

**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*

PANEL:	Henry Maeots	Chairperson, Public Member
	Yuqi Yang	Member
	Maureen Hopman	Public Member

BETWEEN:

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

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(Laura Robinson for the College
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(No representation for the Member
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-and-

KUI LI

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(Aaron Dantowitz,
(Independent Legal Counsel
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(Date of Hearing: January 10, 2017

DECISION AND REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on January 10, 2017 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

Overview

This matter arose as the result of a complaint from Mr. Jun Cao, a patient of the Member, Kui Li, whom, he alleged, had closed her practice without notice to him or the return to him of unused prepaid funds for health services. Mr. Cao had been unable to contact Ms. Li as she appeared to have closed her office and disconnected her phones. As a result, the College investigated, with the assistance of a professional investigator and based on its findings, proceeded to a disciplinary hearing. Ms. Li was not present or represented at the hearing and the panel was presented with written evidence in the form of Affidavits.

The College was able to satisfy the Panel that such evidence was sufficient, on the balance of probabilities, to support their allegations of professional misconduct and behaviour which would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.

Absence of the Member

Kui Li (the “Member”) did not appear and was not represented by counsel. At the outset of the hearing, the panel invited College counsel to address the issue of the Member’s absence. Exhibits were introduced showing several attempts were made by the College and its representatives, including a Process Server, to contact the Member at both her last known office and home addresses, by letter, telephone, email and in person, without success. At least nine such attempts were made between the period March 3, 2016 and December 8, 2016.

Based on the evidence presented by College counsel, the panel accepted that the College had taken sufficient steps to ensure that the Member was deemed to have been served with the Notice of Hearing, and with notice of the time, date and place of the hearing. The panel was satisfied that the Member had received reasonable notice of the hearing in accordance with the *Statutory Powers Procedure Act*, and accordingly, determined that it had the authority to proceed in the Member’s absence.

The Allegations

The allegations were set out in a Notice of Hearing dated March 14, 2016. The College alleged as follows:

THE ALLEGATIONS of professional misconduct are that you:

1. Inappropriately discontinued professional services that are needed, contrary to Section 1(6) of Ontario Regulation 318/12 of the Act;
2. Breached, without reasonable cause, an agreement with a patient or a patient's authorized representative relating to professional services for the patient or fees for such services, contrary to Section 1(24) of Ontario Regulation 318/12 of the Act;
3. Failed to take reasonable steps before the practice was closed to give appropriate notice of the intended closure to a patient, contrary to Section 1(36) of Ontario Regulation 318/12 of the Act; and,
4. 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, dishonourable or unprofessional, contrary to Section 1(48) of Ontario Regulation 318/12.

PARTICULARS OF THE ALLEGATIONS are set out in Schedule "A".

Schedule "A" of the Notice of Hearing provided the following particulars:

1. Ms. Kui Li at the material time had a Certificate of Registration in the grandparent class. Her primary practice address was the Lois Health Clinic, 608-3601 Highway 7, Markham, ON L3R 0M3.
2. The patient J.C. pre-paid Ms. Li for ten treatments. At the time of his last appointment on March 24, 2013 he had a balance of approximately \$600 remaining for future treatments. This amount remains outstanding.
3. Ms. Li closed her clinic without any notice to the patient J.C.
4. Ms. Li discontinued professional services without any notice to the patient J.C.

Member's Plea

Because the Member did not appear and was not represented by counsel, the Member was deemed by the panel to have denied the allegations, and the hearing proceeded as if the Member had pleaded not guilty.

The Evidence

The College introduced an Affidavit from Jun Cao, a former client of Ms. Li, who had received treatment from her in 2013. Mr. Cao had complained to the College in March of 2015 that he was owed \$600 of pre-paid treatments from Ms. Li but was unable to receive treatment as Ms. Li's clinic was closed and her phone numbers were no longer in effect.

Neither Mr. Cao nor the College had been contacted by Ms. Li to advise of the closing of her practice or the transfer of care or records to alternate care providers. Counsel for the College also advised the Panel that Ms. Li's Certificate of Registration had been suspended for non-payment of dues as she had not renewed her membership for the 2015-2016 renewal period.

The College also presented a second Affidavit from Mr. Greg Hutchinson, a Private Investigator retained by the College in August 2015 to investigate whether Ms. Li had committed acts of professional misconduct as set out in the complaint of Mr. Jun Cao. Mr. Hutchinson secured a Corporate Profile Report indicating Ms. Li's business corporation had been dissolved on November 3, 2014. Attending at Ms. Li's last known residence, Mr. Hutchinson was shown documents for that property by the then current resident showing transfer of ownership to him earlier that year.

Final Submissions

The College argued that Clause 51(1) of the *Health Professions Procedural Code* provides that a Panel of the Discipline Committee "shall find that a member has committed an act of professional misconduct if ... (c) the member has committed an act of professional misconduct as defined in the regulations". The Professional Misconduct Regulation of the Traditional Chinese Medicine Act provides that the following are acts of misconduct:

6. Discontinuing professional services that are needed unless the discontinuation would reasonably be regarded by members as appropriate having regard to,
 - i. the member's reasons for discontinuing the services,
 - ii. the condition of the patient,
 - iii. the availability of alternate services, and
 - iv. the opportunity given to the patient to arrange alternate services before the discontinuation.

24. Breaching, without reasonable cause, an agreement with a patient or a patient's authorized representative relating to professional services for the patient of fees for such services.

36. If the member intends to close his or her practice, failing to take reasonable steps before the practice is closed, to give appropriate notice of the intended closure to each patient for whom the member has primary responsibility and failing to

i. ensure that each patient's records are transferred to the member's successor or to another member, if the patient requests, or

ii. ensure that each patient's records are retained or disposed of in a secure manner.

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.

It was the position of the College that the manner in which Ms. Li closed her practice constitutes professional misconduct. There is no evidence that Ms. Li gave appropriate notice to her patients prior to the closure of her clinic nor that Mr. Cao's patient records were retained or disposed in a secure manner. She also failed to provide Mr. Cao an opportunity to arrange alternate service prior to discontinuing her professional service. Further, Mr. Cao's pre-payment to Ms. Li for future treatments constituted an agreement relating to professional services. The failure of Ms. Li to provide reimbursement of such payments also constitutes professional misconduct. In the entire circumstances Ms. Li's actions and failure to act amount to conduct that would reasonably be regarded as disgraceful, dishonourable and unprofessional.

The Decision

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

Having considered the evidence and the onus and standard of proof, the panel finds that the Member committed acts of professional misconduct as alleged in the Notice of Hearing. In particular, the panel found that the Member:

1. Inappropriately discontinued professional services that were needed, contrary to Section 1(6) of Ontario Regulation 318/12 of the Act;
2. Breached, without reasonable cause, an agreement with a patient or a patient's authorized representative relating to professional services for the patient or fees for such services, contrary to Section 1(24) of Ontario Regulation 318/12 of the Act;
3. Failed to take reasonable steps before the practice was closed to give appropriate notice of the intended closure to a patient, contrary to Section 1(36) of Ontario Regulation 318/12 of the Act; and,

4. 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.

Reasons for Decision

The Panel accepted the contents of the two Affidavits as evidence. While a couple items of the information they contained may reasonably be argued as being “hearsay” and thus not acceptable evidence, such items were not relied on by the Panel in reaching its decision. The Panel accepts Mr. Cao’s allegation that he was not informed by Ms. Li of the discontinuance of her practice and his prepaid funds were not returned. He thus had no opportunity, prior to the discontinuance of service by Ms. Li to find an alternate practitioner or to access his health records from Ms. Li. The failure of the College to contact Ms. Li by several means over a period of several months and the finding by the investigator Mr. Hutchinson that Ms. Li’s business had been dissolved satisfies the Panel that all reasonable attempts were made by the College to contact Ms. Li and that it is reasonable to conclude that she ceased practice without notice to the patient or the College where she also failed to renew her membership. Ms. Li’s actions and omissions constitute behaviour that members of the profession would reasonably consider to be disgraceful, dishonourable and unprofessional conduct.

PENALTY AND COSTS

Submissions on Penalty and Costs

The College submitted the following proposed penalty;

- Public reprimand
- Suspension of three (3) months upon reinstatement
- Condition on her certificate of registration to complete an ethics program acceptable to the College
- Payment of \$3,500 to the College to help allay the cost of proceedings

The College advised that the effect of Ms. Li’s administrative suspension and non-renewal of her certificate of registration was such that she would now have to reapply to reinstate her certificate. The College submitted that the Discipline Committee nevertheless had the power to impose a

suspension and a term or condition on Ms. Li's certificate, and referred the panel to the Divisional Court decision in the case of *College of Nurses of Ontario v Dumchin*.

The College made reference to several cases involving health care professionals and their Colleges. The common principles relevant to the imposition of penalties, reviewed in *CPSO vs. Dr. E.H. Noriega* (2015), are protection of the public, maintenance of public confidence in the reputation and integrity of the profession and the effectiveness of self-governance in the public interest, general deterrence as it applies to the membership as a whole, specific deterrence as it applies to this particular member and the potential for rehabilitation of the member.

The College argued that public reprimand would serve both as a general deterrent to other members and help maintain the confidence of the public regarding the College's ability to regulate its members. It would also act as a specific deterrent to this member. Likewise, if the member returns to the jurisdiction of this College, the application of a term or condition on her registration, and specifically the need to complete an ethics course, will serve as a further specific deterrent.

Decision on Penalty and Costs

The Panel made an order:

1. Requiring Ms. Li to appear before a panel of the Discipline Committee to receive a public reprimand within 3 months of any reinstatement of her certificate of registration with the College.
2. Directing the Registrar to suspend Ms. Li's certificate of registration for a period of 3 months from the date of any reinstatement of her certificate of registration with the College.
3. Directing the Registrar to impose a term on Ms. Li's certificate of registration requiring her to take an ethics course acceptable to the College, within 6 months of the date of any reinstatement of her certificate of registration with the College.
4. Requiring Ms. Li to pay costs to the College in the amount of \$3,500.

Reasons for Decision on Penalty and Costs

The Panel concluded that the penalty proposed by the College was reasonable and in the public interest. A review of the cases presented to the Panel by the College confirm that the principles

of penalty outlined by the College are well established. The Panel finds that all elements of the penalty will act as a specific deterrent to Ms. Li and the public reprimand will also act as a general deterrent to other members of the College. It sends a message to the members of the profession that abandoning clients without reasonable cause is not acceptable. The Panel also agrees that the terms provide for the rehabilitation and remediation of Ms. Li. It is thus appropriate to place a condition of completion of an ethics course in the event Ms. Li reapplies for membership to the College. The Order in whole fulfills the College's mandate to protect the public and demonstrates the profession is capable of effectively governing itself.

As to the cost order, the amount of \$3,500 is reasonable and likely falls short of reimbursing the College in its pursuit of Ms. Li and the preparation and presentation of its case.

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

Dated: January 16, 2017



Henry Maeots, Chairperson

Panel Members:

Yuqi Yang, Professional Member

Maureen Hopman, Public Member