

**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:
March 1, 2023

Indexed as: **Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Kyung Chun Oh, 2023 ONCTCMAPO 23**

KYUNG CHUN OH

Panel:	Ryan Longenecker	Chairperson, Professional Member
	Judy Cohen	Public Member
	Maureen Morton	Public Member

BETWEEN:

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

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(Anastasia-Maria Hountalas
(for the College
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KYUNG CHUN OH

(Absent
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(Fredrick Schumann
(Independent Legal Counsel
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(Ryan Chu, CTCMAPO, Manager of
(Professional Conduct
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(Date of Hearing: January 18, 2023

DECISION AND REASONS FOR DECISION – PENALTY AND COSTS

Background

[1] In its Decision and Reasons dated November 1, 2022, the Panel made findings of Professional Misconduct against the Member, Kyung Chun Oh (the “Member”). The Panel is now tasked with determining the appropriate order as to penalty and costs given its determination on the merits.

Finding of Professional Misconduct

[2] The Panel made the following findings of fact on the balance of probabilities:

[3] The Member told his patient, S.K., that acupuncture treatment could regrow his thyroid gland and that he should stop taking his thyroid medication to facilitate the purported regrowth. The Member knew or ought to have known that this advice would endanger S.K.’s health, by causing hypothyroidism.

[4] The Member claimed to S.K. that his thyroid gland was regrowing when he knew or ought to have known that there was no indication that it was regrowing, and that the thyroid gland does not regrow.

[5] The Member advised S.K. to continue this course of action even as S.K. developed symptoms that the Member knew or ought to have known were consistent with hypothyroidism.

[6] Ultimately, the course of action recommended by the Member resulted in S.K. being hospitalized. He was fortunate that he survived and has largely recovered.

[7] The Member failed to keep adequate records by failing to record the advice to S.K. that acupuncture could regrow his thyroid gland, or the advice to stop taking his thyroid medicine.

[8] The Panel finds that it is more likely than not that the Member falsified the patient records in two ways:

a. The Member made consistent statements in the patient records to the effect that S.K. “feels better” and was “getting improved,” but S.K.’s testimony was that he informed the Member that his symptoms were getting progressively worse.

b. The Member made notations suggesting that he recommended that S.K. obtain a blood test, but S.K.’s testimony was that the Member never proactively recommended that S. K. obtain a blood test. This evidence was corroborated by his daughter, L.K, who accompanied her father to the appointments. Rather, the Member and S.K. discussed blood tests once or twice, and it was actually S.K. who asked questions about the Member’s claims that acupuncture could regrow, or was regrowing, his thyroid. The Member said that S.K. could take a blood test, but never

said he should do so immediately, or as a response to the symptoms he was experiencing.

[9] As such, on a balance of probabilities, we found that the Member added the notations about blood tests after the fact, once he learned that S.K. had become seriously ill as a result of his conduct, and he began to face complaints. In short, we found that the Member falsified the patient record to minimize his conduct.

[10] We found that the Member had engaged in Professional Misconduct as alleged in the Statement of Allegations, as follows:

- a. The Member's failures of record-keeping contravened a standard of practice of the profession, namely the Standard for Record-Keeping.
- b. The Member recommended or provided unnecessary treatment (acupuncture and the cessation of thyroid medicine to regrow a thyroid gland) when the Member knew or ought to have known that it was unnecessary.
- c. The Member failed to advise S.K. to consult another member of a health profession where the Member knew or ought to have known that S.K. requires a service that the Member did not have the knowledge, skills or judgment to offer or was beyond his scope of practice. The Member failed to advise S.K. to consult a medical doctor when he learned that S.K. was suffering from symptoms that he knew or ought to have known indicated an urgent medical problem.
- d. The Member treated or attempted to treat a condition that he knew or ought to have known that he did not have the knowledge, skills or judgment to treat, namely the lack of a thyroid gland.
- e. The Member failed to keep records in accordance with the standards of the profession.
- f. The Member falsified a record relating to his practice.
- g. The Member made a claim about a remedy, treatment, device or procedure other than a claim that could be supported by reasonable professional opinion (the claim that acupuncture, combined with cessation of thyroid medicine, could regrow a surgically removed thyroid gland, and the claim that S.K.'s thyroid gland was regrowing).
- h. The Member's cumulative conduct was such that the profession would reasonably regard it as disgraceful, dishonourable or unprofessional.

Evidence and Submissions of the College on Penalty

[11] Section. 51(2) of the *Health Professions Procedural Code* (being Schedule 2 to the Regulated Health Professions Act, 1991, SO 1991, c 18) permits a panel of a College's Discipline Committee to impose a penalty for professional misconduct.

[12] Under s. 51(2)(1), a panel can order revocation of a member's certificate of registration.

[13] Revocation is discretionary and not mandatory in this case.

[14] The Member's certificate of registration has been suspended by the ICRC since October 2021. This was an interim suspension while this matter was pending before the Discipline Committee. More recently, his certificate has also been administratively suspended for nonpayment of the College's registration fees.

[15] College Counsel sought revocation of the Member's certificate of registration and submitted that the Member is ungovernable because of the following:

- a. Ungovernability is determined by the nature, duration and repetition of behaviour, by lack of remorse, a lack of willingness to be governed, and ongoing cooperation.
- b. A finding of ungovernability is appropriate on a first offence if the conduct is sufficiently serious.
- c. While this is the Member's first disciplinary matter, the consequences for the patient were extremely serious and life threatening.
- d. Remorse is difficult to assess because the Member did not attend the contested hearing.
- e. The Member's lack of involvement and ceasing all correspondence with the College shows he is unwilling to be governed by the College authority and therefore, is ungovernable.
- f. The Member did attend the prehearing conference in February 2022, but he then stopped all correspondence.
- g. The latest information is that the Member has closed his clinic and moved to Korea, but he has not updated the College with the required contact information.
- h. The Member failed to participate in the process and has failed to pay his College fees.
- i. The Member failed to see the warning signs in treating his patient.
- j. The Member covered up his culpability by falsifying his treatment notes.

[16] College Counsel provided the Panel with a Book of Authorities, highlighting cases from various discipline matters where revocation of a Member's certificate of registration was considered because ungovernability was in issue.

[17] In Richard Steineke's "**Complete Guide to the Regulated Health Professions Act**" Chapter 6 *Discipline Proceeding*, he describes ungovernability in the following terms:

The concept of ungovernability originates with the legal profession. It sometimes is seen as a particular kind of unprofessional conduct (i.e., a subset of the catch-all definition of misconduct or definitions relating to failing to cooperate with the College). In more recent times a practitioner who was deemed “irremediable” is seen to be ungovernable. Other times it is viewed as an aggravating factor in determining the proper sanction to impose (generally resulting in revocation). **Either way it suggests a pattern of conduct that demonstrates that the member is unprepared to recognize their professional obligations and their regulator’s role.** (emphasis added)

[18] In *Mundulai v. Law Society of Upper Canada*, 2014 ONSC 7208, the Divisional Court upheld the revocation of a lawyer’s licence. The Law Society’s Hearing Panel had found that he was ungovernable. The Divisional Court held that “[o]nce a lawyer is found to be ungovernable, the protection of the public requires that he or she lose the right to practise their profession.”

In a 2022 decision, *College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario v. Shuangjin Zhang*, 2022 ONCTCMAPO 17, the Discipline Committee of this College revoked the member’s certificate of registration. She had engaged in a widespread and long-standing practice of insurance fraud. She had also obstructed the College’s investigation of her practice, including by falsely reporting the College’s investigator to the police, and by trying to physically take files that he had obtained. Further, she had already been before the ICRC because of concerns about record keeping, billing, falsifying documents and accepting payments for treatments not yet performed. The panel found that the member was ungovernable.

Decision and Reasons for Decision

[19] The first issue before us is whether the Member is ungovernable. If he is ungovernable, it supports revocation as the appropriate penalty. If he is not ungovernable, then we must consider what penalty is appropriate.

Is the Member Ungovernable?

[20] Ungovernability is a member’s inability or unwillingness to respond appropriately to authorities who are authorized to supervise and oversee how he governs himself.

[21] The factors to be considered in deciding ungovernability are: the nature and duration and repetition of the misconduct; any prior discipline history; any character evidence; the existence or lack of remorse; the degree of willingness to be governed by the College, medical or other evidence that explains but does not excuse the misconduct; the likelihood of future misconduct; and the Member’s ongoing co-operation with the College in addressing the matters.

[22] **Nature, duration, and repetition of the misconduct:** The matter involved conduct in relation to a single patient, albeit lasting for several months (from February 2020 to June 2020). It consisted not only of medically incorrect claims and dangerous recommendations, but an attempt to conceal the conduct by falsifying patient records.

[23] **Discipline history and character evidence:** There was no prior discipline history, and no character evidence offered.

[24] **Remorse:** the Member did send text messages to the daughter after her father, the patient was hospitalized. These text messages began on June 9, 2020, three days after the patient fell ill. The Member stated, among other things:

I should have told your father earlier to have a blood test at the hospital and take medicine. I am really sorry for making your father fall into critical condition by not doing it. I am really sorry for making your whole family including your father, mother, you, and your youngest brother experience anxiety, pain, and shock. I am really sorry for not apologizing immediately because I lost my mind. I am really sorry for hurting you and making you disappointed. I sincerely hope that your father will recover quickly.

[25] The Member also agreed with the patient's daughter's requests that he pay compensation.

[26] In his response to the complaint to the College, the Member wrote:

As one of the therapists, I am very sorry that I had been contributed [sic] to the cause of this serious health crisis to the patient I was treating. ... Through this experience, I have learned how important it is to communicate properly with patients, and I pledge to be more careful not to put my patients at risk again in the future.

[27] **Degree of willingness to be governed by the College:** The College asks us to infer from the Member's failure to attend the hearing and communicate with the College in relation to the hearing that the Member is unwilling to be governed by the College.

[28] In our view, we should not infer ungovernability from the mere fact that the Member did not attend the contested hearing. It is not professional misconduct not to attend a discipline hearing. Not attending a discipline hearing simply means that the College's evidence and arguments will go unchallenged.

[29] In the past year, the Member has not communicated with the College, nor paid his re-registration fees. That has resulted in his being administratively suspended.

[30] Further, ungovernability may be less relevant where the Member is no longer practising, no longer in the jurisdiction, and there is no apparent likelihood that he will return to practise.

[31] **Likelihood of future misconduct:** This factor is hard to assess. The Member clearly had a serious deficit of knowledge and/or judgment when he treated the patient. It is difficult to tell how much that deficit has been remedied. That said, his remorse and desire to make amends are favourable; we are not dealing with a Member who believes he did nothing wrong.

[32] **Medical of other evidence that explains the misconduct:** There was no such evidence before the Panel.

[33] **Ongoing co-operation with the College in addressing the matters:** The Member did cooperate with the original ICRC referral matter. He attended what was to be an uncontested

hearing on February 8, 2022. The uncontested hearing did not proceed, and it was at that point that the Member stopped communicating with the College.

[34] We were informed that service was attempted to deliver documents to the Member, on more than one occasion. The College was informed that the Member was in Korea. Most recently, when the College arranged for delivery of an Affidavit of Service, it was accepted by a family member.

[35] We are concerned about the Member's willingness to recognize and face his professional obligations, not just failing to participate in the contested hearing, but informing the College of his new location: address, phone number, email address and paying his College registration fees.

[36] That said, we are not satisfied that the evidence, in the light of the factors set out above, shows on a balance of probabilities that the Member is ungovernable. In our view, ungovernability requires more than a single case of misconduct and the failure to participate in the contested hearing process, and then departure from the jurisdiction. The cases we reviewed all had repetitious issues related to a Member's practice over a period of time.

[37] We now turn to the issue of the appropriate penalty. We understand from College counsel that if we disagree with her submission that the Member is ungovernable, she is not seeking the revocation of his certificate.

What is the Appropriate Penalty?

[38] When determining penalty, the first step is to consider the nature and gravity of the misconduct. We should identify any aggravating and mitigating factors, both in the misconduct itself and in the broader circumstances.

[39] This matter was about an egregious, serious, potentially fatal treatment plan. The Member's treatment of the patient was unconscionable, dangerous, and negligent. He knew or ought to have known that this advice would endanger the patient's health and life by causing hypothyroidism.

[40] Furthermore, the Member added the notations about blood tests after the fact, once he learned that the patient had become seriously ill as a result of his conduct.

[41] The aggravating factors include the extremely serious consequences for the patient, the duration of the misconduct (several months), and the element of dishonesty in falsifying the patient records.

[42] The mitigating factors include the Member's evident remorse, his lack of discipline history, and his agreement to compensate the patient.

[43] We should assess the Member's misconduct by comparing it to the other cases provided by College counsel and looking at the penalties imposed in those cases. Those cases reveal some similarities and many differences.

[44] In *Chen v. The College of Denturists of Ontario*, 2017 ONSC 530, the Divisional Court upheld the Discipline Committee's revocation of the member's certificate. It held that "[t]here is

no principle that restricts revocation to cases in which the Member re-offends after being disciplined or declines to participate in the process."

[45] In *Chen*, "the sheer numbers associated with the member's professional misconduct were staggering." He had provided "dental services ... outside of [his] scope of practice, to multiple patients, including vulnerable children, for a period of approximately 2 ½ years." He had also submitted 911 false or misleading claims to insurance companies, with a total value of over \$90,000.

[46] Mr. Chen held himself out as a doctor. Two of his patients who were treated developed infections that required assistance of other professionals in order to resolve.

[47] Mr. Oh never held himself out as a doctor but gave erroneous medical advice and treatment to a patient, S.K., who required actual medical intervention. Telling the patient that he should not take his thyroid medication was irresponsible and had disastrous repercussions.

[48] In *College of Physicians and Surgeons of Ontario v. Khan*, 2022 ONPSDT 26, the College's discipline committee revoked Dr. Khan's certificate. He had "used therapies on vulnerable patients that were not sufficiently supported by evidence and science", "misled colleagues", "took thousands of dollars of public health care dollars to which he was not entitled", billed OHIP for care he was not providing, and failed to cooperate with a College investigation.

[49] Unlike Dr. Khan's conduct, which involved multiple patients as well as their families, other health care professionals and other agencies, Mr. Oh's conduct only involved one patient.

[50] Even though it was Dr. Khan's first discipline matter, his behaviour and poor care were not an isolated incident or single lapse in judgment: they were repetitive and occurred over a span of years. In Mr. Oh's case, this was a single case of misconduct.

[51] Similar to Dr. Khan, however, Mr. Oh impugned not only himself, but the integrity and trustworthiness of the entire profession.

[52] In *Ontario (College of Physicians and Surgeons of Ontario) v. Kakar*, 2017 ONCPSD 8, Dr. Kakar, a psychiatrist, had diagnosed a patient with gout and then prescribed allopurinol. The patient developed a serious and life-threatening allergic reaction. The College's Discipline Committee accepted a joint submission as to penalty, which included a six-month suspension as well as terms and conditions designed to address Dr. Kakar's knowledge shortfall and professional ethics.

[53] In Dr. Kakar's case, he too had no prior discipline history. However, in May 2006 he had received an oral caution relating to another case which had a tragic outcome.

[54] Dr. Kakar's errors in judgment were significant. He exceeded his scope of practice causing harm; he falsified a medical record; he repeatedly misled College investigators; he incorporated another professional assessment as his own; and he failed to maintain the standard of practice in record keeping. Of concern were issues with his clinical notes and a lack of proper and thorough assessments. Inadequate record keeping was pervasive.

[55] The Panel found Dr. Kakar to be incompetent and ordered a reprimand, a six (6) month suspension, supervision, and reassessment.

[56] In contrast, Mr. Oh's history with the College and errors were fewer, albeit with serious consequences.

[57] In *Zhang*, the 2022 decision of the Discipline Committee of this College, Ms. Shuangjin Zhang had given patients false receipts for services she did not render, with the intent of defrauding patient's insurers; she had made false entries in her own records relating to her practice; she had not kept patient records as required; and she had obstructed the College's investigation. Moreover, Ms. Zhang had been before the ICRC before for similar concerns.

[58] That panel determined that this was one of the most serious cases involving fraudulent conduct and that as a result, there could be no other penalty but revocation. The panel considered previous decisions of the College Discipline Committee, which noted that this type of fraudulent conduct was very serious would not be tolerated and should be sanctioned heavily.

[59] In this matter, the penalty should reflect 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.

[60] This Panel acknowledges the gravity of the situation given the false hopes and outright mistreatment of the patient S.K. It was fortunate that the patient did not die.

[61] This Panel also acknowledges that this was the Member's first discipline matter and that prior to the actual discipline hearings, the Member did participate in pre-hearing conferences and the uncontested hearing on February 8, 2022.

[62] This Panel decided that an appropriate penalty would be a lengthy period of suspension, remediation, and supervision for Mr. Oh to gain insight into his behaviour. This would be more significant in the future to both the Member and consequently for his patients.

[63] The penalty allows for rehabilitation for the Member, with no previous complaints, who made an egregious error in treatment and in judgement. The penalty is meant to be severe, as a reminder to other members to practice with integrity and to follow the Standards of Practice diligently.

Costs Order

[64] College counsel filed an affidavit from Ryan Chu, CTCMPAO, Manager of Professional Conduct, which explained the College's costs associated with the hearings. The legal and hearing costs amounted to \$44,727.68.


[65] The Panel can make an order for Mr. Oh to pay all or part of the College's costs. The usual cost penalty is 2/3 of the actual costs incurred.

[66] Costs orders are not meant to be punitive. But the College membership should not have to pay for the professional misconduct of another member.

Order

[67] Accordingly, the Panel orders the following:

- a. The Member shall appear before a panel of the Discipline Committee to receive a reprimand;
- b. The Member's certificate of registration will be suspended for twelve (12) months or until the terms, conditions, and limitations set out below are completed, whichever is longer;
- c. The following terms, conditions and limitations to be placed on the Member's certificate of registration:
 - i. A review of the Standards of Practice;
 - ii. Successful re-completion of the Jurisprudence and Safety Program Test;
 - iii. Successful completion of PROBE; and
 - iv. Up to three (3) unannounced practice inspections
- d. The Member must pay \$29,818.45 in costs to the College.

Signed  _____
Ryan Longenecker
Chairperson

March 1, 2023
Dated _____