

**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 27, 2018

**Indexed as:** Ontario (College of Traditional Chinese Medicine  
Practitioners & Acupuncturists of Ontario) v Alan Canon,  
2018 ONCTCMPAO 32

<b>Panel:</b>	Martial Moreau	Chairperson, Public Member
	Barrie Haywood	Public Member
	Yuqi Yang	Professional Member

**BETWEEN:**

<b>THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO</b>	(	
	(	Kelly Hayden, for the College
	(	
	(	
<b>-and-</b>	(	
	(	
<b>ALAN CANON</b>	(	Member not present or represented
Reg. No. 3112	(	
	(	
	(	Aaron Dantowitz
	(	Independent Legal Counsel
	(	
	(	Date of Hearing: August 30, 2018

## DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing August 30, 2018 before a panel of the Discipline Committee (the “**Panel**”) at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “**College**”).

### **Absence of the Member**

[2] Upon convening the hearing, the Panel noted that Alan Canon (the “**Member**”) was not represented at the hearing by a legal representative and was not present at the hearing.

[3] College Counsel filed an Amended Notice of Hearing dated July 7, 2017 (Exhibit 1), along with an affidavit of service (Exhibit 2) indicating that this document had been hand delivered to the Member. College Counsel also filed an e-mail from the College, dated May 16, 2018, notifying the Member that the hearing would be commencing on August 14, 2018 at 9:30 a.m., which was sent to the Member’s e-mail address, as well as e-mail correspondence in which the College requested an adjournment of the hearing date. The Member did not respond, and Independent Legal Counsel wrote to the parties indicating that the Chair of the Panel had granted the adjournment and the new hearing dates would be August 30 and 31, 2018.

[4] After hearing from Independent Legal Counsel and considering the matter, the Panel was satisfied that the Member had sufficient notice of the hearing, and that the Panel could proceed in his absence and in the absence of counsel for the Member.

### **Publication Ban**

[5] 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 person.

### **The Allegations**

[6] The allegations set out in the Amended Notice of Hearing dated July 7, 2017 are as follows:

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

The **ALLEGATIONS** of professional misconduct are that you:

1. Committed sexual abuse of a patient contrary to section 51(1)(b) of the *Code*;
2. Performed an unauthorized controlled act contrary to section 27(1) of the RHPA and sections 1(10) and 1(39) of *Ontario Regulation 318/12*;
3. (*Withdrawn*)

4. Abused a patient verbally, physically, psychologically and/or emotionally contrary to section 1(2) of *Ontario Regulation 318/12*;
5. Failed to cooperate with an investigation contrary to section 76 (3.1) of the *Code*;
6. (*Withdrawn*)
7. Failed to comply with an order of a panel of a Discipline Committee of the College, contrary to section 1(44) of *Ontario Regulation 318/12*;
8. Engaged in conduct or performed an act relevant to the practice of the profession which, having regard to all the circumstances would reasonably be regarded by a member as disgraceful, dishonorable, or unprofessional, contrary to section 1(48) of *Ontario Regulation 318/12*; and
9. Engaged in conduct unbecoming a member contrary to section 1(49) of *Ontario Regulation 318/12*.

[7] The Amended Notice of Hearing also set out particulars of the allegations, not all of which were pursued by the College.

### **Overview**

[8] Mr. Alan Canon became a Member of the Grandparent class of the College on September 19, 2013, with registration #3112. On October 20, 2015, a Panel of the Discipline Committee ordered that Mr. Canon's Certificate of Registration be suspended for 14 months. On July 19, 2016, Mr. Canon resigned from the College.

[9] The Inquiries, Complaints and Reports Committee ("**ICRC**") of the College subsequently referred Mr. Canon to the Discipline Committee on the basis that he breached the *Regulated Health Professions Act, 1991* S.O. 1991, c.18 (the "**RHPA**") and the *Traditional Chinese Medicine Act, 2006*, S.O. 2006, c.27 (the "**TCMA**").

[10] The Panel heard testimony from the following: the Complainant, a patient of Mr. Canon's clinic between April 19, 2016 and May 23, 2016; Mr. Greg Hutchinson, private investigator and owner of Barker Hutchinson & Associates Ltd.; Ms. Michele Pieragostini, Manager of Quality Assurance and Professional Practice for the College. The issues for the Panel to decide were as follows:

From April 19, 2016 and May 23, 2016 did Mr. Canon

- Sexually abuse a patient
- Perform an unauthorized controlled act
- Verbally, physically, psychologically and/or emotionally abuse a patient
- Fail to co-operate with an investigation

- Fail to comply with an order of a Discipline Committee of the College
- Engage in conduct or performed an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonorable or unprofessional
- Engage in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture

[11] Having considered the evidence, the Panel has concluded that all allegations against Mr. Canon have been proven on a balance of probabilities using clear, convincing and cogent evidence.

### **The Complaint**

[12] This matter came to the College's attention by way of a complaint from a complainant (the "Complainant") received on June 15, 2016. The Complainant complained that she was sexually abused by Mr. Alan Canon.

[13] Barker Hutchinson and Associates Ltd. was appointed by the College on June 23, 2016 to investigate whether Mr. Canon had committed an act of professional misconduct by sexually abusing a patient.

[14] The investigation was to cover four areas pertaining to the complaint of the Complainant:

- a) Attend Mr. Canon's clinic to serve Mr. Canon with the complaint received by the College
- b) Obtain copy of the Complainant's patient file and a random sample of five patient files from March 1, 2016 to June 23, 2016
- c) Interview some of the Complainant's family and friends, as identified in the complaint
- d) Obtain the Peel Regional Police occurrence report and the court records, including Mr. Canon's bail conditions

[15] As a result of Mr. Hutchinson's investigation, a complete report was prepared and submitted to the College on September 5, 2016.

### **Summary of Key Evidence**

#### **Testimony of the Complainant**

[16] In April of 2016, the Complainant booked an appointment with Mr. Canon at his clinic on Burnhamthorpe Road East in Mississauga, Ontario for treatment of acne and her thyroid. The Complainant testified at length what occurred when she attended three appointments with Mr. Canon, namely, April 19, May 16, and May 23, 2016. At these visits, the Complainant testified that Mr. Canon performed treatment involving probing and applying pressure to various part of her body that she understood to be Osteopathy.

*April 19, 2016 Appointment*

[17] As part of her initial appointment, the Complainant testified that she completed a patient intake form, indicating her health concerns were primarily related to acne and her thyroid. In her testimony, the Complainant indicated that once in the treatment room, she was asked by Mr. Canon to lie on a treatment table on her back. The Complainant did so and Mr. Canon began probing her feet, her legs and stomach and examining her by applying pressure with both hands. There was no initial discussion regarding the purpose of her visit or the treatment that would be performed.

[18] After treating her stomach area, the Complainant testified that Mr. Canon moved behind her head and began treating her neck and shoulders. During that treatment, Mr. Canon asked the Complainant, "May I", and before she had an opportunity to respond, Mr. Canon placed his hands under her bra and began to touch her right nipple and breast with both hands. It was a rhetorical question; however, Mr. Canon did seek consent for this particular situation.

[19] Mr. Canon did not explain the reason for examining and touching her breast and her nipple or report any findings from this examination. The Complainant confirmed during her testimony that she never reported any concerns to Mr. Canon regarding her breasts. The Complainant testified that she was provided with an ozone injection during this visit.

*May 16, 2016 Appointment*

[20] The Complainant testified that her second appointment with Mr. Canon was on May 16, 2016. In her testimony, she indicated prior to this appointment, the Complainant had discussed Mr. Canon's behavior with her boyfriend. She explained that Mr. Canon's touchiness and reference to her as "babe" made her feel uncomfortable. Her boyfriend responded by indicating that she was overreacting and provided her with support in preparing for the appointment.

[21] According to the Complainant, this appointment proceeded in a similar fashion to the previous appointment. Mr. Canon asked the Complainant to lie on her back on the treatment table. The Complainant did so and Mr. Canon began the same treatment of probing and applying pressure to her body. The Complainant testified that she was provided with an ozone injection during this visit.

[22] The Complainant testified that she felt uncomfortable during this visit, particularly, as Mr. Canon continued to call her "babe" which she disliked.

*May 23, 2016 Appointment*

[23] According to the Complainant, the treatment began in a similar fashion to her previous treatments with Mr. Canon. He asked her to lie down on the treatment table and began probing her abdominal area. In her testimony, she reported that on two occasions Mr. Canon cupped her face with both his hands and placed his lips on top of her lips for a few seconds. On the second occasion, the Complainant testified that Mr. Canon kissed her twice on her left cheek.

[24] The Complainant testified that she felt very awkward by this behavior, and did not react. The Complainant testified that Mr. Canon moved on to treating her pelvic and uterus area which

consisted of probing and applying pressure with his hands. During this treatment, Mr. Canon told the Complainant that she needed to “touch herself” and needed “release.” the Complainant felt that Mr. Canon was looking for the word “masturbate” and when asked what he meant, it was ascertained. The Complainant testified that during this discussion she felt Mr. Canon’s fingers on top of her clitoris.

[25] The Complainant testified that Mr. Canon did not obtain her consent to treating this area of her body. In her testimony, she continued and indicated that Mr. Canon’s actions made her feel very shocked and stunned. Immediately, following this appointment, the Complainant spoke to her boyfriend about what had occurred. After these discussions, the Complainant reported the incident to the police.

*May 21, 2016 Appointment with Ina Bosnjak*

[26] The Complainant testified that she also had four appointments with Ina Bosnjak, staff personnel at Mr. Canon’s clinic, between April 19 and May 16, 2016.

[27] Between May 16, 2016 and May 23, 2016, the Complainant testified she had another appointment with Ina. During that appointment, Mr. Canon stopped by her to say hello. While he was speaking to her, Mr. Canon placed his two hands on her knees and left them there for the duration of the conversation which was three to five minutes. This made her feel very uncomfortable, particularly given her two nieces were present.

**Testimony of Michele Pieragostini**

[28] Ms. Pieragostini, Manager of Professional Practice testified as a representative of the College. At the College, Ms. Pieragostini is responsible for overseeing the intake and investigation of complaints. Ms. Pieragostini has held this title for the last eight months.

[29] Ms. Pieragostini testified that Mr. Canon became a Member of the College on September 19, 2013. On July 19, 2016, Mr. Canon resigned from the College.

[30] Ms. Pieragostini testified that one of Mr. Canon’s practice locations between April-July, 2016 was the Clinical Cranial Osteopathy Clinic located at 1420 Burnhamthorpe Road East in Mississauga, Ontario. Ms. Pieragostini testified that the most recent address the College had on file was 31-3353 Liptay Avenue, Oakville Ontario.

[31] In her testimony, Ms. Pieragostini provided Mr. Canon’s history with the Discipline Committee. On November 12, 2015, a Panel of the Discipline Committee found Mr. Canon guilty of an act of professional misconduct including use of a prohibited title, performing and unauthorized controlled act and engaging in conduct which would reasonably be regarded as disgraceful, dishonorable or unprofessional. The Panel made an order that included suspension of Mr. Canon’s Certificate of Registration for 14 months and completion of a course in ethics, recordkeeping and a refresher course in traditional Chinese medicine fundamentals. Mr. Canon was charged with a penalty of \$5,000 to be paid in three equal monthly installments.

[32] Ms. Pieragostini testified that Mr. Canon did not complete any courses as set out in the Order.

[33] Ms. Pieragostini testified that the College received a complaint from the Complainant in June 2016.

[34] On June 23, 2016, the College notified Mr. Canon that the Inquiries, Complaints and Reports Committee of the College had approved a request to commence an investigation into whether an act of professional misconduct by sexually abusing a patient had been committed. On that same day, the College appointed Barker Hutchinson & Associates Ltd. to investigate such complaint. On July 10, 2016, Mr. Canon responded to the complaint. As noted above, Mr. Canon resigned from the College nine days later.

[35] Ms. Pieragostini testified that on September 7, 2016, the College wrote to Mr. Canon to provide him with a copy of the investigation report, confirming the College's jurisdiction despite his resignation, and offered a further opportunity to cooperate with the investigation. Mr. Canon did not provide a response.

[36] The College wrote to Mr. Canon again on September 26, 2016 to remind Mr. Canon of his obligation to cooperate with the investigation, to confirm the College's jurisdiction and provide a further opportunity to cooperate with the investigator. Ms. Pieragostini testified that Mr. Canon failed to respond to this request. Without Mr. Canon's co-operation, the College was unable to continue its investigation.

### **Testimony of Greg Hutchinson**

[37] Mr. Greg Hutchinson, owner of Barker Hutchinson & Associates Ltd., was appointed by the College on June 23, 2016 to investigate whether Mr. Canon had committed an act of professional misconduct by sexually abusing a patient. Mr. Hutchinson is a licensed private investigator who has done many investigations on behalf of regulated health professions.

[38] As part of the investigation, Mr. Hutchinson testified that he attended Mr. Canon's place of practice at 1420 Burnhamthorpe Road East in Mississauga, Ontario on June 24, 2016.

[39] Mr. Hutchinson testified that he met Mr. Canon and presented him with a copy of the complaint from the Complainant; identified himself as an investigator appointed by the College under section 75 of the *Code*; and provided Mr. Canon with a letter outlining the powers of an investigator.

[40] Mr. Hutchinson testified that he requested that Mr. Canon provide him with the Complainant's file as well as a sample of his other patient files. In his testimony, Mr. Hutchinson reported that Mr. Canon refused to provide him the patient files. Mr. Hutchinson continued and reminded Mr. Canon of his obligations to cooperate with a College investigator under the *Code*. Mr. Canon responded that he would not provide any patient records as advised by his attorney unless a summons or search warrant was produced.

[41] Mr. Hutchinson testified that he also asked to speak to Mr. Canon's staff which was completely refused.

### **Submission of College Counsel**

[42] Legal Counsel for the College made oral and written submissions, which the Panel reviewed carefully. In its written submission College Counsel reminded the Panel that although Mr. Canon is no longer a member of the College, the College retains jurisdiction over Mr. Canon in respect of professional misconduct that is alleged to have occurred during the time he was a member.

[43] College Counsel continued by referring the Panel to section 14(1) of the *Code* which states that “a person whose certificate of registration is revoked or expires or who resigns as a member continues to be subject to the jurisdiction of the College for professional misconduct or incompetence referable to the time when the person was a member and may be investigated under section 75.”

[44] In addition, section 14(2) of the *Code* states that “a person whose certificate of registration is suspended continues to be subject to the jurisdiction of the College....for professional misconduct..... referable to the time when the person was a Member or to the period of the suspension and may be investigated under section 75.”

[45] Accordingly, College Counsel submitted the College retains jurisdiction over Mr. Canon for professional misconduct that is alleged to have occurred from September 19, 2013 until July 19, 2016 including the period of his suspension.

[46] College Counsel acknowledged that the burden of proof rests on the College. The appropriate standard of proof in College discipline hearings is well known: the College must prove its case on the civil standard of proof on the balance of probabilities, based on clear, convincing and cogent evidence.

#### ***Allegation 1: Whether Mr. Canon sexually abused a patient contrary to section 51(1) (b.1) of the Code;***

#### **College’s submission**

[47] College Counsel submitted that the evidence of touching of sexual nature and behavior or remarks of a sexual nature towards the Complainant by Mr. Canon consisted “sexual abuse” and contravened the *Code*. Therefore, Mr. Canon is guilty of “sexual abuse”.

[48] According to Subsections 1(3) and 1(4) of the *Code*, sexual abuse of a patient is described as follows:

- (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.

[49] College Counsel submitted that Mr. Canon did not provide acupuncture or traditional Chinese medicine treatment to the Complainant. However, Mr. Canon provided healthcare services to the Complainant while he was a Member of the College. The Complainant saw Mr. Canon for treatment in relation to medical concerns, and understood him to be a medical professional. In addition, Mr. Canon practiced at a clinic that offered acupuncture and other regulated health services. Therefore, College Counsel contends that the Complainant was a “patient” of Mr. Canon under the *RHPA* during the relevant time period.

[50] College Counsel submitted that the Complainant’s testimony was clear as to how she regarded the touching and comments as being intrusive, inappropriate and unwarranted. Her recollection of the sexual touching and remarks made to her by Mr. Canon is not in dispute.

[51] College Counsel submitted that the totality of the circumstances as described in the Complainant’s testimony must be considered including:

- (a) Mr. Canon touching the Complainant’s breast and nipple without consent or explanation;
- (b) Mr. Canon referring to the Complainant as “babe” throughout the appointments
- (c) Mr. Canon touching the Complainant’s knees for a prolonged period of time outside the context of treatment
- (d) Mr. Canon kissing the Complainant on the lips twice during treatment
- (e) Mr. Canon touching the Complainant’s pelvic area and clitoris without consent
- (f) Mr. Canon telling the Complainant that she needed to activate that area, meaning to “touch herself” and “masturbate”.

[52] College Counsel submitted that Mr. Canon’s conduct towards the Complainant including the touching of sexual nature and remarks of a sexual nature is unwarranted. Given the sensitivity of the breasts, absent consent of the Complainant or any stated clinical purposes for touching constituted sexual abuse. Touching of the Complainant’s clitoris also clearly involves a sensitive body part. Absent consent, and in conjunction with comments regarding masturbation, this conduct is clearly sexual abuse. Further, there can be no clinical purpose for Mr. Canon kissing D.J on the lips.

[53] College Counsel submitted that terms of endearment used by Mr. Canon such as “babe” and the comments regarding the need to touch herself all constituted remarks of a sexual nature.

[54] College Counsel submitted that in the course of treatments of the Complainant, Mr. Canon has engaged in sexual abuse.

***Allegation 2: Whether Mr. Canon performed an unauthorized controlled act contrary to section 21(1) of the RHPA and sections 1(10) and 1(30) of the Professional Misconduct Regulation;***

**College’s submission**

[55] College Counsel submitted that the evidence of the Complainant demonstrated that Mr. Canon administered ozone injections to her on three occasions. This falls under the category of two controlled acts: administration of a substance by injection, and performing a procedure on tissue below the dermis (which is not acupuncture). Indeed, in granting an injunction against Mr. Canon, the Superior Court of Justice recently found that such conduct constituted performance of a controlled act.

[56] Sections 1(10) and 1(39) of the Professional Misconduct Regulation establish that it is an act of professional misconduct to perform a controlled act the Member is not authorized to perform and contravene the provisions of the *RHPA*.

[57] Section 27(1) of the *RHPA* provides that:

No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

- (a) the person is a member authorized by a health profession Act to perform the controlled act; or
- (b) the performance of the controlled act has been delegated to the person by a member described in clause (a)

[58] The list of controlled acts provided in section 27(2) include:

- 2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of the teeth.
- 5. Administering a substance by injection or inhalation.

[59] The *TCMA* does not permit a Member to engage in the controlled act of performing a procedure below the dermis that is not acupuncture, or of administering a substance by injection.

[60] College Counsel submitted that the testimony of Ms. Pieragostini establishes that Mr. Canon was not a Member of any other regulated health profession when he administered these

injections in April-May, 2016, nor would his membership in the College (even if it had not been suspended at the time) allow him to perform this act.

[61] Accordingly, College Counsel submitted that Mr. Canon was not authorized to administer the ozone injections to the Complainant. Consequently, College Counsel contends Mr. Canon is guilty of an act of professional misconduct.

***Allegation 4: Whether Mr. Canon verbally, physically, psychologically and/or emotionally abused a patient contrary to section 1(2) of the Professional Misconduct Regulation;***

**College's submission**

[62] College Counsel submitted that Section 1(2) of the Professional Misconduct Regulation establishes that it is professional misconduct for a practitioner to verbally, physically, psychologically and/or emotionally abuse a patient.

[63] College Counsel submitted based on the evidence of the Complainant, she was never advised of the purported clinical purpose of Mr. Canon's touching of her breast and pelvic region. She was also consistent in her testimony that she did not provide consent to that treatment before it began.

[64] College Counsel submitted based on the evidence of the Complainant, Mr. Canon touched her breasts and clitoris without her prior consent. College Counsel contends the Panel must conclude that Mr. Canon physically abused his patient. Furthermore, College Counsel submitted that Mr. Canon comments to the Complainant constitute verbal abuse of a patient in the totality of the circumstances.

***Allegation 5: Whether Mr. Canon failed to cooperate with an investigation contrary to section 76(3.1) of the Code;***

**College's submission**

[65] College Counsel submitted that Section 76(3.1) of the *Code* requires members to cooperate fully with an investigator appointed under the *Code*. According to the *Code* investigators are permitted to make reasonable inquiries of the Member who is subject to the investigation on matters relevant to the investigation, enter at any reasonable time the place of practice of the Member, and examine anything found that is relevant to the investigation.

[66] College Counsel submitted the *Code* prohibits obstruction, withholding or destruction of anything that is relevant to the investigation. This includes refusing to respond to requests for information from the College.

[67] College Counsel submitted the testimony of Mr. Hutchinson establishes that he attended at Mr. Canon's place of practice on June 24, 2016 and requested that Mr. Canon provides the

Complainant's patient file, a sample of his other patient files, and access to staff members for an interview.

[68] College Counsel submitted the information requested was relevant to the investigation. College Counsel submitted that Mr. Canon did not provide the College with this information as requested. Mr. Canon also did not provide a response to the College's letters of September 2016. Regardless of Mr. Canon's suspension, College Counsel submitted that Mr. Canon remained a Member of the College at the time of the investigation and was therefore subject to the College's jurisdiction. His obligation to cooperate with the College existed despite his being charged criminally.

***Allegation 7: Whether Mr. Canon failed to comply with an order of a panel of a Discipline Committee of the College, contrary to section 1(44) of the Professional Misconduct Regulation;***

**College's submission**

[69] College Counsel submitted that it is an act of professional misconduct to fail to comply with an order of a panel of a Committee of the College. On October 20, 2015, a Panel of the Discipline Committee of the College made an Order that required Mr. Canon to, *inter alia*,

- (a) complete an Ethics course;
- (b) complete a Record-keeping course; and
- (c) complete a refresher course in traditional Chinese medicine fundamentals.

[70] College Counsel submitted that the testimony of Ms. Pieragostini establishes that Mr. Canon did not fulfill any of the conditions of the Order.

***Allegation 8: Whether Mr. Canon engaged in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonorable or unprofessional, contrary to Section 1(48) of Ontario Regulation 318/12.***

**College's submission**

[71] College Counsel submitted that even where the same conduct forms the grounds for multiple allegations of professional misconduct, an allegation that a member was in breach of a standard of practice or committed disgraceful, dishonorable or unprofessional conduct is a separate basis upon which a finding of professional misconduct may be made, as it requires a different legal nexus between the misconduct and the allegation.

[72] Accordingly, even if the facts relied on to support this allegation were the same as that relied on to support the other allegations of misconduct, this would be sufficient.

[73] In this case, the College relies upon the evidence of the Complainant in support of the allegation that Mr. Canon's conduct was disgraceful, dishonorable or unprofessional.

[74] Specifically, College Counsel argued that Mr. Canon's behavior toward Mr. Hutchinson and failure to communicate further with the College on the investigation was disgraceful, dishonorable or unprofessional.

[75] The evidence from the business card of Mr. Canon that he was using a Doctor title is an additional factor demonstrating a serious disregard for his professional obligations.

[76] College Counsel submitted that Mr. Canon has demonstrated a significant and flagrant disregard for his obligations as a member of a regulated health profession. Flaunting the self-regulation structure undermines the importance of self-regulation and diminishes the profession generally.

***Allegation 9: Whether Mr. Canon engaged in conduct unbecoming a member contrary to Section 1(49) of the Professional Misconduct Regulation***

**College's submission**

[77] College Counsel submitted that Section 1(49) of the Professional Misconduct Regulation prohibits Members of the College from engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture.

[78] This act of professional misconduct is generally understood "to capture conduct outside the practice of the profession where such behavior reflects on a "professional's" integrity to the point that public protection is required."

[79] College Counsel argued in support of this allegation, as Mr. Canon's inappropriate behavior towards the Complainant and his performance of ozone injections – which occurred outside the scope of traditional Chinese medicine, and was a controlled act that members of this College are not permitted to perform – is unacceptable and unbecoming for a professional. Also, the Complainant testified, Mr. Canon failed to obtain her consent to treatment of sensitive areas; called her "babe" and touched her unnecessarily on her knees during a visit with another staff member. This conduct shames the profession and is worthy of sanction.

**Decision**

[80] The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities, based upon clear, cogent and convincing evidence.

[81] Having considered the evidence and the onus and standard of proof, the Panel finds that the Member's practice was subject to the jurisdiction of the College and that he has committed professional misconduct as alleged by each allegation in the Amended Notice of Hearing.

## **Reasons for Decision**

### ***I. Assessment of Credibility***

[82] Resolving issues of “sexual abuse” and other non-“sexual abuse” conduct requires the Panel to assess the credibility of three non-expert witnesses: the Complainant, Ms. Pieragostini and Mr. Hutchinson.

[83] Although the Member did not attend or testify at the hearing, the Panel must still undertake an assessment of credibility of the College’s witnesses. 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.

[84] College Counsel submitted that appropriate considerations for a Discipline Committee have been set out by the Divisional Court. According to the Court in *Health v College of Physicians and Surgeons of Ontario*, “the credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried the conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of a story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize in that place and in those conditions.”

[85] The Panel has to assess the reliability of a witness’s evidence even when the Panel considers the witness to be doing his or her best to tell the truth. In this case, the essence of the evidence of the Complainant was that she honestly believed she had been sexually abused.

[86] Based on the testimonies provided, the Panel concluded that all witnesses were credible.

### ***II. Credibility of the Complainant***

[87] In her evidence, the Complainant appeared forthright, consistent and sincere. It was clear to the Panel by her facial expression and consistency in her evidence after two years from the “sexual abuse” that she sincerely believed that she has been sexually abused. There were no significant inconsistencies in her evidence. She had a good memory of her visits to Mr. Canon’s office and the treatments received at each of those visits. She was able to recall the layout of the treatment room, her position on the treatment table, and the interaction between herself and Mr. Canon during those visits.

[88] The explanation that the Complainant provided for her recollection of the events with Mr. Canon was sensible and coherent. There is no credible basis upon which to conclude that the Complainant imagined the detailed sensations that were experienced during those treatments.

### ***III. Credibility of Ms. Michele Pieragostini***

[89] Ms. Pieragostini's gave evidence at the hearing as a Representative for the College. She explained in detail that part of her role was to oversee investigations into allegations of professional misconduct. Her testimony was forthright and candid.

### ***IV. Credibility of Mr. Greg Hutchinson***

[90] In his examination by College Counsel, Mr. Hutchinson was forthright about the details of his meeting with the Member, candid and answered all the questions without hesitation.

### ***Allegation 1: That the Member sexually abused a patient***

[91] The Panel on the basis of the evidence provided by the Complainant, finds, on the balance of probabilities, that the Member sexually abuse his patient.

[92] The Complainant alleged the Member:

- touched her breast and nipple without consent or clinical explanation
- referred to her as "babe" throughout her appointments
- touched her knees for an extended period of time outside the context of treatment
- kissed her on the lips on two different occasions during treatment
- touched her pelvic area and clitoris without consent or clinical explanation
- told her she needed to "touch herself" and "masturbate"

[93] The evidence provided by the Complainant remained unchallenged and undisputed. The Panel finds her account to be reliable as her testimony remained consistent after a two-year period from the incident. Her sincerity remained unequivocal and steadfast throughout her testimony.

[94] In all the circumstances, there was no clinical need for the Member to touch the sensitive parts of the patient's body; no consent provided by the patient; no need to call her "babe"; no need for the Member's comments to the patient to touch herself or masturbate; and no need for the Member to kiss the patient on the lips.

[95] It is the Panel's finding that there is clear, cogent and convincing evidence that it is more than likely the Member engaged in "sexual abuse" in the course of treatment to his patient, within the meaning of the *Code*. These actions on the part of the Member violated the sexual integrity of the patient.

***Allegation 2: That the Member contravened the RHPA by performing an unauthorized controlled act, contrary to section 21(1) of the RHPA and sections 1(10) and 1(30) of the Professional Misconduct Regulation***

[96] Sections 1(10) and 1(39) of the Professional Misconduct Regulation establish that it is an act of professional misconduct to perform a controlled act the Member is not authorized to perform and contravene the provisions of the *RHPA*.

[97] Section 27(1) of the *RHPA* provides that:

No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

- (a) the person is a Member authorized by a health profession Act to perform the controlled act; or
- (b) the performance of the controlled act has been delegated to the person by a Member described in clause (a)

[98] The list of controlled acts provided in section 27(2) include:

- 2. Performing a procedure on tissue below the dermis, below the surface of a mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of the teeth.
- .....
- 5. Administering a substance by injection or inhalation.

[99] The *TCMA* does not permit a Member to engage in the controlled act of performing a procedure below the dermis that is not acupuncture, or of administering a substance by injection.

[100] Testimony of the Complainant supports that the Member administered ozone injections during her three appointments. This falls under the category of two controlled acts: administration of a substance by injection, and performance of a procedure on tissue below the dermis.

[101] Testimony of Ms. Pieragostini establishes that the Member was not a member of any other regulated health profession when he administered these injections to his patient in April-May, 2016, nor would his membership at the College have allowed him to perform this act, even if it had not been suspended at the time (members of the College may perform procedures on tissue below the dermis, but only for the purpose of acupuncture).

[102] As explained above, the Panel finds that the Member was not authorized to administer the ozone injections to his patient during her appointments.

[103] The Panel finds the Member perform a controlled act that he was not authorized to perform. It follows from the Panel's findings that the Member is guilty of this allegation.

***Allegation 4: That the Member verbally, physically, psychologically and/or emotionally abused a patient contrary to section 1(2) of the Professional Misconduct Regulation***

[104] The Professional Misconduct Regulation establishes that it is professional misconduct for a Member to verbally, physically, psychologically and/or emotionally abuse a patient.

[105] Evidence from the Complainant supports that she was never advised of the purported clinical purpose for the Member to touch her breast and pelvic region. The Complainant also testified that she did not provide consent to that treatment before it began.

[106] Evidence supports that the Member physically touched the Complainant's knees for a prolonged period of time which was not part of a clinical treatment.

[107] Evidence from the Complainant supports that she has been called "babe" throughout her appointments at the Member's clinic which can be psychologically and emotionally disturbing.

[108] Based on the evidence provided, the Panel finds that the Member violated the Professional Misconduct Regulation by verbally, physically, and/or emotionally abusing his patient.

***Allegation 5: That the Member failed to cooperate with an investigation contrary to section 76(3.1) of the Code***

[109] Section 76(3.1) of the *Code* requires a Member to co-operate with an investigator appointed under the *Code*.

[110] As noted above, the evidence shows that Barker Hutchinson & Associates Ltd. was appointed by the College on June 23, 2016 to investigate whether the Member had committed an act of professional misconduct by sexually abusing a patient. According to testimony, Mr. Greg Hutchinson, a private investigator for that firm, attended the Member's place of practice on June 24, 2016. Mr. Hutchinson explained to the Member that an investigation had been initiated by the College as a result of a complaint from one of his patients. At the same time, he would appreciate a random sample of the Member's patients' files.

[111] According to Mr. Hutchinson, the Member responded, as per his lawyer's directives, that he would not permit access to the Complainant's patient file nor those of any other patients nor permit any interviews with his staff.

[112] Mr. Hutchinson testified that the Member was informed of his obligation to cooperate with the College's investigator as it is mandatory according to the *Code*.

[113] The Member responded that he was not interested and if need be the College could issue a summons for the patient records or execute a search warrant. Without the Member's co-operation, the College was unable to continue its investigation.

[114] According to the evidence provided by Mr. Hutchinson, the Panel finds that the Member failed to fulfill his obligations as stipulated in the *Code*. While this is not a category of professional misconduct in and of itself, it does amount to “contravening, by act or omission, a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts”, which is a form of professional misconduct under s. 1(39) of Ontario Regulation 318/12.

***Allegation 7: That the Member failed to comply with an order of a panel of a Discipline Committee of the College, contrary to section 1(44) of the Professional Misconduct Regulation***

[115] As per testimony from Ms. Pieragostini, on October 20, 2015, a Panel of the Discipline Committee of the College made an Order that imposed terms, conditions and limitations on the Member’s Certificate of Registration requiring the Member to, *inter alia*,

- (a) complete an Ethics course;
- (b) complete a Record-keeping course; and
- (c) complete a refresher course in traditional Chinese medicine fundamentals.

[116] According to the testimony of Ms. Pieragostini, none of these terms and conditions were completed by the Member.

[117] The Panel finds, based on the evidence provided, the Member failed to comply with the Order of October 20, 2015 and therefore violated the provisions of the Professional Misconduct Regulation.

***Allegation 8: That the Member engaged in conduct or performing an act relevant to the practice of the profession that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonorable or unprofessional, contrary to Section 1(48) of Ontario Regulation 318/12.***

[118] The Panel considered the Member’s conduct as a whole.

[119] The Member’s behaviour in ignoring the Order issued on October 20, 2015 demonstrates a serious disregard for his professional obligations. At the very least, it is conduct relevant to the practice of the profession that would reasonably be regarded by the profession as unprofessional. His serious breaches of professional standards, as described above under Allegations 1,2,4,5 and 7 merit the finding that the Member engaged in conduct or performed an act relevant to the practice of the profession, having regard to all the circumstances, would reasonably be regarded by a Member as disgraceful, dishonorable, and unprofessional, contrary to Section 1(48) of Ontario Regulation 318(12).

***Allegation 9: That the Member engaged in conduct unbecoming a member contrary to Section 1(49) of the Professional Misconduct Regulation.***

[120] Section 1(49) of the Professional Misconduct Regulation prohibits members of the College from engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture.

[121] As per testimony from the Complainant, the Member performed an inappropriate act with ozone injections, which occurred outside the scope of acts he was authorized to perform; failed to obtain consent prior to touching “sensitive parts” of her body; called her “babe”; and touched her knees with no clinical purpose and without consent. Due to this type of conduct and behavior in the treatment of a female patient, the Member engaged in a conduct unbecoming to the profession.

[122] The Panel finds, this type of conduct on the part of the Member is contrary to the public interest and harms the standing of the profession in the eyes of the public.

I, Martial Moreau, sign this Decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:

**Dated: November 27, 2018**

Martial Moreau, Chairperson



Signature: \_\_\_\_\_

Panel Members:                    Martial Moreau  
    Yuqi Yang  
    Barrie Haywood