

**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:** August 23, 2021

**Indexed as:** Ontario (College of Traditional Chinese Medicine  
Practitioners & Acupuncturists of Ontario) v Cheng, 2021  
ON CTCMPAO 14

<b>Panel:</b>	Deborah Sinnatamby	Chairperson, Public Member
	Pixing Zhang	Public Member
	Ming Cha	Professional Member

**BETWEEN:**

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

**-and-**

**ESTHER YU KWAN CHENG**

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( Erica Richler for the College  
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( Basil Khan for the Member  
( Esther Yu Kwan Cheng  
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( Fredrick Schumann  
( Independent Legal Counsel  
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( Date of Hearing: August 23, 2021

## **DECISION AND REASONS FOR DECISION**

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Traditional Chinese Medicine Practitioners and Acupuncturists (the “College”), on August 23, 2021, via videoconference.

### **The Allegations**

[2] The allegations were set out in a Statement of Allegations appended to the Notice of Hearing, dated March 30, 2021. The allegations fell into two categories. The first concerned the Member’s dealings with two patients, one of whom was a College-appointed investigator, whom the Member treated in 2017 and 2018 respectively. The second concerned the Member’s record-keeping.

### **Member’s Position**

[3] The Member and College counsel prepared an Agreed Statement of Facts which contained admissions of four heads of professional misconduct. 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 limited to the admissions in the Agreed Statement of Facts. The substantive portion of the Agreed Statement of Facts follows.

#### **The Member**

1. Esther Yu Kwan Cheng (the “Member”) became a Grandparented member (R. TCMP, R. Ac.) of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario on March 13, 2014 and transferred to the General class (R. TCMP, R. Ac.) on November 27, 2017.
2. At the material times, the Member was self-employed at her own clinic and was employed by clinics in Scarborough, Whitby, Thornhill and Toronto, Ontario.

#### **Improper Billing**

3. On or about April 20, 2017, the Member provided a massage treatment to Patient #1 while employed by Reborn Massage and Physio Spa in Whitby, Ontario (“Clinic”).
4. Patient #1 did not complete an intake form before their treatment.
5. Following the treatment, Patient #1 was charged \$160, which they paid to the Clinic.

6. It is agreed that the Member asked Patient #1 to complete an intake form following the treatment.
7. On or about April 27, 2017, the clinic provided Patient #1 with a receipt. The receipt was in the name of a Registered Massage Therapist. The receipt indicated that treatment was provided to Patient #1 on April 13 and 20, 2017, and that the total paid was \$180.
8. On or about November 28, 2018, the Member provided a massage and cupping treatment to an undercover College-appointed investigator (Patient #2) at SE Wellness Centre in Scarborough, Ontario.
9. Patient #2 paid \$80 for the treatment and the Member provided Patient #2 with a receipt for acupuncture.
10. On or about November 30, 2018, the Member provided a massage treatment to Patient #2. Patient #2 paid \$80 for the treatment, but the Member did not provide Patient #2 with a receipt on this date. It is agreed that the Member offered to provide Patient #2 with a massage therapy receipt listing three massages (the massage on November 30, 2018 and two additional massages) so that Patient #2 could use their remaining massage therapy benefits.
11. On or about December 18, 2018, Patient #2 attended at SE Wellness Centre. Patient #2 paid the Member an additional \$160 but did not receive a treatment on this date. The Member provided Patient #2 with a receipt. The receipt was in the name of a Registered Massage Therapist. The receipt indicated that treatment was provided to Patient #2 on November 29, December 6 and December 13, 2018. The receipt indicated that the total paid was \$255 (3 x \$85). It is agreed that the Member knew or ought to have known that this receipt was false or misleading.

### **Record-Keeping**

12. Between in or around 2017 to 2019, the Member failed to keep records in accordance with the standards of the profession. In particular:
  - a. The Member failed to maintain treatment notes for some patients in accordance with the standards;
  - b. The Member failed to maintain a separate file for some patients in accordance with the standards;
  - c. The Member failed to maintain accurate appointment logs on some occasions in accordance with the standards; and
  - d. The Member failed to maintain complete and/or accurate billing records on some occasions in accordance with the standards.

## Professional Misconduct

15. 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 19:** Submitting an account or charge for services that the member knows or ought to know is false or misleading; and
- b. **Paragraph 25:** Failing to keep records in accordance with the standards of the profession; and
- c. **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
- 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.

## Decision of the Panel

[5] The panel found that the Member had engaged in professional misconduct as admitted in paragraph 15 of the Agreed Statement of Facts. The Panel agreed that the facts as admitted fit each of the categories of professional misconduct.

## Penalty and Costs Submissions

[6] The Member and the College agreed on a joint submission on penalty and costs. The joint submission was reduced to writing and signed by the Member on July 19, 2021 (the “**Joint Submission**”). The substantive portion of the Joint Submission is reproduced below:

1. Ms. Cheng 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 Ms. Cheng’s Certificate of Registration for a period of three (3) months, to commence immediately following the hearing.
3. The Registrar is directed to immediately impose the following specified terms, conditions and limitations on Ms. Cheng’s Certificate of Registration:

- a. Requiring that Ms. Cheng successfully complete an ethics course, pre-approved by the Registrar, at her own expense, within six (6) months of the date of the Discipline Committee's order;
  - b. Requiring that Ms. Cheng successfully complete the College's Record Keeping course, at her own expense, within six (6) months of the date of the Discipline Committee's order;
  - c. Requiring that Ms. Cheng successfully complete, to the satisfaction of the Registrar, a 1000-word reflective essay, within six (6) months of the date of the Discipline Committee's order; and
  - d. Requiring that Ms. Cheng participate in up to three (3) practice assessments, at her own expense, within two (2) years of her return to practice following the suspension. The cost of each assessment shall not exceed \$600.00.
4. Ms. Cheng is required to pay to the College, in equal monthly payments, or at such earlier times as she may determine at her discretion, costs in the amount of \$3,500.00 within ten (10) months of the Discipline Committee's order.

### **Penalty and Costs Decision**

[7] After considering the Joint Submission and the submissions of the parties, the Panel decided to accept the Joint Submission, and therefore made an order in the terms of the Joint Submission.

[8] In accordance with the Joint Submission, the panel reprimanded the Member. A summary of the reprimand is an appendix to these reasons.

[9] The Panel accepted the Joint Submission, and is in agreement with both College Counsel and the Member's Counsel's recommendation on penalty and costs. The reprimand, suspension, imposed Terms, Conditions and Limitations, and costs award are strong deterrents to other members from practicing similar behaviours. The Panel agrees the Discipline's professional standards can be maintained with these penalties. In line with similar cases, the Member received similar penalties and requirement to pay costs. Several cases were considered in briefs of Authorities submitted by both College Counsel and Member's Counsel. The Orders made are similar to other Orders made in similar cases. The principles of penalty and costs serve the Public's protection. The Reprimand is a specific deterrent to Ms. Cheng as well as a general deterrent to other members of the Profession. The remedial penalties of suspension and TCLs will equip Ms. Cheng in her future practice. The suspension is a serious consequence and is onerous to Ms. Cheng, it is consistent with cases presented in the briefs of authorities. Although the conduct is aggravating, we have considered mitigating factors that there have been no such previous cases relating to Ms. Cheng and she has admitted to her conduct.

[10] The Panel is satisfied that, in this matter, ordering costs in the amount of \$3,500.00 was appropriate, as the expense of the hearing was mitigated by the Member's admission of misconduct.

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

Date: September 13, 2021

Signed:   
Deborah Sinnatamby, Chair  
Pixing Zhang  
Ming Cha

### **APPENDIX – REPRIMAND SUMMARY**

The panel noted that Ms. Cheng engaged in professional misconduct in multiple ways.

The panel expressed its concern that Ms. Cheng engaged in professional misconduct. The result of her misconduct is that she has let down the public, the profession and herself. Her conduct is totally unacceptable to her fellow practitioners and to the public.

Of special concern to the panel was the fact that the professional misconduct in which she engaged has involved failing to adhere to the Standard of Practice of maintaining patient records and improper billing and record keeping concerns. The panel determined it was necessary to use the reprimand as an opportunity to impress upon her the seriousness of her misconduct. Her willingness to work with the College reassured the panel that she has recognized the seriousness of her conduct.

The panel stated that while the penalty that it imposed was a fair penalty, a more significant penalty will likely be imposed by another Discipline panel in the event that she is ever found to have engaged in professional misconduct again.