. Mr. Xiao confirmed that he was the only person who performed administrative tasks at Evergreen.

58. Mr. Xiao confirmed that another RMT and R. Ac practiced at Evergreen in the past. She left signed blank massage therapy and acupuncture receipts at Evergreen.

### *Evergreen Lakeshore*

59. Evergreen and Evergreen Lakeshore shared a website. Signs outside of Evergreen Lakeshore indicate RMT and acupuncture were offered.

60. Mr. Xiao stated that Evergreen Lakeshore was called Evergreen Wellness from March 2017-2018 only, when he co-owned the Clinic with HC. Mr. Xiao said no RMTs or acupuncturists practiced at Evergreen Lakeshore.

61. Evergreen Lakeshore's price list included a higher amount for a "special" massage. Mr. Xiao knew that Evergreen Lakeshore was offering sexual services.

## **Interview with HC**

62. Ms. Hutchinson also interviewed HC as part of the investigation. HC confirmed:

- (a) Mr. Xiao was involved with the management of Evergreen Lakeshore and shared in the profits; and
- (b) Mr. Xiao provided blank receipts to Evergreen Lakeshore with Mr. Xiao's signature to be given to clients if the clients asked for a receipt after receiving a treatment.

63. Barker Hutchinson's investigation report dated October 1, 2020, is attached as **Tab 9**. This report is true and accurate save and except that the Member denies all of the allegations of HC.

## **ADMISSIONS TO ALLEGATIONS**

64. With respect to the allegations set out in the Notice of Hearing dated October 28, 2021, Mr. Xiao acknowledges and pleads that based on the facts set out above, he engaged in professional misconduct as follows:

- (a) Submitted accounts or charge for services that the Member knew or ought to have known are false or misleading contrary to section 1(9) of Ontario Regulation 318/12;
- (b) Signed or issued in the Member's professional capacity, documents that the Member knew or ought to have known contain a false or misleading statement contrary to section 1(26) of Ontario Regulation 318/12;
- (c) Falsified records relating to the Member's practice contrary to section 1(27) of Ontario Regulation 318/12;
- (d) Contravened, by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession contrary to section 1(1) of Ontario Regulation 318/12;
- (e) Failed to keep records in accordance with the standards of the profession contrary to section 1(25) of Ontario Regulation 318/12;
- (f) Engaged in conduct or performed 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;
- (g) 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.

### **Decision of the Panel on Misconduct**

[5] 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 on Misconduct**

[6] The evidence showed that Mr. Xiao frequently issued receipts to customers for acupuncture services to people who were never customers at Evergreen Lakeshore, for acupuncture services where the customers had actually received massages and/or sexual services, and for services and dates that did not accurately reflect the type of services rendered or the date on which they were rendered. He therefore submitted accounts or charges for services that he knew or ought to have known were false or misleading, contrary to paragraph 1(19) of Ontario Regulation 318/12 (the "**Regulation**"), pursuant to the *Traditional Chinese Medicine Act, 2006*, SO 2006, c 27.

[7] The same facts show that Mr. Xiao also signed or issued, in his professional capacity, documents that he knew or ought to have known contained a false or misleading statement, contrary to paragraph 1(26) of the Regulation.

[8] These facts also show that Mr. Xiao falsified records relating to his practice, contrary to paragraph 1(27) of the Regulation.

[9] Mr. Xiao failed to maintain certain classes of required records. He also maintained records in unsafe locations, including file cabinets that were not capable of locking. In this, he failed to keep records in accordance with the standard of the profession, contrary to paragraph 1(25) of the Regulation.

[10] In our view, this conduct contravened a standard of practice of the profession or failed to maintain a standard of practice of the profession. This contravened paragraph 1(1) of the Regulation.

[11] By permitting and knowingly facilitating the sale of sexual services to clients from his clinics, and by issuing false receipts, the member engaged in conduct or performed 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 paragraph 1(48) of the Regulation.

[12] This conduct would also be reasonably regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to paragraph 1(49) of the Regulation.

### **Penalty and Costs Submissions**

[13] The Member and the College agreed on a joint submission on penalty and costs. The Joint Submission was signed by the Member on May 24, 2022 and the substantive portion of the Joint Submission is as follows:

1. Mr. Xiao will attend before the Discipline Committee for a public and recorded reprimand;
2. Mr. Xiao's Certificate of Registration will be suspended for a period of twenty-four (24) months. The period of suspension will begin counting from November 2, 2021 and will end on November 2, 2023;
3. The Registrar will impose the following terms, conditions and limitations on Mr. Xiao's certificate of registration;
  - (a) Requiring that Mr. Xiao successfully complete a course in professional ethics approved by the College, at his own expense, within twelve (12) months of the date of the Order of the Discipline Committee;
  - (b) Requiring that Mr. Xiao successfully complete a course on the Standards of Practice approved by the College, at his own expense, within twelve (12) months of the date of the Order of the Discipline Committee;

(c) Requiring that Mr. Xiao successfully complete a course on Record-Keeping approved by the College, at his own expense, within twelve (12) months of the date of the Order of the Discipline Committee;

(d) Requiring that Mr. Xiao complete a 2,000 word reflective essay within twelve (12) months of the date of the Order of the Discipline Committee;

(e) Require that Mr. Xiao submit to three unannounced inspections of his practice, to be conducted within two years following his return to practice, and at Mr. Xiao's expense.

4. Mr. Xiao must successfully fulfill the requirements in paragraph 3 (a) through (d) prior to the conclusion of the suspension of his Certificate of Registration, failing which his Certificate of Registration will continue to be suspended until such time as those requirements are fulfilled.

5. Mr. Xiao shall pay the College costs in the amount of \$10,000 to be paid in monthly installments of no less than \$2,500 per month over four months commencing June 22, 2022.

6. The College and Mr. Xiao agree that this Joint Penalty Submission may be executed electronically.

### **Penalty and Costs Decision**

[14] 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.

[15] The Member waived his 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**

[16] 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 ONCTCMPO 12.

[17] We concluded that the joint submission would not bring the administration of justice into disrepute or be contrary to the public interest. Mr. Xiao's misconduct was serious and deserved a significant penalty. The twenty-four month suspension meets that threshold, and it will deter Mr. Xiao and others from similar misconduct. The terms, conditions, and limitations will contribute to Mr. Xiao's rehabilitation.

[18] The Panel therefore accepted the joint submission and made an order in accordance with its terms.

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

Date: 7 November 2022

Signed: Kimberley Bishop  
Kimberley Bishop  
Iftikhar Choudry  
Hai Su

## **APPENDIX “A” – STATEMENT OF ALLEGATIONS**

1. Mr. Hongxing Xiao (the “Member”) is a R.Ac who owns and practices out of Evergreen Wellness Centre, located at 1205 Hurontario Street, Mississauga (“Evergreen”). The Member also owns the building located at 1171 Lakeshore Road East (“Evergreen Lakeshore”) and was and continues to be involved in its management.
2. The Member is a grandparented member, first registered with the College of Traditional Chinese Medicine and Acupuncturists of Ontario (the “College”) on October 9, 2013.

### **Submitting a False and Misleading Account/Charge for Services; Signing or issuing a document that the Member knows or ought to know contains a false or misleading statement; Falsifying Records Relating to the Member’s Practice**

3. The Member has issued payment receipts to clients for services by the Member that were not rendered.
4. The Member has issued payment receipts to clients which he knew or ought to have known were false and misleading. The receipts contained false and misleading information regarding, among other things, the date of treatment and the type of treatment.
5. 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, Mr. Xiao:
  - a. Submitted 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*.
  - b. Signed or issued, in his professional capacity, documents 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*.
  - c. Falsified a record relating to the Member’s practice, contrary to Section 1(27) of *Ontario Regulation 318/12*.
  - d. Engaged in conduct or performed 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, dishonorable or unprofessional contrary to section 1(48) of *Ontario Regulation 318/12*.

### **Failure to Keep Records in Accordance with the Standards of the Profession**

6. The Member did not maintain treatment records in accordance with the standards of practice of the profession. The deficiencies in his records include:
  - a. Failure to maintain patient records in a system that makes finding and retrieving records efficient;

- b. Failure to maintain a complete and up-to-date daily appointment log that contains the names of patients and the time and duration of each visit;
  - c. Failure to maintain a complete patient health summary, initial assessment and treatment record;
  - d. Failure to maintain a follow-up treatment record, including documentation of services rendered, clinical finding, client reaction and recommendation;
  - e. Failure to retain records for 10 years from the date of the last patient visit.
7. The Member advised the College investigator that he did not always fill out treatment notes.
8. The Member's records were disorganized, retained in different locations, and/or misfiled.
9. The Member did not maintain records for the length of time required by the standard of the profession, including his appointment book.
10. The Member did not always include the patient's name in his appointment book.
11. 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, Mr. Xiao:
- a. Contravened, by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession, contrary to Section 1(1) of *Ontario Regulation 318/12*.
  - b. Failed to keep records in accordance with the standards of the profession, contrary to Section 1(25) of *Ontario Regulation 318/12*.
  - c. Engaged in conduct or performed 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*.

**Engaging in conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture and disgraceful, dishonourable or unprofessional conduct**

12. The Member permitted and knowingly facilitated the sale of sexual services to clients at Evergreen and Evergreen Lakeshore.
13. The Member used his position as a member of the College to assist in facilitating the sale of sexual services at Evergreen and Evergreen Lakeshore.
14. 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, Mr. Xiao:



- a. Contravened, by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession contrary to section 1(1) of *Ontario Regulation 318/12*.
- b. Engaged in conduct or performed 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*.
- c. 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*.