

**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: April 3, 2020

Indexed as: Ontario (College of Traditional Chinese Medicine
Practitioners & Acupuncturists of Ontario) v David Moon,
2020 ONCTCMPAO 9

Panel:	Richard Dong	Chairperson, Public Member
	Deborah Sinnatamby	Public Member
	Pixing Zhang	Public Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO	(
	(Anastasia Hountalas for the College
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	(
-and-	(
	(
DAVID MOON	(Member Present, Self-Represented
Reg. No. 2709	(
	(
	(Edward Marrocco,
	(Independent Legal Counsel
	(
	(Date of Hearing: January 15, 2020

DECISION AND REASONS FOR DECISION

- [1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on January 15, 2020 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).
- [2] David Moon (the “Member”) was present and self-represented.

The Allegations

- [3] On June 20, 2019, the College issued a Notice of Hearing against the Member (the “Notice”), alleging that the Member had engaged in professional misconduct under the *Traditional Chinese Medicine Act, 2006* (the “Act”) as follows:

The Member

1. David Moon (the "Member") became a Grandparented member of the College (R. TCMP, R. Ac) in April 2013. He transferred to the General class (R. TCMP, R. Ac) in October 2013.
2. The Member owns St. Luke Wellness Centre at 1319 Ouellette Avenue in Windsor, Ontario (the "Clinic").

Insurance Fraud

3. On or about June 21, 2017, the College received a complaint from an insurer alleging that the Member engaged in insurance fraud and submitted claims for treatments not actually rendered. Specifically, the insurer reported that:
 - a. It Identified 185 claims for treatments purportedly provided by the Member, where treatment was not actually rendered by the Member as claimed;
 - b. It identified an additional 75 claims for treatments purportedly provided by the Member that were unsupported by the Member's records; and/or
 - c. On or about November 19, 2016 and April 13, 2017, the Member remitted the amount paid to him by the insurer for the treatments identified in paragraphs 3(a)-(b) above to insurer

Record-Keeping

4. Between in or about January 2015 and January 2019, the Member failed to keep records as required. Specifically:
 - a. The Member failed to maintain treatment notes; and/or
 - b. The Member failed to maintain accurate billing records.

Acts of Professional Misconduct

5. It is alleged that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code, being Schedule 2 of the *Regulated Health Professions Act* (the "Code") as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006*:
 - a. **Paragraph 1:** Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession (In particular, Standard of Practice (4) - Communication and/or Standard of Practice (5) - Record Keeping);
 - b. **Paragraph 19:** Submitting an account or charge for services that the member knows or ought to know is false or misleading;

- c. **Paragraph 25:** Failing to keep records in accordance with the standards of the profession;
- d. **Paragraph 26:** Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement;
- e. **Paragraph 48:** Engaging 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, dishonourable or unprofessional.

Altering and/or Losing Patient Records

- 6. Between in or about January 2015 and January 2019, the Member lost and/or altered patient records. Specifically:
 - a. The Member lost patient files and/or failed to report the loss as required; and/or
 - b. The Member re-wrote and/or asked patients to re-write portions of patient records during the College's investigation.

Acts of Professional Misconduct

- 7. It is alleged that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006*:
 - a. **Paragraph 1:** Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession (in particular, Standard of Practice (4) - Communication and/or Standard of Practice (5) - Record Keeping);
 - b. **Paragraph 25:** Failing to keep records in accordance with the standards of the profession;
 - c. **Paragraph 27:** Falsifying a record relating to the member's practice; and/or
 - d. **Paragraph 48:** Engaging 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, dishonourable or unprofessional.

Falsifying Documents and Offering a Bribe to the College's Investigator

- 8. On or about August 8, 2017, the Member submitted altered copies of TD Bank statements for the Clinic's bank account to the College during its investigation.
- 9. On or about January 14, 2019, the Member attempted to bribe the College's investigator with \$5,000.00 in exchange for the investigator omitting evidence from his investigation report.

Acts of Professional Misconduct

- 10. It is alleged that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code, as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006*:
 - a. Paragraph 48: Engaging 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, dishonourable or unprofessional; and/or
 - b. Paragraph 39: Contravening, by act or omission, a provision of the Act, the *Regulated Health Professions Act, 1991* or the regulations under either of those Acts (In particular, section 76(3) of the Code).

Member's Position

- [4] The Member admitted the allegations of professional misconduct contained in the Notice of Hearing. The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

The Evidence

- [5] The evidence was tendered by way of an Agreed Statement of Facts. The Agreed Statement of Facts is reproduced below but without the attachments referenced therein:

The Member

1. At all material times, David Moon ("Mr. Moon") was a member of the College.
2. Mr. Moon became a Grandparented member of the College (R. TCMP, R. Ac) in April 2013. He transferred to the General class (R. TCMP, R. Ac) in October 2016. A copy of Mr. Moon's Member Profile is attached as **Tab "1"**.
3. Mr. Moon owns St. Luke Wellness Centre at 1319 Ouellette Avenue in Windsor, Ontario (the "Clinic").

Insurance Fraud

4. On or about June 21, 2017, the College received a complaint from an insurer alleging that Mr. Moon engaged in insurance fraud and submitted claims for treatments not actually rendered. Specifically, the insurer reported that:
 - a. It identified 185 claims for treatments purportedly provided by Mr. Moon, where treatment was not actually rendered by Mr. Moon as claimed;
 - b. It identified an additional 75 claims for treatments purportedly provided by Mr. Moon that were unsupported by Mr. Moon's records; and
 - c. On or about November 19, 2016 and April 13, 2017, Mr. Moon remitted the amount paid to him by the insurer for the treatments identified in paragraphs 4(a)-(b) above to insurer.
5. It is agreed that Mr. Moon submitted the claims identified in paragraph 4(a) above for treatments that Mr. Moon did not actually render.
6. It is agreed that Mr. Moon submitted the claims identified in paragraph 4(b) above for treatments that were unsupported by Mr. Moon's records.
7. It is agreed that the claims identified in paragraphs 4(a) and 4(b) above are accounts or charge for services, and a document.
8. It is agreed that Mr. Moon remitted the amount paid to him by the insurer for the treatments identified in paragraphs 4(a)-(b) above to insurer. Redacted copies of the two remittance cheques provide by Mr. Moon's to the insurer are attached as **Tab "2"**.
9. It is a standard of practice of the profession to maintain complete and accurate billing and patient records that attest to the treatment of a patient. A copy of Standard of Practice (5) - Record Keeping is attached as **Tab "3"**.

Record Keeping

10. It is agreed that between in or about January 2015 and January 2019, Mr. Moon failed to keep records as required. Specifically, it is agreed that:
 - a. Mr. Moon failed to maintain treatment notes; and
 - b. Mr. Moon failed to maintain accurate billing records.

11. It is a standard of practice of the profession to maintain complete and accurate billing and patient records that attest to the treatment of a patient (see Tab “3”).

Professional Misconduct

12. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 to the Regulated Health Professions Act, 1991 (the “Code”) as set out in the following paragraphs of section 1 of Ontario Regulation 318/12 made under the Traditional Chinese Medicine Act, 2006:
 - a. **Paragraph 1:** Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession (in particular, Standard of Practice (5) - Record Keeping); and
 - b. **Paragraph 19:** Submitting an account or charge for services that the member knows or ought to know is false or misleading; and
 - c. **Paragraph 25:** Failing to keep records in accordance with the standards of the profession; and
 - d. **Paragraph 26:** Signing or issuing, in his or her professional capacity, a document that the member knows or ought to know contains a false or misleading statement; and
 - e. **Paragraph 48:** Engaging 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, dishonourable or unprofessional.

Altering and Losing Patient Records

13. It is agreed that between in or about January 2015 and January 2019, Mr. Moon lost and altered patient records. Specifically, it is agreed that:
 - a. Mr. Moon lost patient files and failed to report the loss as required; and
 - b. Mr. Moon re-wrote and asked patients to re-write portions of patient records during the College’s investigation.
14. It is agreed that the patient files identified in paragraph 13 above are records relating to Mr. Moon’s practice.
15. It is a standard of practice of the profession to keep all patient information confidential, except when necessary to facilitate an assessment or treatment of the patient or when legally obliged or allowed to disclose such information. A copy of Standard of Practice (4) – Communication is attached as **Tab “4”**.
16. It is a standard of practice of the profession to maintain complete and accurate patient records that attest to the treatment of a patient. It is also a standard of practice of the profession to arrange and organize all material in patient records in a manner that ensures security and confidentiality (see Tab “3”).

Professional Misconduct

17. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code, as set out in the following paragraphs of section 1 of Ontario Regulation 318/12 made under the Traditional Chinese Medicine Act, 2006:
 - a. **Paragraph 1:** Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession (in particular, Standard of Practice (4) – Communication and Standard of Practice (5) - Record Keeping); and
 - b. **Paragraph 25:** Failing to keep records in accordance with the standards of the profession; and
 - c. **Paragraph 27:** Falsifying a record relating to the member’s practice; and

- d. **Paragraph 48:** Engaging 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, dishonourable or unprofessional.

Falsifying Documents and Offering a Bribe to the College's Investigator

18. It is agreed that on or about August 8, 2017, Mr. Moon submitted altered copies of TD Bank statements for the Clinic's bank account to the College during its investigation. A redacted copy of the altered TD Bank statement is attached as **Tab "5"**. A redacted copy of the true TD Bank statement is attached as **Tab "6"**.
19. It is further agreed that on or about January 14, 2019, Mr. Moon attempted to bribe the College's investigator with \$5,000.00 in exchange for the investigator omitting evidence from his investigation report.
20. Section 76(3) of the Code states that no person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation. A copy of Section 76(3) of the Code is attached as **Tab "7"**.
21. It is agreed that Mr. Moon's conduct identified in paragraphs 18 and 19 above obstructed the College's investigator and concealed relevant information from the College's investigator.

Professional Misconduct

22. It is agreed that the above conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code, as set out in the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006*:
 - a. **Paragraph 48:** Engaging 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, dishonourable or unprofessional; and
 - b. **Paragraph 39:** Contravening, by act or omission, a provision of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts (in particular, section 76(3) of the Code).
23. By this document Mr. Moon states that:
 - a. he understands fully the nature of the allegations against him;
 - b. he has no questions with respect to the allegations against him;
 - c. he understands that by signing this document he is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
 - d. he understands that by admitting the allegations, he is waiving his right to require the College to prove the case against him and the right to have a hearing;
 - e. he understands that the decision of the Discipline Committee and a summary of its reasons, including reference to his name, may be published in the College's annual report and any other publication or website of the College;
 - f. he understands that any agreement between him and the College with respect to the penalty proposed does not bind the Discipline Committee; and
 - g. he understands and acknowledges that he is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that he has been advised of his right to seek legal advice and that he has had the opportunity to receive such advice.

Decision

- [6] Having considered the admissions of the Member, the evidence contained in the Agreed Statement of Facts and the submissions of counsel, the Panel found that the Member committed professional misconduct as alleged in the Notice of Hearing.

Reasons for Decision

[7] The Panel unanimously found that the facts contained in the Agreed Statement of facts supported the guilty plea, and consequently, the Panel found that Mr. Moon engaged in each of the allegations of professional misconduct as alleged.

Penalty Submission

[8] The parties were in agreement on the issue of penalty, and jointly proposed that the Panel make an order as follows:

1. Mr. Moon is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.
2. The Registrar is directed to immediately suspend Mr. Moon's Certificate of Registration for a period of nine (9) months, to commence immediately following the hearing.
3. The Registrar is directed to immediately impose the following specified terms, conditions and limitations on Mr. Moon's Certificate of Registration:
 - a. Requiring that Mr. Moon successfully complete the PROBE ethics course, at his own expense, within nine (9) months of the date of the Order of the Discipline Committee.
 - b. Requiring that Mr. Moon successfully complete the College's Record Keeping E-Workshop, at his own expense, within nine (9) months of the date of the Order of the Discipline Committee.
 - c. Requiring that Mr. Moon participate in up to three (3) practice inspections, at his own expense, within two (2) years of his return to practice.
4. Mr. Moon is required to pay to the College costs in the amount of \$10,000.00 within two (2) months of the date of the Order of the Discipline Committee.

Penalty and Costs Decision

[9] Having considered the findings of professional misconduct, the relevant evidence and the submissions of the parties, the panel made an order on the day of the hearing in accordance with the joint submission outlined above.

Reasons for Penalty and Costs Decision

[10] A joint submission on penalty and costs should only be rejected if it is truly unreasonable, unconscionable or would otherwise undermine the publicly perceived integrity of the

discipline process. Given that the Panel was satisfied that the joint submission in this matter was fair, reasonable and in the public interest, it accepted it.

[11] The facts in this case represent a serious lapse in judgment which Mr. Moon has acknowledged and admitted. The Panel is satisfied that both the reprimand and length of suspension were warranted in this matter given the seriousness of the misconduct which relates to falsifying billings for the Member's personal gain. The terms, conditions and limitations placed upon Mr. Moon's Certificate of Registration and the subsequent inspections of Mr. Moon's practice will reinforce his commitment to uphold the standards of the profession.

[12] The Panel also notes that Mr. Moon was cooperative with the College with respect to this investigation. By cooperating with the College in its investigation and admitting that he engaged in professional misconduct, Mr. Moon helped to avoid the costs of a lengthy hearing.

I, Richard Dong, sign this Decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Handwritten signature of Richard G. Dong in black ink, with the name "Richard G. Dong" written in a cursive style.

Richard Dong, Chairperson

Panel Members: Richard Dong
 Deborah Sinnatamby
 Pixing Zhang