

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on October 23, 2018 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”). A Mandarin interpreter was present to assist the member, Chenghua Zhan (the “Member”).

The Allegations

[2] The allegations set out in the Notice of Hearing dated February 20, 2018 are as follows:

THE ALLEGATIONS of professional misconduct are that you:

1. Sexually abused patient G.H. contrary to section 51(1) (b.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];
2. Verbally, physically, psychologically and/or emotionally abused patient G.H. contrary to section 1(2) of Ontario Regulation 318/12;
3. Contravened a standard of practice of the profession or failed to maintain the standard of practice of the profession contrary to section 1(1) of Ontario Regulation 318/12;
4. Submitted an account or charge for services that you knew or ought to have known was false or misleading contrary to section 1(19) of Ontario Regulation 318/12;
5. Failed to keep records in accordance with the standards of the profession contrary to section 1(25) of Ontario Regulation 318/12;
6. Signed or issued, in your professional capacity, a document that you knew or ought to have known contained a false or misleading statement contrary to section 1(26) of Ontario Regulation 318/12; and
7. 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.

THE PARTICULARS OF THE ALLEGATIONS are that:

1. On or about May 8, 2017, you sexually, verbally, psychologically, and/or emotionally abused patient G.H. by, among other things, touching his buttocks and genitals in the course of a massage treatment.

2. On or about May 8, 2017, you sexually, verbally, psychologically, and/or emotionally abused patient G.H. by, among other things, making remarks of a sexual nature towards the patient, including:
 - (a) asking whether he wanted a massage of his genitals; and
 - (b) offering to perform a “Happy Ending” to the massage for a fee of \$40.

3. On or about May 8, 2017, you failed to maintain the standard of practice of the profession, including by:
 - (a) touching patient G.H.’s buttocks and genitals in the course of a massage treatment;
 - (b) asking whether he wanted a massage of his genitals;
 - (c) offering to perform a “Happy Ending” to the massage for a fee of \$40;
 - (d) failing to maintain proper draping during the course of patient G.H.’s massage treatment; and
 - (e) failing to obtain proper consent from patient G.H. prior to and during the massage treatment.

4. On or about May 8, 2017, you signed documents in your professional capacity that you knew contained false or misleading statements, in that you completed receipts for acupuncture treatments dated April 10 and May 8, 2017, which were not rendered.

5. Prior to and on September 14, 2017, you failed to maintain the standard of practice of the profession, including by:
 - (a) failing to maintain adequate records; and
 - (b) failing to adhere to the standard of the safe disposal of sharps.

6. Prior to and on September 14, 2017, you failed to keep records in accordance with the standards of the profession.

7. 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.

Member’s Position

[3] The Member admitted the allegations of professional misconduct in paragraphs 1 through 7 of the Notice of Hearing. The Panel conducted a plea inquiry and was satisfied that the Member’s admissions were voluntary, informed and unequivocal.

The Evidence

[4] The evidence was tendered by way of an Agreed Statement of Facts. The Agreed Statement of Facts is reproduced below, without the attachments referred to in the Agreed Statement of Facts.

AGREED STATEMENT OF FACTS

OVERVIEW

1. Ms. Chenghua Zhan (the “Member”) a Registered Acupuncturist and Traditional Chinese Medicine Practitioner since September 25, 2015. Her registration number is 3733.
2. The Inquiries, Reports and Complaints Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”) has directed that specified allegations of professional misconduct be referred to the Discipline Committee, as set out in the Notice of Hearing dated February 20, 2018. The Notice of Hearing is attached at Tab 1.
3. The allegations referred to the Discipline Committee arise out of the facts agreed to by the Member as set out below.

FACTS

4. On September 26, 2016, the College was advised by the Member that she had received a citation from the Town of Richmond Hill for operating as an attendant of a body rub parlour without a license.
5. By Notice of Appointment dated March 27, 2017, the College commenced a section 75 (1)(a) investigation into the Member’s practice.
6. The College’s investigator attended the Member’s clinic, Golden Wellness Center on May 8, 2017, for a scheduled 60 minute massage treatment. The Member performed the 60 minute massage treatment.
7. In the course of the massage treatment, the Member:
 - (a) touched the investigator’s buttocks and genitals on several occasions;
 - (b) failed to maintain appropriate draping, including removing the investigator’s underwear and removing the draping such that the investigator was naked and exposed on the treatment table; and
 - (c) touched the investigator’s penis and asked if he wanted her to massage “here”, and advised that there would be an additional charge of \$40 for her to provide a “Happy Ending”.
8. The Member did not obtain consent from the investigator prior to removing the draping or touching his buttocks or genitals.

9. In engaging in the aforementioned conduct, the Member sexually and verbally abused a patient, and failed to meet the standards of practice of the profession.
10. After the massage treatment was complete, the investigator advised the Member that he would like a receipt. She indicated that it would be an additional \$20 fee for a receipt, and offered to provide either an acupuncture receipt or a massage therapy receipt. The investigator requested, and the Member completed and signed, an acupuncture receipt dated May 8, 2017. A copy of the May 8, 2017 acupuncture receipt is attached at Tab 2.
11. The Member then offered and completed and signed an additional acupuncture receipt dated April 10, 2017. A copy of the April 10, 2017 acupuncture receipt is attached at Tab 3.
12. The receipts dated April 10, 2017 and May 8, 2017 are false and inaccurate. The Investigator did not receive acupuncture treatments from the Member on either date.
13. A second investigator attended at the Member's clinic on August 13, 2017 and obtained the Member's original patient charts for Mr. Hutchinson and ten other patients. Copies of the patient charts obtained by the second investigation are attached at Tab 4.
14. The Member did not maintain patient records as required by the standards of the profession.
15. The Member did not maintain a written or electronic daily appointment log that outlined the date, name and time of the appointment for each patient. In addition, the patient records obtained do not include:
 - (a) a consent to treatment form;
 - (b) a complete Patient Health Summary for each patient; or
 - (c) a complete Patient Health Record for each patient.

ADMISSIONS TO ALLEGATIONS

16. Ms. Zhan admits the facts specified in paragraphs 1 to 15 above and admits that, based on these facts:
 - (a) She sexually abused a patient contrary to section 51(1)(b.1) of the Code;
 - (b) She verbally and physically abused a patient contrary to section 1(2) of Ontario Regulation 318/12;
 - (c) She contravened standards of practice of the profession and failed to maintain the standard of practice of the profession contrary to section 1(1) of Ontario Regulation 318/12;
 - (d) She submitted an account or charge for services that she knew was false or misleading contrary to section 1(19) of Ontario Regulation 318/12;
 - (e) She failed to keep records in accordance with the standards of the profession contrary to section 1(25) of Ontario Regulation 318/12;

- (f) She signed or issued, in her professional capacity, a document that she knew contained a false or misleading statement contrary to section 1(26) of Ontario Regulation 318/12; and
- (g) She engaged in conduct or performed an act relevant to the practice of the profession that, having regard to all circumstances, would be regarded by the profession as disgraceful, dishonourable or unprofessional.

Decision of the Panel

[5] The Panel accepted the admissions of professional misconduct set out in the Agreed Statement of Facts (ASF), and accordingly made findings of professional misconduct as alleged in the Notice of Hearing.

Reasons for Decision

[6] The Panel considered the ASF, the submitted patient records and the Member's plea and finds that this evidence supports findings of professional misconduct as alleged in the Notice of Hearing.

[7] Allegation 1 is supported by paragraphs 7 and 8 in the ASF. The Member sexually abused a patient contrary to Section 51(1)(b. 1) of the Code.

[8] Allegation 2 is supported by paragraphs 7 and 8 of the ASF. The Member verbally and physically abused a patient contrary to section 1(2) of Ontario Regulation 318/12.

[9] Allegation 3 is supported by paragraph 8 of the ASF. The Member failed to properly drape the patient or to obtain the patient's consent to massage a sensitive area, thus contravening standards of practice of the profession and failing to maintain the standard of practice of the profession contrary to section 1(1) of Ontario Regulation 318/12..

[10] Allegation 4 is supported by paragraphs 11 and 12 of the ASF. The Member submitted an account or charge for services that she knew was false or misleading contrary to section 1(19) of Ontario Regulation 318/12.

[11] Allegation 5 is supported by paragraphs 14 and 15 of the ASF. The Member failed to keep records in accordance with the standards of the profession contrary to section 1(25) of Ontario Regulation 318/12.

[12] Allegation 6 is supported by paragraph 12 of the ASF. The Member signed or issued, in her professional capacity, document(s) that she knew or ought to have known contained a false or misleading statement contrary to section 1(26) of Ontario Regulation 318/12.

[13] Allegation 7 is supported by the above referenced paragraphs as well as the Member's admission in paragraph 16 of the ASF that, based on the facts specified in paragraphs 1 to 15 in the ASF, she has engaged in conduct or performed acts relevant to the practice of the profession which would reasonably be regarded by a member of the profession as disgraceful, dishonourable or unprofessional.

Penalty and Costs Submissions

[14] The Member and the College agreed on joint penalty submissions as well as a joint submission on costs. The Joint Submission was signed by the Member on October 22, 2018 and is reproduced below:

The College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”) and Chenghua Zhan (the “Member”) have agreed to make the following joint submission on penalty following findings of professional misconduct:

1. The Member shall receive a public and recorded reprimand;
2. The Member’s Certificate of Registration shall be revoked, effective immediately;
3. The Member shall contribute to the investigation and prosecution costs of the College in the amount of \$7,500 to be paid in full within 180 days after the decision made;
4. The decision of the Discipline Committee in this matter shall be published in the usual course.

Penalty and Costs Decision

[15] The Panel accepted the joint submission on penalty and costs and accordingly, made the order proposed in the joint submission. The Member waived her right to appeal the agreed-upon penalty and so the Panel reprimanded the Member at the hearing.

Reasons for Penalty and Costs Decision

[16] The Panel found that the evidence submitted at the hearing of admittedly false treatment sessions noted in the Member’s treatment records and issued receipts, the admitted failure to maintain records to the College’s standards and the admission of sexual abuse of a patient contained in the ASF substantiated the allegations of professional misconduct contained in the Notice of Hearing.

[17] The Panel was mindful that its penalty should not deviate substantially from the joint submission of the parties unless it found such submission to be largely unworkable.

[18] In assessing the appropriateness of the penalties proposed by the College and the Member, the Panel considered the effectiveness of the proposed penalties to serve as both a specific deterrent in guiding the Member’s future behavior as well as a general deterrent to other members of the profession from engaging in similar conduct. The Panel also considered whether the proposed penalties would maintain public confidence in the College’s ability to regulate its members and safeguard the public. As well, the Panel considered the prospects of remediation that could result from prescribed terms of the penalty.

[19] The Panel noted that, other than the misconduct admitted to, there were no aggravating factors to the Member's conduct. The Member had no other offences on record and had co-operated fully with the College in its investigation, thereby mitigating the cost and time required to reach resolution.

[20] The Panel found that the penalty agreed to by both parties met all of the above considerations. The Panel found that the gravity of the offense of sexual abuse of a patient merited the penalty of revocation of the Member's certificate of registration. The Panel was also aware however that it lacked discretion to order a lesser penalty, even if it was inclined to do so, as Section 51(5) of the Code mandates that where a panel has found that the Member has committed acts of professional misconduct by sexually abusing a patient in the manner in issue in this case (touching of a sexual nature of the patient's genitals and buttocks), the panel shall impose a penalty that includes a reprimand and revocation of the Member's certificate of registration. The Panel also has the discretion to make an order regarding the College's costs, pursuant to s. 53.1 of the Code.

[21] The Panel also found that the order of \$7,500 in costs was appropriate as the costs of the hearing were mitigated by the Member's full co-operation. Though such amount is likely only a portion of the College's costs to investigate and present the hearing, it nevertheless imposes some of the cost on the Member whose behavior was found to constitute professional misconduct, thereby lessening the cost to be borne by the other members of the College.

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

Date: November 1, 2018

Signed:



Henry Maeots, Chair
Ming Cha
Ferne Woolcott