

**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 12, 2018

Indexed as: Ontario (College of Traditional Chinese Medicine
Practitioners & Acupuncturists of Ontario) v Turevski,
2018 ONCTCMAO 31

Panel:	Henry Maeots	Chairperson, Public Member
	Feng Li Huang	Professional Member
	Barrie Haywood	Public Member

BETWEEN:

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

(Kelly Hayden for the College

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-and-

DIANA TUREVSKI
Reg. No. 2122

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DECISION AND REASONS FOR DECISION
ON PENALTY AND COSTS

BACKGROUND

- [1] In a previous decision dated July 6, 2018, the Panel found that Ms. Turevski had committed acts of professional misconduct. As a result of these findings, a hearing on the issues of penalty and costs was held in writing, without objection, on November 7, 2018.
- [2] As set out in the Panel's July 6, 2018 decision, Ms. Turevski relinquished her membership with the College in December of 2017. The professional misconduct found in this matter occurred prior to the Member's resignation and during a period of time when Ms. Turevski was a registered member of the College.
- [3] Ms. Turevski did not file any materials in respect of the November 7, 2018 hearing despite having notice of the matter. Prior to the November 7, 2018 hearing, the Panel received only written submissions on penalty and costs from the College.
- [4] After conducting the hearing in writing, the Panel deliberated, and was able to arrive at a decision. These are the Panel's reasons for its decision.

PENALTY

Evidence and Submissions of the Parties on Penalty

- [5] The College sought the following penalty as a result of the professional misconduct committed by the Member:
- (a) A public reprimand which shall be recorded and published on the College Register;
 - (b) An Order that in the event the Member re-applies and renews her Certificate of Registration with the College, her Certificate of Registration shall be suspended for a period of twelve (12) consecutive months to commence immediately.
- [6] The College submitted that each of the allegations proven against the Member are very serious as they concern deliberate acts of fraud, record falsification and dishonesty. These acts demonstrate, the College submitted, a lack of respect for the College's authority, which interferes with its ability to self govern.
- [7] The College submitted that a lengthy suspension (i.e. 12-months) will provide the necessary specific and general deterrence and a public reprimand will serve as a formal statement that the College is committed to enforcing its standards. Public confidence can only be sustained when patients are able to place trust in healthcare professionals. As such, the College seeks to send out a strong message to both the Member and the entire profession that the Member's misconduct is unacceptable and will not be tolerated.

- [8] While the College stated that a mitigating factor for the Member was that she does not have a prior disciplinary history; albeit her College membership at approximately 2 years from 2013 to the time of the allegations in 2015 was relatively short; the matter was aggravated by the fact that the Member took deliberate steps to conceal her behaviour by submitting an incorrect questionnaire and falsified treatment records.
- [9] The College submitted that as the Member did not attend the hearing to contest the allegations, the Panel lacks any evidence to indicate that she has gained insight or is capable of rehabilitation.
- [10] The College submitted that the proposed penalty is proportionate given the range of penalties in other similar cases. In the very recent case of *CTCMPAO v Xu*¹, the Discipline Panel imposed a suspension of 12-months where the member was found guilty of falsifying patient records and issuing false receipts. The *Xu* case concerned \$750 in falsified acupuncture receipts and falsified records in respect of three acupuncture treatments which did not occur. The present case involves a similar quantum (\$630) in respect of nine false treatments and falsified records. There were also mitigating facts in the *Xu* case which do not arise in this matter. Specifically, that the member in *Xu* accepted responsibility and cooperated with the College in reaching a joint submission.
- [11] Ms. Turevski did not attend or participate in the hearing in this matter and did not make any submissions regarding penalty.

Decision on Penalty

- [12] Having considered the findings of professional misconduct and the submissions received, the Panel orders as follows:
- (a) A public and recorded reprimand; and
 - (b) In the event the Member re-applies and renews her Certificate of Registration with the College, her Certificate of Registration shall be suspended for a period of twelve (12) consecutive months to commence immediately.

Reasons for Decision on Penalty

- [13] The penalty imposed must maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence, and, where appropriate, rehabilitation and remediation of the Member's practice. The Panel also considered other mitigating and aggravating factors such as Ms. Turevski's lack of prior disciplinary record but also her failure to cooperate with the College in its investigation.

¹ *College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v Xu*, 2018 ONCTCMPAO 26, Decision and Reasons dated July 10, 2018 at paras 7-11[*CTCMPAO v Xu*].

- [14] The Panel finds that the penalty set out by the College is reasonable in the circumstances and in the public interest. It falls within the parameters of penalties for similar offences by other members of this College. Further, the Panel believes that the penalty satisfies the principles of specific and general deterrence and protection of the public. The Panel finds that the profession as a whole will likewise view the suspension and reprimand, if Ms. Turevski attempted readmission to the College, and the publication of same as deterrents to similar behaviour.
- [15] The Panel concludes that the penalty maintains the public's confidence in the ability of the College to regulate its members and to protect the public.

COSTS

Evidence and Submissions of the Parties on Costs

- [16] The College sought an Order of Costs in the amount of \$10,000. College Counsel submitted that Section 53.1 of the *Health Professions Procedural Code* permits a Panel to make an order requiring Ms. Turevski to pay all or part of the College's legal cost and expenses, as well as the College's costs and expenses incurred in investigating the matter and conducting the hearing.
- [17] The College submitted that in determining an appropriate cost award, the Panel must consider the nature of the misconduct, the relative success of the parties in the proceeding, and the conduct of the member during the hearing.
- [18] The College submitted that this is an appropriate case for costs as the nature of the misconduct was serious, involving dishonesty and trust, and disregard for the tenants of the profession. In addition, the College was successful on each allegation of professional misconduct in respect of which it sought a finding.
- [19] The College submitted an itemized accounting of its costs, totalling \$17,272.36 which the Panel accepted as accurate and reasonable. There was no evidence put forward challenging this amount.
- [20] The College's requested amount of \$10,000 represents about 60% of its incurred costs. The Panel was referred to several decisions at both this College as well as other regulated health colleges where the cost awards for similar misconduct ranged from 50% to 65% of the College's costs. The very recent decision of member Xiao Chun Xu² who was found guilty of signing or issuing false statements and falsifying patient records, ordered costs in the amount of \$3,000 or 50% of the College's costs. In that case the College's costs were mitigated by the full co-operation of the member by way of an Agreed Statement of Facts as well as a Joint Submission of Penalty.
- [21] There were no submissions on costs from Ms. Turevski in this matter.

² *Ibid CTCMPAO v Xu* at para. 10.

Decision on Costs

[22] The Panel finds that it is appropriate to make a cost order in this case in the amount of \$10,000 and orders accordingly.

Reasons for Decision on Costs

[23] The costs of the investigation and prosecution result from the professional misconduct that the Member has been found to have committed. The failure of the Member to cooperate throughout this matter undoubtedly aggravated the costs to the College. An inability to recover some of these costs would leave the membership of the College to absorb 100% of the above costs through their membership fees. The Panel does not feel that in the circumstances of this case the majority of the cost should be borne by the membership.

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

Date: November 12, 2018

Signed: 

Feng Li Huang
Barrie Haywood
Henry Maeots, Chair