

**DISCIPLINE COMMITTEE OF THE
COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND
ACUPUNCTURISTS OF ONTARIO**

PANEL:	Henry Maeots	Chairperson, Public Member
	Xianmin Yu	Professional Member
	Barrie Haywood	Public Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO	(Jaan Lilles and Laura Robinson for the
	(College
	(
	(Lisa Freeman for the Member
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-and-	(
	(
DAN MICU	(Edward Marrocco (October 3, 4, 10
	(and November 9)
	(Aaron Dantowitz (October 12)
	(Independent Legal Counsel
	(
	(Dates of Hearing: October 3, 4, 10, 12
	(and November 9, 2017

DECISION AND REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) over the course of five days on October 3, 4, 10, 12 and November 9, 2017 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

Dan Micu (the “Member”) was present and represented by counsel at all times.

Publication Ban

At the request of the College, the Panel made an order prohibiting the publication and/or broadcasting of the name of the patient identified in this hearing, as well as any information that would reasonably identify the patient.

The Allegations

Allegations of professional misconduct against the Member were referred to the Discipline Committee of the College, in accordance with section 26(1) of the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18 (the "RHPA"). The allegations against the Member were set out in a Notice of Hearing, dated June 10, 2016 (the "Notice of Hearing") and are as follows:

IT IS ALLEGED that you are guilty of professional misconduct under the *Traditional Chinese Medicine Act, 2006* (the "Act"), S.O. 2006, c. 27 and the Regulations thereto, all as amended.

THE ALLEGATIONS of professional misconduct are that you:

1. Sexually abused patient J.S. contrary to section 51(1)(b.1) of the Code;
2. Verbally, physically, psychologically and/or emotionally abused patient J.S. contrary to section 1(2) of *Ontario Regulation 318/12*;
3. Contravened a standard of practice of the profession contrary to section 1(1) of *Ontario Regulation 318/12*;
4. 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*; and
5. 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*.

THE PARTICULARS OF THE ALLEGATIONS are that:

1. On or about May 13, May 25, June 1, June 8, June 15, and/or June 22, 2015, you sexually, verbally, psychologically, and or emotionally abused patient J.S. by, among other things, making remarks of a sexual nature towards the patient, including:
 - (a) Calling J.S. a princess;
 - (b) Remarking to J.S. that she was special;
 - (c) Remarking to J.S. that she should be spoiled;
 - (d) Remarking to J.S. that she had a beautiful body; and
 - (e) Remarking to J.S. that you liked her nail polish but next time she should use red.

2. On or about May 13, May 25, June 1, June 8, June 15, and/or June 22, 2015, you fell below the standard of practice in your treatment of the patient J.S. by, among other things, making inappropriate remarks towards the patient, including:
 - (a) Calling J.S. a princess;
 - (b) Remarking to J.S. that she was special;
 - (c) Remarking to J.S. that she should be spoiled;
 - (d) Remarking to J.S. that she had a beautiful body; and
 - (e) Remarking to J.S. that you liked her nail polish but next time she should use red.
3. On or about June 15 and/or June 22, 2015, you sexually, physically, psychologically and/or emotionally abused patient J.S. by, among other things, touching her breasts and nipples during the course of an acupuncture and massage treatment.
4. On or about June 22, 2015, you sexually, psychologically and/or emotionally abused patient J.S. by, among other things, touching her labia during the course of an acupuncture and massage treatment.
5. On or about June 15 and/or June 22, 2015, you fell below the standard of practice in treatment of the patient J.S. by, among other things, touching her breasts, nipples and labia during the course of an acupuncture and massage treatment.
6. As a result of the above, you engaged in conduct and/or performed an act relevant to the practice of the profession that, having regard to all the circumstances, would be regarded by the profession as disgraceful, dishonourable or unprofessional.
7. As a result of the above, you engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture.

Member's Position

At the outset of the hearing, the Member entered his plea and denied all of the allegations of professional misconduct contained in the Notice of Hearing.

Overview

Patient J.S., at the time a well-educated 32-year-old single professional woman, attended at Mr. Micu's clinic on six occasions in 2015. She presented with complaints of stress and neck and shoulder pain. The Member at the time of the alleged misconduct was a 63-year-old married male who had practiced traditional Chinese medicine ("TCM") since 2001. He specialized in pain and stress management and had an extensive educational and work background. The Member became registered with the College in May of 2013.

The Panel heard testimony from J.S., the Member Dan Micu, College investigator Greg Hutchinson, and Mr. Danny Li who was qualified as an expert to provide evidence on behalf of the College, regarding standards of practice of Chinese Medicine Practitioners and Acupuncturists.

There is no dispute that J.S. and Mr. Micu were alone in Mr. Micu's clinic during all of their six appointments. The evidence of both J.S. and Mr. Micu was similar regarding what occurred during the first three appointments. Their accounts diverge significantly in respect of the last three appointments. Comments made by Mr. Micu to J.S. at various sessions, including the first three, as well as the practice of J.S. and Mr. Micu hugging at the commencement of each treatment session is not in dispute. The nature of touching, however, during massages at the last three appointments differs significantly as between these two witnesses. As such, the Panel has made assessments and findings with respect to credibility and reliability of the testimony.

The issues for the Panel to decide were as follows:

1. Did the Member engage in sexual abuse of patient J.S.?
2. Did the Member verbally, physically, psychologically or emotionally abuse patient J.S.?
3. Did the Member contravene a Standard of Practice of the Profession of TCM and Acupuncture?
4. Did the Member engage in conduct or perform an act relevant to the practice of TCM which would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional?

Having considered the evidence, the Panel has concluded that all of the allegations against Mr. Micu have been proven on a balance of probabilities using clear, convincing and cogent evidence. For the reasons set out below, Mr. Micu is found to have committed professional misconduct as set out in Allegations 1-4 of the Notice of Hearing.

Summary of Key

(a) Evidence Regarding the Treatment Sessions

Both J.S. and Mr. Micu testified about the six (6) treatment sessions which occurred in the summer of 2015. J.S. testified that she was a 32-year-old female business owner at the time, seeking acupuncture treatment for ongoing neck-shoulder tension and stress. She had undergone previous

acupuncture treatment on a few occasions from a massage therapist who was no longer available. Mr. Micu testified about his work and educational background. At the time of the alleged misconduct, Mr. Micu was a 63-year-old married male. He had practiced TCM since 2001, specializing in pain and stress management. Mr. Micu became a member of the College in May of 2013.

At her initial appointment on May 13, 2015, J.S. completed a Patient Record and Consent Form and advised Mr. Micu about her concerns of neck-shoulder tension and stress. She also identified other health concerns, including hair loss, excess worry, and struggles achieving emotional balance after having gone through a divorce. She testified that her health complaints remained consistent throughout each of the appointments. J.S. testified that she never reported any health concerns to Mr. Micu relating to cancer, breast cancer or any other concern regarding her breasts. Mr. Micu agreed that J.S. never complained to him about any concerns with her breasts including lactation problems, breast lumps, or any family history of breast cancer at any of the six appointments.

Mr. Micu and J.S. both confirmed that, during all six treatment sessions, they were alone in the clinic together. J.S. testified that several of her appointments with Mr. Micu commenced with a hug. She did not recall who initiated the hugs but Mr. Micu testified that J.S. initiated them. Mr. Micu testified that while the hugging made him feel awkward, he did not feel comfortable telling J.S. that it was inappropriate. Moreover, he believed that hugging could be therapeutic, depending on the patient. During cross-examination, Mr. Micu accepted that this hugging was a boundary violation. He agreed it was his obligation, as a practitioner, to stop this conduct when it first occurred.

J.S. testified that each of her appointments commenced with a general discussion about her presenting health concerns and, after her first appointment, her response to the prior treatment. Mr. Micu also performed an assessment of her pulse and tongue at the beginning of each appointment.

J.S. testified that, after initial discussions, Mr. Micu directed her to the treatment area which was separated from the reception area by a curtain in the small clinic. She was instructed to undress to her level of comfort. She removed all of her clothing other than her full-bottom underwear. She would then lie on the treatment table on her front, with a white cotton sheet used as draping across her midsection and upper legs.

J.S. testified that her first three appointments with Mr. Micu proceeded in a similar fashion. She underwent an acupuncture treatment to her upper back, neck and limbs, which lasted approximately 20 minutes. Mr. Micu then removed the acupuncture needles and massaged her back, neck, shoulders and limbs. J.S. did not recall giving express consent for these massages but stated that if Mr. Micu had asked, she would have given her consent.

At the second appointment on May 25, 2015, Mr. Micu performed a Gua Sha treatment on J.S.'s upper back, explaining to her that the purpose was in relation to stagnated Qi. J.S. agreed that Mr. Micu may proceed to do so. She confirmed that, although Mr. Micu had never informed her as to the clinical nature of the massage and that its purpose was to move blocked or stagnant Qi through her meridians, she was aware that the acupuncture needles were intended to move stagnated Qi and expel it from her body. However, she testified that she never provided her informed consent to the massage in advance of the treatment proceeding. J.S. said she was very busy at work during this period and, according to Mr. Micu, she was reading and answering emails on her phone during this discussion. Mr. Micu acknowledged telling J.S. during this appointment that J.S. was special. On cross-examination he explained that he was referring to the fact that she had a responsible

position in her father's company, worked very hard and was connected to the spiritual part of life. Later that day Mr. Micu emailed information about the Gua Sha treatment to J.S. According to J.S., this treatment, left unexpected visible bruising. However, J.S. confirmed that she found each of these treatments relaxing and beneficial to her sleep and reactions to stress.

Mr. Micu acknowledged telling J.S., at the third appointment on June 1, 2015, after the usual greeting by hugging and inquiring about her well being, that she was fortunate, well treated and like a princess. At the time he did not think there was anything wrong in calling J.S. a princess.

He denied telling her he would spoil her, but agreed he said she deserved to be spoiled. J.S. considered that a compliment at the time and, while thinking it wasn't "super professional" of Mr. Micu to make those comments, she was not offended by them. Mr. Micu acknowledged that, at that appointment, he told J.S. she had a beautiful body and that it was not professional for him to do so. He explained he was trying to encourage her to look after herself better. Mr. Micu again administered acupuncture needles to J.S. while she was on her stomach. After the acupuncture needles were removed Mr. Micu massaged J.S.'s legs, thighs and buttock area. J.S. left the appointment feeling very good.

At the fourth appointment on June 8, 2015, J.S. mentioned that her neck and shoulder pain had moved down her neck and was more centralized. Mr. Micu determined a lack of progress in healing and determined the appropriate course of treatment was to purge and eliminate stagnation from the abdomen and chest and breast area. He knew that the breast is the receptor for a number of meridians but, due to lack of muscle tissue, it is difficult to remove the stagnant Qi with needles. Mr. Micu asked J.S. if she would be comfortable receiving acupuncture on the front of her body. He referred her to an anatomical chart and demonstrated where he intended to place the needles. J.S. agreed and turned onto her back. She described two separate sheets provided draping, one stretched from her armpits to her upper stomach and the other from her waist to a point on her legs so that her mid-section was exposed. Mr. Micu applied acupuncture needles to her hands, feet and non-sensitive mid-section area. J.S. testified that, after the acupuncture treatment, Mr. Micu stood behind her head and massaged her shoulders, her breasts under the sheet, her torso area where the needles had been in and her legs. She described the breast massage as involving both of Mr. Micu's flat hands simultaneously massaging both of her breasts, including her nipples, in a circular fashion for a couple of minutes. J.S. claimed that she had not provided consent for the frontal massage before it began and that she was never advised as to its clinical purpose. However, Mr. Micu testified that, after removing the needles, he asked J.S. for permission to massage the front of her body. Mr. Micu described his massage on that occasion as beginning down the conception vessel in between the breasts and back up along the kidney meridian. He said he then went down along the liver and spleen meridians out towards the armpits and down the pericardium meridian along the arms towards the fingers. Mr. Micu testified that he massaged J.S.'s breasts at the fourth, fifth and sixth appointments, though he denied ever massaging her nipples. Mr. Micu testified that while he did not specifically explain to J.S. that his proposed treatment would involve him massaging her breasts, he said that he showed her the meridians on the chest and asked if "she agrees to go on the meridians". On cross-examination Mr. Micu questioned about why the breast massage was not reflected in his clinical notes for that appointment. Mr. Micu testified that the breast massage was implied by his clinical notes stating "eliminate stagnation from the abdomen and chest and breast area". J.S. stated, that once Mr. Micu had started massaging her breasts on that occasion, he asked if it was "ok" and she said it was. J.S. testified that she found it odd and surprising that her breasts were being massaged as there had been no needles in that area. Although she was not

comfortable with it, she testified that she thought it was part of the practice. At the end of the appointment J.S. said Mr. Micu told her “thank you for trusting me” which she took to mean he wanted to help her and that he was thankful that she trusted him to do so. Mr. Micu confirmed that he had made the statement. Mr. Micu also agreed that, at that fourth appointment, he commented on J.S.’s nail polish. Mr. Micu explained that he perceived the nail polish as evidence of J.S. paying more attention to her personal grooming and that this, to him, was an indicator of improved well-being on her part.

The fifth appointment took place on June 15, 2015. J.S. testified that she made a fifth appointment with Mr. Micu even though she was not entirely comfortable with the events of the fourth appointment. She testified that she had been seeing benefits to the treatment and wanted to continue. She added “I’ll try anything once”. Both parties agreed that Mr. Micu introduced a new test during the fifth appointment called an acugraph. Electrodes were placed on certain parts of J.S.’s body and a computer created colour-coded charts as a result of the test. Mr. Micu emailed J.S. copies of those results after the appointment, addressing the email as “Hello Little Special Princess”. After acupuncture and massage were administered to her back J.S. said she again turned over and received acupuncture treatment to her front. Mr. Micu testified that he told J.S. he was going to perform the same treatment as the last time and that J.S. consented in response. J.S. testified that Mr. Micu began to massage her front while again standing at her head. Mr. Micu described the massage on that occasion as being similar to the massage at the previous appointment. He performed Qi Gong massage visualizing and breathing as is the custom in TCM. Mr. Micu again denied massaging J.S.’s nipples. During the massage J.S. stated she felt the sheet to be “pulled off” from her body, leaving her front entirely exposed. Mr. Micu admitted that while massaging down the conception vessel, the sheet moved down J.S.’s waist. J.S. described the massage at that appointment as two hands massaging her “full breasts, nipples, side, my entire front”. J.S. stated she felt shocked, confused and very exposed. Mr. Micu testified that the sheet covering J.S.’s breasts was removed as a result of his initial hand movement down her body and that he left her naked from the waist up for the remainder of the massage. J.S. claimed that Mr. Micu again massaged her breasts on that occasion, specifically her “full breast, nipples, sides, my entire front” with two hands at the same time. She alleged Mr. Micu used his full hand, open palm, and made a circular massaging motion over the entirety of J.S.’s breasts. While Mr. Micu acknowledged that he did touch J.S.’s breasts during administration of this massage, he denied that it occurred as described by J.S. Rather, he testified, he went down between the breasts and then came back out and circled them, in order to manipulate the meridians that went through the breast. Although he denied ever touching J.S.’s nipples, he did agree that he touched J.S.’s breasts as follows: “First motion was I went on conception vessel with the fingers and I came back on kidney meridian, up and I moved the energy, if you will, on top of the breast. The other one was exteriorly and I went ...up on liver meridian and spleen, and around the breast. And another one was close to the breast. I brushed the base of the breast and removed the dirty Chi through the pericardium meridian”. On cross-examination Mr. Micu answered that he ran his hand right over J.S.’s breasts. Also, during cross-examination, he confirmed that he did not specifically advise J.S. that the treatment he had proposed involved massaging her breast.

The sixth appointment took place on June 22, 2015. J.S. again testified that she booked this sixth appointment despite having reservations. J.S. stated that she booked the sixth appointment, explaining “I really didn’t want to admit that this was anything that I should be concerned about and I kind of felt that I should be okay with it because he is an expert and I did believe he wanted to help me.” J.S. described the sixth appointment as largely similar to the other appointments. She

testified that she first received acupuncture and massage to her back and then acupuncture to her front while she was fully draped. She claimed that Mr. Micu then did a full-frontal massage after removing the acupuncture needles. She stated that the draping sheet was again pulled down but this time the massage was very different from the previous session. Mr. Micu testified that although he provided J.S. with a separate towel to cover her breasts, she declined. He agreed that when he massaged down the conception vessel he pushed the draping sheet down with his hands. J.S. described Mr. Micu used his hands to rub over the length of her body rather than focusing on one area at a time. J.S. testified that Mr. Micu rubbed from her shoulder, over her breasts and down her thighs in one continuing motion and he appeared to be breathing heavily as he did so. She testified that there had been no prior discussion as to what was happening. Mr. Micu testified that he had described to J.S. in detail what he was planning to do vis-a-vis the massage. He testified that he again asked J.S. if he could perform the same treatment as the previous time and that J.S. agreed. J.S. testified that she found the experience horrible and uncomfortable. She stated that the motion was repeated about four times. She claimed that, as Mr. Micu's hands were travelling up from her lower body towards her head, one of his hands grazed her vagina over her underwear. At that point she stated she told Mr. Micu "I'm not comfortable with that" whereupon Mr. Micu immediately stopped, covered her with the sheet and left the treatment area. In his testimony Mr. Micu stated that his eyes had been closed and that he was in a meditative state at that point. He said he knew he had accidentally touched the side of J.S.'s labia because the skin felt different. J.S. said that after she dressed and met Mr. Micu outside the treatment area, he said to her "I'm sorry, I was just dreaming". Mr. Micu confirmed there was no clinical purpose for touching J.S.'s labia. Mr. Micu was adamant that he did not massage J.S.'s nipples during this sixth session at any point.

(b) Evidence Regarding Comments Made by Mr. Micu

The comments that Mr. Micu made to J.S. are generally not in dispute. J.S. testified that she recalled several comments made to her by Mr. Micu during the course of her six appointments,

although she confirmed she could not always recall during which specific appointments the comment was made.

J.S. testified that Mr. Micu:

- called her a princess;
- told her that he was spoiling her and that she deserved to be treated differently;
- commented that her treatment was longer than he would give someone else because she was special;
- told her not to tell her friends how long her treatments were because that was a special deal for her and not for someone else;
- told her he thought she had a beautiful body, and that he knew it was not professional of him to say that, “but it’s true”;
- commented that he liked her nail polish but next time she should try a different colour;
- told her in reference to the massage that she was getting a special treatment and was getting spoiled; and
- told her something to the effect of it would be a shame if her body were to dry out (in response to her comment that she should be drinking more water).

Mr. Micu confirmed several aspects of J.S.’s account in his testimony, including that he had made comments she had outlined and, specifically:

- calling her special;
- calling her a princess;
- telling her that she had a beautiful body and that it was not professional for him to say so but it was true; and
- telling her that he liked her nail polish but next time she should use a different colour.

Mr. Micu testified that he had not intended any harm. However, his counsel advised in submissions that, upon reflection, Mr. Micu realized his comments were not appropriate.

(c) Evidence of the College Investigator

Mr. Greg Hutchinson, a licensed private investigator, had been appointed by the College to investigate whether the Member had committed the specified acts of professional misconduct. His investigation included interviewing the Member and preparing a written report (the “Investigation

Report”). Mr. Hutchinson testified that Mr. Micu described the techniques he had used in respect of the breast massages undertaken at the fifth and sixth appointments as follows:

- (a) After obtaining J.S.’s verbal consent to massage these areas and expose her breasts ... Mr. Micu placed his hands flat against J.S.’s upper chest and used a continuous stroke downward between her breasts until his fingers reached just above her pubic bone. Continuing the same stroke, he then brought his hands up between her breasts and then simultaneously circled each hand around the base of each breast - left hand around left breast, right hand around right breast - with his hands remaining flat. J.S. was draped from her shoulders down to her feet before Mr. Micu began his massage. During the first downward stroke, his hands pushed the drape to J.S.’s underwear line and exposed her breasts;
- (b) Mr. Micu placed the palms of his hands flat against the base of one breast, and keeping his hands flat massaged inward and upward to the top of the breast. This motion was repeated on the other breast; and
- (c) Mr. Micu placed the palms of his hands flat against the top of one breast, and keeping his hands flat, massaged downward and outward to the base of the breast. This motion was repeated on the other breast.

Mr. Hutchinson testified that the Member told him he repeated this sequence three or four times and that it was possible the sides of his hands inadvertently contacted J.S.’s nipples but that he never intentionally touched them.

Mr. Micu, in cross-examination, admitted to making the first statement above (a) but disagreed he made the second and third statements (b) or (c).

Mr. Hutchinson conceded in cross-examination that he had not made an audio recording of the interview nor had he asked Mr. Micu to review any of his investigative notes or summaries of the interview for accuracy. Counsel for the Member submitted that there was no reason for Mr. Hutchinson not to have audio recorded his interview with Mr. Micu or to have produced the notes of his interview for Mr. Micu’s review for accuracy.

(d) Expert Evidence Regarding TCM and Acupuncture

Mr. Danny Li was called by the College and qualified by the Panel as an expert witness on the standards of practice for Traditional Chinese Medicine and Acupuncture. In his evidence, Mr. Micu also accepted Mr. Li as an authoritative source on TCM and indicated his respect for Mr. Li’s opinion.

Mr. Li explained that, in TCM, the practitioner provides holistic treatment for the patient for existing conditions as well as to prevent future illness. The treatment would include some specific treatment to achieve a specific effect, based on a specific diagnosis, and it could also involve non-specific treatment for the patient’s body and mind.

He explained that a “meridian” is a pathway associated with the function of a particular organ and through which energy flows. As such, when an organ needs treatment but acupuncture needles cannot be placed into the organ, stimulation is provided on the surface of the body along a pathway

to the organ. Acupuncture points located on the same meridian have different clinical indications and a practitioner will select a particular point to achieve a specific effect.

He stated that each of the acupuncture points located on or around the female breast is generally used to address breast issues, such as breast pain or aching, mass, or a lactation issue. He further stated that there is no acupoint value on the nipple.

Mr. Li also testified that it is the practitioner's responsibility to ensure proper draping is maintained throughout the entire appointment to avoid unnecessary exposure in order to protect patient privacy. Further, a practitioner should not expose the entire breast.

With respect to one of the massage techniques that was used (Tui-Na), Mr. Li informed the Panel that it is a Chinese medicine massage technique based on the meridian system rather than the musculoskeletal system. The technique utilized by the practitioner performing this kind of massage depends on the patient's symptoms and diagnosis. Appropriate techniques, he stated, include using the thumb in a circular motion on a specific acupuncture point to address a particular complaint, using the thumb or fingers to work along the meridian to achieve a more general beneficial effect, and using the hand on larger body areas, such as the back, hip and upper shoulder. As this latter technique lacks specificity, it is more common to use fingers to target particular points. Mr. Li explained that, with Tui-Na massage, it is not necessary to work on the entire meridian, but rather the practitioner will usually focus on the section of the meridian that is related to the patient's complaint or symptoms. A full body massage could be appropriate if there was a legitimate clinical purpose for it.

Mr. Micu disagreed with Mr. Li's opinion that the purpose of Tui-Na massage is focused on particular points or sections related to the patient's symptoms, as opposed to involving rubbing along the entire meridian.

Mr. Li also testified about the standards of practice pertaining to the use of breast massage in TCM. He stated that it may be appropriate to treat the breasts if the patient has developed symptoms and presents with a primary complaint about illness related to the breast, such as pain, tension, mass or lactation issues. In that event, additional consent, which may be verbal, must be obtained from the patient prior to treating the breasts due to their sensitivity. Further, for a sensitive area such as a woman's breast or genitalia, the practitioner requires a specific indication to justify treatment of that particular area. Mr. Li testified that the standard of practice required the patient to have a specific complaint about their breast, and the practitioner to utilize a specific technique to address that complaint. Further, the use of an open hand on a woman's breast would not demonstrate an intention to focus on a particular meridian or a particular acupuncture point.

Mr. Li also testified as to his assessment of Mr. Micu's treatment of J.S. based on his review of a Report of Investigation provided by the College, as well as the Member's clinical records. Mr. Li testified that Mr. Micu did make a correct TCM diagnosis based on J.S.'s clinical condition, namely Qi stagnation in the liver and gallbladder meridians. He also found that Mr. Micu established an appropriate treatment method of promoting Qi circulation using acupuncture, herbs, Gua Sha and Tui-Na massage. Likewise, he found that the placements of the acupuncture needles on J.S.'s back during the first, second and third appointments were appropriate and good choices. He also stated that the performance of Tui-Na massage to J.S.'s neck and upper back during the first three appointments was appropriate. However, while it was unclear to Mr. Li what specific symptoms provided the rationale during the fourth session to determine that there was stagnation in the chest and breast, in the absence of a specific breast complaint, he stated it was not appropriate

for the Member to massage J.S.'s breasts as J.S. had described at the fourth and fifth appointments (simultaneously in a circular fashion using his open hands). Mr. Li noted there was no clinical indication for such treatment. Mr. Li also stated that it was not appropriate for Mr. Micu to rub J.S.'s entire front body four times in the manner J.S. described as having occurred at the sixth appointment. Mr. Li also stated that there was no clinical reason for the draping to be entirely removed from J.S.'s body.

While Mr. Li agreed that there was no contraindication for Mr. Micu to do Tui-Na massage on J.S.'s center line, he was very doubtful that there was a clinical indication for Mr. Micu to massage along the center line and kidney meridian on the breast area. He reported that although the meridians of the liver, gallbladder and spleen are all distributed near the breasts, none of them are located at the center of the breast and the nipples. His opinion was that massaging the patient's breasts or nipples was not relevant to the treatment goal and was not present in the treatment plan. He explained that if the patient has a specific complaint about the breast, the practitioner should further identify which organ and meridian is involved and then focus on it. However, as many meridians go into or around the breast area, the use of an open hand does not indicate an intention to focus on a particular meridian or point. Even to address emotional issues, the practitioner is not justified to work on the entire meridian, including sensitive areas, but rather to utilize "distal" or source points of the meridian. Massaging at those points, said Mr. Li, is very useful for relieving stress. Mr. Li stated that there is never an indication to touch a woman's nipple as there is no acupoint value to it.

Mr. Li testified that there are no recognized acupuncture points around a woman's vaginal area but there are some quite nearby, near the pelvic bone. There are none in or around a woman's labia. Mr. Li stated that it was not appropriate for Mr. Micu to touch J.S.'s labia and confirmed that it is the practitioner's responsibility to ensure they are making appropriate contact in the course of Tui-Na massage. When asked by Mr. Micu's counsel whether Mr. Micu had engaged in inappropriate action if the touching of the labia was accidental, Mr. Li said he could not say one way or another because he could not ascertain the intention of the practitioner.

With respect to Qi Gong massage, Mr. Li described it as a special massage technique which integrates the mechanical massage with the practitioner's tranquil and focused state involving visualization and coordination of breath with specific movement.

Finally, Mr. Li stated that the comments that Mr. Micu made to J.S. regarding her appearance and calling her a "princess" and "spoiled" crossed the appropriate professional boundary.

Mr. Li concluded that Mr. Micu breached the standard of practice in respect of his failure to obtain proper informed consent for massage treatments, failure to employ proper draping techniques, failure to establish and maintain professional boundaries, and employing a treatment to a sensitive body area without a clinical indication to do so.

Submissions of Counsel

Both parties made detailed written and oral submissions which the Panel has reviewed carefully. The Panel also received oral advice at the conclusion of the hearing from its Independent Legal Counsel to which all parties had an opportunity to make submissions in response.

The parties were largely in agreement with respect to general legal principles applicable to this hearing, such as the burden and standard of proof and the relevant factors to consider in assessing credibility.

The College acknowledged that it bore the burden of proof, and that it had to prove the allegations on the balance of probabilities, based on clear, convincing and cogent evidence.

Issue 1: Whether Mr. Micu Engaged in “Sexual Abuse” of a Patient

College’s Submission

College counsel submitted that Mr. Micu had engaged in “sexual abuse” of a patient, which included touching of a sexual nature of J.S., and behavior and remarks of a sexual nature. Counsel referenced subsections 1(3) and 1(4) of the Code which provide as follows:

Sexual abuse of a patient

(3) In this Code,

“sexual abuse” of a patient by a member means,

(a) sexual intercourse or other forms of physical sexual relations between the member and the patient,

(b) touching, of a sexual nature, of the patient by the member, or

(c) behavior or remarks of a sexual nature by the member towards the patient.

Exception

(4) For the purposes of subsection (3),

“sexual nature” does not include touching, behavior or remarks of a clinical nature appropriate to the services provided.

College counsel submitted that (3)-(b) and (3)-(c) of the Code have been proven in this case. Counsel stated that the question of whether touching is of a sexual nature is to be determined objectively in light of all the circumstances. College counsel further submitted that relevant factors to consider include the nature of the contact, its frequency, the body part(s) touched, and whether there is any clinical indication for the touching.

College counsel submitted that Mr. Li and Mr. Micu agreed that there was no clinical indication for touching J.S.’s nipples or labia during her treatment. Furthermore, College counsel relied upon the opinion evidence of Mr. Li to argue that in the absence of a specific breast complaint, it was not appropriate for Mr. Micu to massage J.S.’s breasts in either the manner that J.S. had described (simultaneously in a circular fashion using his open hand), or as Mr. Micu had described (massaging along the conception vessel meridian and kidney meridian on the breast area). College counsel submitted that Mr. Micu had admitted in cross-examination that he had touched J.S.’s breasts going through the spleen meridian while he was in a meditative state and had his eyes closed.

It was submitted that Mr. Micu had also admitted to inadvertently touching J.S.’s nipple and labia.

College counsel, once again relying on the evidence of Mr. Li, submitted that there was no apparent clinical purpose to touch J.S.'s nipples, breasts or labia. College counsel urged the Panel to conclude that the absence of a clinical purpose for the touching is strong evidence that it was of a sexual nature. Counsel submitted that it is not necessary to demonstrate a positive subjective sexual intent and that the nature of the acts viewed objectively in the circumstances is sufficient.

College counsel referred the Panel to a recent decision of the College of Physicians and Surgeons of Ontario ("CPSO") Discipline Committee (*CPSO v. Kunyntez*, 2017 ONCPSD 11) which found that a physician engaged in sexual abuse of a patient where he placed his hands inside a patient's bra and put his hands down and under her breasts, noting that:

"The Committee understands that it is not necessary to demonstrate sexual intent, arousal or gratification in order to make a finding of sexual abuse. Touching of a sexual nature constitutes sexual abuse. Touching of a "sexual nature" does not include touching of a clinical nature appropriate to the services provided."

College counsel also referred the Panel to another CPSO case (*CPSO v. Peirovy*, 2015 ONCPSD 30) wherein the Discipline Committee found that the physician in that matter had sexually abused his patient by placing his stethoscope directly on her nipples in the course of his examination. The CPSO Discipline Committee noted that the physician did not have consent to touch his patient in this manner and there was no clinical purpose to examine the patient in that way. The CPSO Discipline Committee wrote:

"the placing of the stethoscope directly on her nipples would, to the objective observer, be construed as sexual nature. Regardless of Dr. Peirovy's motivation, this deliberate touching of her nipples during a chest examination was a violation of Ms. V's sexual integrity and constitutes sexual abuse."

College Counsel referenced a third case heard at the CPSO (*CPSO v. Porter*, 2016 ONCPSD 3) where the CPSO Discipline Committee found sexual abuse had been established on the basis of remarks by Dr. Porter when he complimented a patient on her appearance.

In this case, the content of the remarks made by Mr. Micu are not in dispute. College counsel noted that Mr. Micu agreed, in accordance with the College's Jurisprudence Handbook, "non-medical comments about a patient's physical appearance, e.g. "You look sexy today", is sexual abuse".

College counsel asked the Panel to conclude that in making inappropriate and sexual comments to J.S., performing a breast massage without clinical indication to do so, causing the removal of the sheet in the course of the frontal massage thereby leaving J.S.'s breasts exposed on two occasions and touching J.S.'s labia, Mr. Micu had engaged in sexual abuse of a patient as set out in the Notice of Hearing.

Member's Submission

With respect to the allegations involving physical touching, counsel for Mr. Micu argued that the College had failed: (1) to prove that the Member had massaged J.S.'s nipples; or (2) that the touching of J.S.'s labia was intentional or not clinical in nature or done without a clinical purpose.

Counsel argued that there was insufficient evidence to establish that Mr. Micu had in fact massaged J.S.'s nipples. Mr. Micu agreed that nipples are generally off limits in TCM and he was adamant that he did not massage J.S.'s nipples at any point. Counsel noted that J.S. had not mentioned massaging of her nipples in her original complaint and only adverted to the possible touching of her nipples after being asked what counsel characterized as a leading question by the investigator. It was asserted that the investigator's question "Did he massage your nipples?" when asked during the investigation, could taint the resulting answer such that it becomes unreliable. More specifically, the Member's counsel argued that by eliciting the information in this fashion, the investigator had crystallized the response in J.S.'s mind and thereby tainted her view of the actual events. Counsel argued that, by the time J.S. testified at the hearing, she believed Mr. Micu had massaged her nipples, regardless of whether he had or had not.

Counsel went on to note that J.S. acknowledged in cross-examination that it was possible her nipples were not massaged at the fourth appointment on June 8, 2015. Counsel submitted that J.S. would not have returned to Mr. Micu's office for a fifth or sixth appointment if she had been inappropriately touched at the fourth appointment. Counsel also argued that J.S. would not have continued to initiate hugs with Mr. Micu at the start of the subsequent appointments if she had been inappropriately touched previously. Counsel noted that Mr. Micu had asked J.S. how she felt about the treatment at the conclusion of the fifth appointment and she replied that she felt good. There was no discussion or indication of J.S. feeling uncomfortable. Counsel also challenged the reliability and accuracy of the investigator's report on the basis that, as above, Mr. Micu's interview had not been recorded and that Mr. Micu was not asked to review and initial the interview report for accuracy.

Member's counsel argued that J.S.'s recollection is also unreliable on other factual issues because, on several occasions during her testimony, J.S. said she could not recall particulars or contents of discussions. Counsel noted that, in addition to J.S.'s testimony that it was possible her nipples were not massaged on June 8, 2015, it was also possible that J.S. provided consent for the meridian massage that day but has forgotten due to the passage of time. Mr. Micu's clinical notes indicate that, for each of the last three treatment sessions, he received the patient's consent to the treatment plan, part of which involved eliminating stagnation from the abdomen and chest/breast areas. Counsel noted that in relation to the fourth appointment (June 8, 2015), Mr. Micu testified that he asked J.S. if it was acceptable to conduct the breast massage in the middle of the massage and obtained consent. After the June 8, 2015 session, Mr. Micu testified that he continued to obtain J.S.'s consent by asking for permission to repeat what had happened at the prior treatments.

With respect to the issue of clinical propriety of the treatment, Mr. Micu's counsel submitted that the Member viewed breast health as an important issue as his mother had died from breast cancer. The Member had authored articles and a book regarding prevention of breast cancer and wished to inform patients regarding prevention of the same. Counsel noted that Mr. Li was unable to answer "yes" or "no" to the question of whether, assuming the patient gave her consent, it would be acceptable to administer Tui-Na massage down the center of the chest to the pubis and up around the sides of the waist and breast towards the arm pits. Counsel further submitted that Mr. Li had accepted that it was not "contra-indicated" to perform a massage down the kidney meridian and up the liver meridian in an attempt to circulate Qi. Counsel conceded that Mr. Micu did not

take sufficient responsibility for ensuring J.S. was appropriately draped, as Mr. Micu believed that offering her a towel and accepting her decision not to utilize it was acceptable. Counsel indicated Mr. Micu agrees that he ought to have insisted. However, counsel submitted that this should be considered a matter of negligence rather than abuse. Counsel argued that the College failed to prove that Tui-Na/Qi Gong massage was not of an appropriate clinical nature and that a finding of sexual abuse cannot be supported on the evidence.

With respect to the admitted touching of J.S.'s labia, counsel submitted that this occurred while Mr. Micu was in a meditative state with his eyes closed, that it was very brief and that Mr. Micu stopped as soon as he became aware of what had occurred. Counsel submitted that the College had failed to establish that the contact was intentional and that a finding of sexual abuse cannot be supported on the evidence.

With respect to the allegations of sexual abuse involving comments made to J.S., it was conceded that the comment relating to J.S.'s body being beautiful was inappropriate and constituted sexual abuse under the Code. Counsel for the Member submitted, however, that the remaining comments, while inadvisable, did not reach the threshold of sexual abuse.

Issue 2: Whether Mr. Micu Verbally, Physically, Psychologically and/or Emotionally Abused a Patient

The massaging and inadvertent touching of J.S. and/or the comments made to J.S. may be capable of constituting abuse under the Code irrespective of whether that conduct rises to the level of sexual abuse as canvassed under the first issue.

College's Submission

Section 1(2) of the Professional Misconduct Regulation listed in the Notice of Hearing establishes that it is professional misconduct for a practitioner to verbally, physically, psychologically and/or emotionally abuse a patient. College counsel submitted that if J.S.'s evidence that Mr. Micu massaged her breasts without her prior consent is accepted, the Panel must conclude that Mr. Micu physically abused a patient. Furthermore, that Mr. Micu's comments, the contents of which are not in dispute, constitute verbal abuse of a patient.

Member's Submission

Mr. Micu's counsel conceded that the Member's comment that J.S. had a beautiful body constitutes sexual abuse under the Code. Counsel however urged the Panel to find that any remaining comments do not constitute abuse (sexual or otherwise) as Mr. Micu stated in his evidence that he had not intended any harm but realizes, upon reflection, that the comments were inappropriate.

Issue 3: Whether Mr. Micu Contravened a Standard of Practice of the Profession

College's Submission

College counsel argued that Mr. Micu contravened several standards of practice of the profession by failing to employ proper draping techniques, failing to establish and maintain professional boundaries with a patient, making inappropriate comments to a patient, and making inappropriate contact with a patient in the course of a massage, in touching J.S.'s labia. College counsel further asserted that if the Panel accepts the evidence of J.S. and Mr. Li, then it should find that Mr. Micu failed to obtain proper and informed consent prior to performing a breast massage and performed treatment to a sensitive body area without a clinical indication to do so. Even if the Panel cannot conclude that the touching and/or comments were of a sexual or abusive nature, the Panel was urged to find that such conduct falls below the relevant standards of practice and constitutes professional misconduct.

Member's Submission

Mr. Micu's counsel submitted that Mr. Micu had consistently denied the massaging of J.S.'s breasts and nipples. The Member has offered clinical reasons in the nature of prevention, for the massage technique that he utilized. The Member argues that any brushing or touching of J.S.'s nipples (which is denied) was inadvertent and that the admitted grazing of her labia was wholly inadvertent and done while in a meditative state. The Member believed the offering of drapes to J.S., which at times she declined, was sufficient to discharge his professional obligations. Further, as J.S. had, without contradiction, initiated the practice of hugging upon greeting each other at the beginning of the session, the Member had not opposed the practice at the time, believing it to be potentially therapeutic for J.S.

Issue 4: Whether Mr. Micu's Conduct Was Disgraceful, Dishonourable or Unprofessional

The Member did not address this allegation separate and apart from the other allegations. However, the Panel understands that this allegation is not admitted.

College counsel argued that if the factual evidence of J.S. is accepted, the conduct in issue will be disgraceful, dishonourable and unprofessional. College counsel contends that the conduct in issue should be perceived as unprofessional regardless of whether the evidence of J.S. is ultimately accepted.

Decision

In closing submissions, counsel for the College advised that the College would not be seeking a finding in respect Allegation #5 in the Notice of Hearing pertaining to conduct unbecoming a practitioner. Accordingly, the Panel makes no finding of professional misconduct in respect of Allegation 5.

The College bears the onus of proving the remaining allegations on a balance of probabilities based upon clear, cogent and convincing evidence.

Having considered the evidence, the onus and standard of proof, the Panel finds that the Member is guilty of professional misconduct as alleged in paragraphs 1, 2, 3 and 4 of the Notice of Hearing.

Reasons for Decision

Mr. Li provided the Panel with an understanding of the appropriate standards of practice of the profession of TCM and Acupuncture. Mr. Li did not purport to make findings of fact and appeared in the course of direct and cross-examination to provide helpful, impartial and non-partisan expert evidence. Based on Mr. Li's testimony, there was no legitimate clinical purpose requiring the Member to include a massage of J.S.'s nipples in the course of her treatment or to have touched her labia given the health concerns that she presented with. Similarly, there was no legitimate clinical purpose for making any of the comments to J.S. that Mr. Micu agrees he made.

Therefore, the issues to be decided are largely factual in nature. The Panel must resolve whether the evidence has established that Mr. Micu did in fact massage J.S.'s nipples without consent on any or all of the fourth, fifth or sixth appointments and whether, on the totality of the evidence, the College has proven that any touching of J.S. was touching of a sexual nature and/or otherwise was not touching of a clinical nature.

While much of the factual evidence regarding the first three appointments is consistent between Mr. Micu and J.S., their evidence differs on what occurred at the fourth, fifth and sixth appointments. The veracity of Mr. Hutchinson's evidence is considered as well because, in his report, he purports to proffer evidence about what Mr. Micu allegedly told him about those same disputed events.

I. Assessment of Credibility

Resolving issues 1 and 2 (the allegations of sexual abuse and other "non-sexual" abuse) requires the Panel to assess the credibility of the three non-expert witnesses (Mr. Micu, J.S. and Mr. Hutchinson). Mr. Li's credibility and ability to provide his expert opinion was not in dispute.

The assessment of witness credibility requires the Panel to consider the general integrity and intelligence of the witness, their powers to observe, and their capacity to remember. Inconsistencies on minor details are to be expected and should be considered in light of the totality of the evidence.

College counsel referred the Panel to a recent decision of the Discipline Committee of this College (*CTCMPAO v. Phillip Tran* May 13, 2017) wherein the panel in that matter, in assessing credibility, considered the following non-exhaustive list of factors:

- The witness' opportunity to observe;
- The witness' capacity to remember

- The overall probability or reasonability of the evidence;
- The internal consistency or inconsistency of a witness'
- The external consistency of the evidence, that is, whether it was consistent with other evidence the Panel accepts as credible;
- A witness' interest in the outcome of the case, with the important caveat that this cannot be used to shift the burden of proof away from the College or presume that the Member must be lying; and
- The appearance and demeanour of the witness, being alive to the challenges of assessing credibility based on a witness' demeanour.

II. Credibility of J.S.

J.S. was directly involved in all of the material events. She was forthright, consistent and believable in her evidence. When confronted with the fact that her written complaint did not reference breast massage specifically at the fourth appointment, or that her nipples had been touched in the course of the breast massages at the fourth, fifth and sixth appointments, she explained how she related this information at the first opportunity when asked to recall the particular details of each encounter by the College investigator. The explanation that J.S. provided for her recollection is sensible and consistent with common human experience. There is no credible basis upon which to conclude that J.S. imagined the detailed sensations she testified about or that this information was the result of questions put to her by Mr. Hutchinson.

J.S. was consistent and candid in the manner in which she approached her capacity to remember events. She made fair concessions throughout her testimony. On cross-examination, she readily acknowledged her inability to remember precise details of certain events on several occasions. For example, she stated that Mr. Micu may not have brushed her nipple in the course of her treatment on June 8, 2015, the fourth treatment. Likewise, she conceded that due to the passage of time, she was unable to say at which appointment certain comments were made by Mr. Micu. She also could not recall whether Mr. Micu asked her throughout the treatments if she was comfortable. She testified that Mr. Micu may have discussed the meridians chart with her prior to commencing the treatment. Likewise, she admitted that Mr. Micu may have explained that massage was one method of circulating stagnant Qi.

J.S. did not downplay the legitimate limits of her recollection. While J.S. was forthright about not recalling a number of discussions with Mr. Micu, those discussions were not critical to determining the issues.

III. Credibility of the Member

Mr. Micu gave meticulous testimony regarding his diagnosis and plan of treatment for J.S. His opinions and beliefs were in accord with that of the expert, Mr. Li, except in respect of the extent of the need for massage and the methodology of its administration.

Mr. Micu's testimony differed significantly from J.S. in respect of the massages. Like J.S., Mr. Micu was a direct participant in the key events and well positioned to have made key observations. Mr. Micu's testimony however contained shortcomings which he refused to acknowledge. This was not reasonable in the circumstances. In particular, although the Member provided generally detailed notes of all of the six appointments, these notes failed to describe the massage at the fourth session along the conception meridian. When given an opportunity to comment on this omission, the Member failed to make reasonable concessions. The Member testified that the notes were silent on the point because "it was obvious". Similarly, Mr. Micu's clinical notes for that session did not reference a breast massage. When confronted with this, Mr. Micu claimed "it was implied". These were important omissions in his notes which applied directly to a significant and contested point regarding patient consent. The Member's refusal to acknowledge these shortcomings and his insistence that the documents were silent only on obvious points made the Panel question Mr. Micu's overall reliability. In many other areas of J.S.'s treatment, there were detailed treatment plans and specific entries dealing with obtained consent. It was not reasonable for Mr. Micu to argue that the notes were intentionally silent on these particular points.

Mr. Micu's evidence was also inconsistent. At the fourth appointment Mr. Micu initially testified that he placed his hands under the towel covering J.S.'s breasts. Later, on cross-examination, he described his hands as moving over the towel. Mr. Micu's testimony regarding touching J.S.'s breast also changed - from having done it one time to doing it on two instances. Also, while initially maintaining that only his fingers touched J.S. when massaging her front, Mr. Micu was forced to acknowledge in cross-examination that the motion he described would have required his hands to have contacted J.S.'s breasts and that this occurred several times.

The Panel prefers the evidence of J.S. over the Member.

IV. Credibility of Mr. Hutchinson

Mr. Hutchinson's testimony supports the version of events articulated by J.S. However, as between the Member and J.S. alone, the Panel, as above, prefers the evidence of J.S. and the evidence of Mr. Hutchinson is therefore not dispositive in this respect.

Mr. Micu takes issue with some of Mr. Hutchinson's report but this, in and of itself, is not sufficient to dismiss Mr. Hutchinson's evidence as entirely inaccurate or wholly unreliable. Mr. Micu's descriptions of the techniques he employed while massaging J.S.'s front vary between that of J.S. and his alleged answers provided to Mr. Hutchinson. While Mr. Micu denied the description he had provided to Mr. Hutchinson, he confirmed, on cross-examination, that part of the account provided by Mr. Hutchinson was accurate. Specifically, Mr. Micu confirmed the accuracy of the report which stated:

“After obtaining J.S.’s verbal consent to massage these areas and expose her breasts...Mr. Micu placed his hands flat against J.S.’s upper chest and using a continuous stroke downward between her breasts until his fingers reached just above her pubic bone. Continuing the same stroke, he then brought his hands up between her breasts and then simultaneously circled each hand around the base of each breast – left hand around left breast, right hand around right breast – with his hands remaining flat. J.S. was draped from her shoulders down to her feet before Mr. Micu began the massage. During the first downward stroke, his hands pushed the drape to her underwear line and exposed her breasts”.

There is insufficient evidence to support that Mr. Hutchinson erred in the reporting of his interview with Mr. Micu or that Mr. Hutchinson’s evidence is unreliable.

V. Insufficient Consent Obtained

The Panel finds that the Member abused J.S. by touching her at the fifth and sixth appointments without having obtained the requisite consent to do so. More specifically, the Panel accepts that J.S.’s breasts and nipples were massaged at the fifth and sixth appointments and that J.S. was not informed of the intimate nature of the massage technique proposed and ultimately performed. The Panel notes in particular J.S.’s testimony that she was surprised and shocked by the intimate nature of the massage. While she was unsure of Mr. Micu having brushed her nipples at the fourth appointment, she is likely to have been very sensitive to the nature of the massage of her breast and nipples at the fifth and sixth appointments.

It is insufficient for the Member to ask the patient’s consent to “do what we did last time”. This form of consent is too general and incapable of eliciting the necessary informed and specific consent required for the intimate actions taken by Mr. Micu.

VI. No Clinical Purpose for Touching

Mr. Li testified that there was no clinical indication to touch J.S.’s breasts. He testified that a practitioner needs specific clinical indication to work on a part of the meridian at the breast. He could not identify such an indication given the information he was asked to review. Indeed, there is no dispute that the patient had not presented any complaint about her breasts and did not offer any family history of breast issues. The Panel notes that Mr. Li did not disagree with Mr. Micu’s beliefs that prevention is a fundamental principle of TCM or that Qi-Gong massage is a legitimate method for circulating stagnant Qi. Mr. Li also did not dispute that several principle meridians flow into the breast tissue. Ultimately, Mr. Li explained that breast massage can be a legitimate form of treatment, but only if the patient consents and is appropriately draped.

The Panel finds that Mr. Micu touched J.S. without a clinical purpose for doing so.

VII. Finding of Sexual Abuse

In all of the circumstances of this case, taking into account the manner and location of the touching, the fact that there was no clinical purpose for touching of the breasts, nipples or labia, the Panel finds that Mr. Micu touched J.S.'s nipples, breasts and labia in a sexual nature in contravention of the Code. This touching cannot be clinical in nature because there was clearly no clinical indication for it.

Mr. Micu is accordingly found to have committed sexual abuse of the patient.

VIII. Remarks Made to J.S.

The Panel finds that Mr. Micu's comments to J.S. calling J.S. a princess, telling her that she deserves to be spoiled, that she is special, and that it would be a shame if her body were to dry out are not comments of a clinical nature and constitute verbal abuse. These comments were not sought by the patient and are unprofessional. Also, and separately, the Panel finds that Mr. Micu's statement to J.S. that she has a beautiful body constitutes sexual abuse as Mr. Micu concedes.

IX. Standards of the Profession and Nature of the Misconduct

The Panel finds that Mr. Micu's actions and comments constitute behaviour that would reasonably be regarded by the profession as disgraceful, dishonourable and unprofessional.

Notwithstanding the possible influences of Mr. Micu's culture on his practices in regard to addressing patients and his intentions, such as the detection and/or prevention of breast cancer or the prevention of future illnesses, the Panel finds that Mr. Micu's actions involving J.S. and his comments to J.S. regarding her appearance as well as his failure to establish and maintain a proper distance in his client relationship by condoning the practice of hugging, and his failure to insist on proper draping of the patient during treatment contravene standards of practice of the TCM and Acupuncture.

I, Henry Maeots, sign this Decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Date: January 15, 2018

A handwritten signature in black ink, appearing to read "H. Maeots". The signature is written in a cursive style with a large initial "H" and a stylized "Maeots".

Henry Maeots, Chairperson

Panel Members: Henry Maeots
 Xianmin Yu
 Barrie Haywood