

**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: October 1, 2018

Indexed as: Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v YATWAH CHEUNG, 2018 ONCTCMPAO 27

Panel:	Henry Maeots	Chairperson, Public Member
	Feng Li Huang	Professional Member
	Martial Moreau	Public Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO (Kelly Hayden for the College

-and-

YATWAH CHEUNG, MEMBER Reg. No. 1633 (Yatwah Cheung, self-represented

(Aaron Dantowitz, Independent Legal Counsel

(Date of Hearing: September 12, 2018

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing as to penalty and costs before a panel of the Discipline Committee (the “**Panel**”) on September 12, 2018 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists (the “**College**”).

[2] In a previous decision dated June 21, 2018, the panel found that Mr. Cheung had committed acts of professional misconduct. As a result of these findings, a further hearing was held on the issue of penalty and costs on September 12, 2018.

[3] After hearing from the parties, the Panel reserved its decision on penalty and costs. These are the Panel’s reasons for its decision.

PENALTY

Evidence and submissions of the parties on penalty

[4] The College sought the following penalty for professional misconduct committed by the Member:

- (a) Mr. Cheung shall attend in person before the Panel to receive a public and recorded reprimand;
- (b) In the event that Mr. Cheung re-applies and renews his Certificate of Registration with the College:
 - (i) Mr. Cheung’s Certificate of Registration shall be suspended for a period of eighteen (18) consecutive months to commence immediately; and
 - (ii) There shall be a term, condition or limitation placed on the Mr. Cheung’s Certificate of Registration which contemplates the reassessment of Mr. Cheung’s practice three (3) months following his return to practice at the end of the period of suspension.

College’s Argument in Support of the College’s Penalty Submission

[5] The College submitted that the Member’s misconduct presented a serious risk to the public. He made claims to the public that were unsubstantiated and recommended treatment without making a diagnosis, thus putting patients’ health at risk. He made dishonest promises to patients that a treatment can cure them with 100% effectiveness, thus providing them with false hope. In the College’s view, to foster public confidence in the profession the Discipline Committee needs to send a strong message to both the Member and the entire profession that this type of behaviour is unacceptable and will not be tolerated. An 18-month suspension would provide the necessary specific and general deterrence and a public reprimand would serve as a formal statement that the College is committed to upholding its standards.

[6] To help ensure that the Member’s practice is consistent with the standards expected of members of the College to protect the public, the College proposed that the Member’s practice be re-assessed if he ever re-applies and is granted membership in the College.

[7] The College submitted that although the Member does not have a prior disciplinary history with the College the conduct at issue arose early on in his practice and as such, this lack of discipline history should not be a significant mitigating factor. On the other hand, he jeopardized public safety by misleading the public throughout his practice. The College submitted that this is an aggravating factor. Further, the Member has demonstrated no insight into his behaviour. Throughout the hearing he denied that he was subject to the jurisdiction of the College and insisted that his treatments were 100% effective. In addition he continued to use the titles “Master” and “Grandmaster” in contravention of the College’s policy of the use or terms, titles or designations.

[8] The College submitted that the proposed penalty was in proportion to the range of penalties imposed in other similar cases. It cited the case of *Devgan v College of Physicians and Surgeons of Ontario, 2003 CanLII 64550*, where the physician’s licence was revoked when he was found to have made misrepresentations to patients regarding proposed treatment options and made claims regarding the efficacy of treatments that were not supported as reasonable professional opinion. The College also cited the cases of *CTCMPAO v Jessica Rea*, May 23, 2017 and *CTCMPAO v Alan Canon*, November 12, 2015 where significant suspensions were imposed for conduct bearing some similarity to the case at hand. Ms. Rea was suspended for 9 months for conduct which included posting testimonials, breaching the College’s standards of practice, using prohibited title and performing unauthorized controlled acts. Mr. Canon was suspended for 14 months for performing unauthorized controlled acts and using a prohibited title. The Member was also found guilty of breaching the College’s standards, using a prohibited title and contravening the College’s advertising regulations on his website. Further, the mitigating factors present in the cases of Rea and Canon are not present in this case. The Member has not admitted any of the allegations of professional misconduct nor has he shown any remorse for his behaviour. Accordingly, the College submitted that the proposed penalty is proportionate.

Member’s Argument in Support of the His Penalty Submission

[9] The Member opposed the College’s submission of penalty in its entirety. He continued his contention that his Qigong treatment should not be subject to the regulation of the practice of the profession as it is unrelated to TCM practice. As such, he continued to dispute the authority of the College as it relates to his Qigong treatment.

Decision on Penalty

[10] Having considered the findings of professional misconduct, the relevant evidence and the submissions of the parties, the Panel orders as follows:

- (a) that the Member appear before the Panel to receive a public and recorded reprimand;
- (b) in the event that the Member re-applies and renews his Certificate of Registration with the College:
 - (i) the Member’s Certificate of Registration shall be suspended for a period of fourteen (14) consecutive months to commence immediately; and
 - (ii) there shall be a term, condition or limitation placed on the Member’s Certificate of Registration which contemplates the reassessment of the

Member's practice three (3) months following his return to practice at the end of the period of suspension.

Reasons for Penalty Decision

[11] In arriving at an appropriate penalty the Panel considered the following factors:

- the nature and seriousness of the conduct
- protection of the public
- the principles of specific and general deterrence
- aggravating and mitigating factors
- the rehabilitation of the Member
- the public interest.

[12] The Panel's primary goal in imposing the penalty is to protect the public, maintain professional standards and preserve public confidence in the integrity of the profession and the College's ability to effectively govern its members.

[13] The Panel found that the Member's unsubstantiated claims to the public and recommending treatment without making a diagnosis puts patients health at risk, as does his advice to patients not to use "Western medicine".

[14] The Member was found guilty of serious acts of professional misconduct which directly undermine public confidence in the system of self-regulation. By making unsupported claims to the public, the Member jeopardized the public's trust and put public health in jeopardy.

[15] The Panel determined that the penalty it imposes is sufficient to adequately protect the welfare of future clients of TCM practitioners and serves as both a general and specific deterrence. It sends a strong message that the Member's misconduct is unacceptable and will not be tolerated. In the cited case of *CTCMPAO v Canon*, that panel found a fourteen (14) month suspension, with provision of a two (2) month remission upon complying with terms, to be proportionate for offences similar to those of the Member. This Panel, however, noted that the Member has not admitted any of the allegations or shown remorse for his actions, which were mitigating factors in the Canon case. Indeed, he continues to defy the authority of the College. The Panel therefore finds a fourteen (14) month suspension to be proportionate for his professional misconduct.

[16] A public reprimand will serve as a formal statement that the College is committed to upholding its standards.

[17] In order to achieve the appropriate goal of remediation and rehabilitation, an order that the Member's practice be reassessed if he ever re-applies and is granted membership by the College ensures that the Member's practice is consistent with the standards expected of members of the College and thus protects the public.

Evidence and submissions of the parties on costs

[18] The College also seeks an Order for \$60,000 on account of costs.

[19] The College submitted that this is an appropriate case for costs, as the nature of the misconduct is serious, involving patient safety and trust, and ignores the tenants of the profession.

The College's claim that it incurred over \$120,000 in legal costs and expenses, cost in investigating the matter, and costs in conducting the hearing was supported by a detailed costs outline and was not challenged by the Member. The College contended that an Order that the Member pay \$60,000, or approximately 50% of its costs, is reasonable, particularly as the Member had agreed to plead guilty to some of the allegations at a pre-hearing conference and had entered into a joint submission on penalty in that regard. However, the Member reneged the agreement at the plea hearing, thus requiring an unnecessary and costly day at the College.

[20] The hearing proceeded over a total of 5 days and required significant preparation by counsel in light of the range of allegations advanced and although the Member contested each allegation in the Notice of Hearing, the Panel concluded that all had been established by the College on the basis of cogent and compelling evidence.

[21] The College cited several cases where significant cost awards were issued, including *Reid v College of Chiropractors of Ontario, 2016 ONSC 1041*, *College of Physicians and Surgeons of Ontario v Yazdanfar, 2011 ONCPSD 45*, *College of Optometrists of Ontario v Spear, 2017 ONCO 1*, and an award of this College, *CTCMPAO v Tran*, September 6, 2017, where a cost award of \$105,000 was made against a member found to have sexually abused a patient, after a 5 day hearing in which the allegations were contested.

[22] The Member opposed any cost award, stating that he would not pay any amount. He alleged that he was bankrupt and \$1,000,000 in debt, although he did not present any evidence of his financial circumstances or assets.

Decision on costs

[23] The Panel orders that the Member pay \$60,000 to the College in respect of hearing costs.

Reasons for Decision on costs

[24] The Panel finds that this is an appropriate case for the awarding of a cost order, due to the seriousness of the offences and the findings of guilt on all allegations.

The Panel accepts that in these circumstances the College and its members at large should not bear the full cost of the matter.

The Panel was not presented with any evidence that would undermine the accuracy of the costs outlined by the College and they must, therefore, be taken at face value.

While the member briefly alluded to a dire financial situation, he did not present any evidence of particulars and thus his alleged financial difficulties were given little weight by the Panel in determining the appropriate quantum of cost order.

The Panel determined that this cost order was in line with other successful orders by this and other health colleges, cited by College Counsel, for contested hearings involving similar offences.

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

Date: October 1, 2018

Signed:



Henry Maeots, Chair

Feng Li Huang

Martial Moreau