

**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: January 9, 2019 (Decision); January 21, 2019 (Reasons)

Indexed as: **Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Mark Lannard, 2019 ONCTCMAO 2**

Panel:	Henry Maeots	Chairperson, Public Member
	Feng Li Huang	Professional Member
	Barry Haywood	Public Member

BETWEEN:

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

-and-

MARK LANNARD
Reg. No. 773

(
(Anastasia Hountalas and Rebecca
(Durcan for the College
(
(
(
(
(Member not present or represented
(
(
(Aaron Dantowitz
(Independent Legal Counsel
(
(Date of Hearing: January 9, 2019

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on January 9, 2019 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

Overview

[2] Mark Lannard (the “Member”) was a member of the College between May 6, 2013 and June 2, 2017. His certificate of registration is currently revoked.

[3] On or about December 17, 2017, the Member was found guilty in criminal court on two counts of sexual assault on a female patient pursuant to section 271 of the *Criminal Code*. The court determined that the Member exposed and touched the patient’s vagina and breasts without clinical indication or consent. It also found that he engaged the patient in inappropriate stretches. The Member was still a member of the College at the time of both instances.

[4] As a result the College investigated and based on its findings, proceeded to a disciplinary hearing. It alleged that the above conduct constitutes professional misconduct pursuant to s. 51(1)(a) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) as the Member has been found guilty of an offence that is relevant to the Member’s suitability to practise. The College further alleged that the above conduct constitutes professional misconduct pursuant to s. 51(1)(b.1) of the Code as the Member sexually abused the patient.

[5] The Member was not present or represented at the hearing and the Panel was presented with written evidence in the form of Affidavits, court ruling and emails.

[6] The College was able to satisfy the Panel that such evidence was sufficient, on the balance of probabilities, to support their allegations.

Absence of the Member

[7] Upon convening the hearing, the Panel noted that Mark Lannard was not represented at the hearing by a legal representative and was not present at the hearing.

[8] College counsel filed a Notice of Hearing dated August 7, 2018 (Exhibit 1), along with an affidavit from Kristina Formosi, an assistant in counsel’s office outlining the efforts to serve the Member with the Notice of Hearing (Exhibit 2). An initial attempt was made to serve the Member personally at his last known address, whereupon it was discovered that this address was a UPS Store mailbox. The Member was then served at this address by regular mail. Correspondence was subsequently sent to the Member advising him of the date of the hearing. College counsel was also in contact with the Member’s criminal counsel about this matter, until on December 9, 2018, the Member’s criminal counsel advised that he no longer represented the Member.

[9] After 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.

The Allegations

[10] The allegations set out in the Notice of Hearing dated August 7, 2018 are as follows:

The Member

1. Mark Lannard was a member of the College (the “Member”) between May 6, 2013 and June 2, 2017.

Finding of guilt of sexual assault

2. On or about November 11, 2015, the Member was charged with two counts of sexual assault (s 271 of the *Criminal Code*) that occurred on October 31 and/or November 3, 2015.
3. The victim was a female Patient of the Member.
4. The assaults occurred during treatment sessions with the Member.
5. The assaults included sexual touching of the Member’s [sic] breasts and nipples.
6. On or about December 18, 2017, the Member was convicted on both counts of sexual assault.
7. The Member did not appeal the judgment.

Acts of Professional Misconduct

8. It is alleged that the above conduct constitutes professional misconduct pursuant to s. 51(1)(a) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “Code”) as the Member has been found guilty of an offence that is relevant to the Member’s suitability to practise.
9. It is alleged that the above conduct constitutes professional misconduct pursuant to s. 51(1)(b.1) of the Code as the Member sexually abused the Patient.

Publication Ban

[11] Because this matter involved allegations of misconduct of a sexual nature, College counsel requested an order prohibiting the publication of the name of the complainant in this case, and the Panel made that order.

Member’s Position

[12] Because the Member did not attend the hearing, the Panel proceeded on the basis that the Member denied all of the allegations.

The Evidence

[13] The Member was a member of the College between May 6, 2013 and June 2, 2017.

[14] On or about November 11, 2015, the Member was charged with two counts of sexual assault pursuant to section 271 of the *Criminal Code*, which states:

Sexual assault

271 Everyone who commits a sexual assault is guilty of

(a) an indictable offence and is liable to imprisonment for a term of not more than 10 years or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than 14 years and to a minimum punishment of imprisonment for a term of one year; or

(b) an offence punishable on summary conviction and is liable to imprisonment for a term of not more than 18 months or, if the complainant is under the age of 16 years, to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of six months.

[15] According to the findings of the trial judge, Justice Ritchie of the Ontario Court of Justice, the victim of the sexual assaults was the Member's patient ("Patient 1"). The sexual assaults against Patient 1 occurred during two treatment sessions on October 31 and November 3, 2015. During those sessions, the Member exposed and touched Patient 1's vagina and breasts without clinical indication or consent. He also engaged Patient 1 in inappropriate stretches. At the time in question, the Member was still a member of the College.

[16] On or about December 18, 2017, the Member was found guilty on both counts of sexual assault pursuant to section 271 of the *Criminal Code*. Justice Ritchie of the Ontario Court of Justice released the reasons for his decision on June 26, 2017.

[17] The Member appealed the convictions to the Superior Court of Justice. On December 7, 2018, Justice Code dismissed the Member's appeal and upheld the convictions.

Submissions of the College

[18] The College submitted that the Member engaged in professional misconduct pursuant to section 51(1)(1)(a) of the Code which states:

Professional misconduct

51 (1) A panel shall find that a member has committed an act of professional misconduct if,

(a) the member has been found guilty of an offence that is relevant to the member's suitability to practise:..

[19] The College submitted that, on its face, a conviction for sexual assault is relevant to a member's suitability to practise. It cited *College of Nurses of Ontario v Mackenzie*, in which the Discipline Committee of the College of Nurses of Ontario considered whether a conviction for sexual assault pursuant to section 271 of the *Criminal Code*, (among other convictions) was relevant to the member's suitability to practise. The Discipline Committee determined that such conduct was "clearly relevant" to the member's suitability to practise. It wrote, in part, as follows:

The Member's conduct relating to his criminal convictions are clearly relevant to the Member's suitability to practise. Each involves misuse of authority and deceit. The Member preyed on the vulnerable and needy, having a detrimental effect on specific individuals and on the general community. The Member put himself first before the needs of others. The Member's conduct was disgraceful in that it shames the Member and by extension members of the profession. The Member's conduct was dishonourable in that it involved dishonesty and deceit. The Member's conduct was unprofessional in that it demonstrated a lack of good judgement and responsibility.

[20] The College submitted that the Member's convictions for sexual assault pursuant to section 271 of the *Criminal Code* are particularly relevant to his suitability to practise because the sexual assaults occurred during treatment sessions and were committed against his patients.

[21] The College also submitted that the Member engaged in professional misconduct under section 51(1)(b.1) which states:

Professional misconduct

51 (1) A panel shall find that a member has committed an act of professional misconduct if,

[...]

(b.1) the member has sexually abused a patient; [...]

[22] The term "sexual abuse" is defined in section 1(3) of the Code as follows:

'sexual abuse' of a patient by a member means,

- (a) sexual intercourse or other forms of physical relations between the member and patient,
- (b) touching, of a sexual nature, of the patient by the member, or
- (c) behaviour or remarks of a sexual nature by the member towards the patient.

[23] Touching of a sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

[24] In his reasons, Justice Ritchie dismissed the possibility that the Member's conduct was clinically-indicated. Rather, he determined that the Member acted for his own sexual gratification,

[25] The Member has admitted the alleged conduct to the Panel via an email exchange between his counsel and College counsel.

Decision of the Panel

[26] Having considered the evidence at the hearing, and the submissions of the College, the Panel found that the Member had committed professional misconduct as alleged in paragraphs 8 and 9 of Statement of Specified Allegations in the Notice of Hearing.

Reasons for Decision

[27] The onus to provide proof of its allegations on the balance of probabilities rests with the College.

Allegation #1: Found guilty of an offence relevant to the Member's suitability to practise

[28] It is alleged that the criminal court's finding of guilt for sexual assault of a patient constitutes professional misconduct pursuant to s. 51(1)(a) of the *Health Professions Procedural Code*.

[29] The panel is satisfied that the Member was found guilty of sexual assault. The Panel finds that the Member's misconduct is relevant to his suitability to practise in that his conduct is inconsistent with the College's mandate to protect the public and undermines the public perception of the profession. The Member misused his authority by preying on a needy patient, thus causing a detrimental effect on that individual as well as the entire community. In seeking sexual gratification he put himself before the needs of another. His conduct was unprofessional in that it demonstrated a lack of good judgement and responsibility. His conduct shames himself and by extension members of the profession. The Panel finds that this allegation is proven.

Allegation #2: Committed sexual assault of a patient

[30] It is alleged that the criminal court's finding of sexual abuse of a patient constitutes professional misconduct pursuant to s. 51(1)(b.1) of the Code.

[31] As noted above, in the criminal trial Justice Ritchie made findings that, among other things, the Member touched Patient 1's breasts, and that this touching was not of a clinical nature. His findings were not disturbed on appeal.

[32] Justice Ritchie applied the criminal standard of proof beyond a reasonable doubt when deciding whether the Member committed sexual assault under section 271 of the *Criminal Code*. That standard is significantly more stringent than the civil standard of proof on a balance of probabilities and which is the standard that the Panel must apply.

[33] On the basis of the facts found by Justice Ritchie, which meet the definition of "sexual abuse" in the Code, the Panel finds that this allegation is proven.

PENALTY AND COSTS

Evidence and Submissions

[34] The College requested the following penalty:

- a. A reprimand;
- b. Revocation of the Member's certificate of practice;
- c. An order requiring the Member to reimburse the College for funding for therapy and counselling provided to Patient 1; and
- d. An order requiring the Member to provide security for funding for therapy and counselling for Patient 1 in the amount of \$16,060.00.

[35] The College submitted that although the Member's certificate of practice is currently revoked, he is still subject to the jurisdiction of this Panel in accordance with section 14(1) of the Code, since the conduct in question occurred while the Member was a member of the College.

[36] The College cited the *College of Nurses of Ontario v Mark Dumchin*, where the Divisional Court found that, pursuant to section 14 of the Code, a former member is subject to all stages of the investigation and disciplinary process as long as the alleged misconduct was referable when the person was a member.

[37] Further, the Divisional Court *in Dumchin* found that since a former member is subject to the Discipline Committee's continued jurisdiction, the Discipline Committee can impose the penalty of revocation even when the former member's certificate of practice is already revoked. The Divisional Court determined that this was consistent with the purpose of section 14 of the Code.

[38] The College submitted that revocation is mandatory where a member has engaged in a frank act of sexual abuse against a patient. Specifically, section 51(5) of the Code states:

Orders relating to sexual abuse

(5) If a panel finds a member has committed an act of professional misconduct by sexually abusing a patient, the panel shall do the following in addition to anything else the panel may do under subsection (2):

1. Reprimand the member.
2. Suspend the member's certificate of registration if the sexual abuse does not consist of or include conduct listed in paragraph (3) and the panel has not otherwise made an order revoking the member's certificate of registration under subsection (2).
3. Revoke the member's certificate of registration if the sexual abuse consisted of, or included, any of the following:

- i. Sexual intercourse.
- ii. Genital to genital, genital to anal, oral to genital or oral to anal contact.
- iii. Masturbation of the member by, or in the presence of, the patient.
- iv. Masturbation of the patient by the member.
- v. Encouraging the patient to masturbate in the presence of the member.
- vi. Touching of a sexual nature of the patient's genitals, anus, breasts or buttocks.
- vii. Other contact of a sexual nature prescribed in regulations made pursuant to clause 43 (1) (u) of the *Regulated Health Professions Act, 1991*.

[39] As such, the College submitted, if the Panel made a finding that the Member sexually abused Patient 1 when he touched her breasts and nipples as alleged in the Notice of Hearing, then it must revoke the Member's certificate of practice.

[40] The College submitted that the Member should reimburse the College for funding for therapy and counselling provided to Patient 1 and provide security for that funding. Section 85.7 of the Code establishes a program whereby the College provides funding for survivors of sexual abuse. The College submitted that, in accordance with the above-noted section of the Code, Patient 1 is eligible to receive funding for therapy and counselling.

[41] Regulation 59/94 made under the RHPA establishes the maximum amount of funding available to the abused patient. Specifically, the patient is entitled to the amount that Ontario Health Insurance Plan ("OHIP") would pay for 200 half-hour sessions of individual out-patient psychotherapy with a psychiatrist. The OHIP coverage for 200 such half-hour sessions is \$16,060.00.

[42] Section 85.7(12) of the Code states that the College is entitled to recover the cost of this funding from the Member. As such, the College requested that the Panel order the Member to reimburse the College for the cost of therapy and counselling provided to Patient 1. The College further requested that the Panel order the Member to pay security for funding equivalent to that amount. In the event that Patient 1 does not access the funding, it will be returned to the Member in accordance with Regulation 59/94.

[43] The College also requested that the Panel order the Member to pay its costs, in the amount of \$28,299.90. In support of this request the College filed an affidavit of Michele Pieragostini (Exhibit 9) containing evidence of the College legal costs, as well as its investigative costs, and the costs of conducting the hearing, which collectively totalled over \$42,000.

[44] The College referred the Panel to Section 53.1 of the Health Professions Procedural Code which states that, in an appropriate case, the panel may make an order requiring a member who the panel finds has committed an act of professional misconduct to pay all or part of the College's legal costs and expenses, the College's costs and expenses incurred in investigating the matter and the College's costs and expenses incurred in conducting the hearing.

[45] The College presented evidence of the Member's repeated failure to respond to the College's correspondence. Although the Member did not appear at the hearing to contest the allegations, he did not indicate that he would admit the alleged conduct until just prior to the hearing. As such, the College incurred costs of investigation and preparation that it would not otherwise have needed to incur. As such, the College submitted that this was an appropriate case for costs and requested that the Panel award costs to the College in the amount of 2/3 of the actual costs incurred.

Penalty and Costs Decision

[46] The Panel orders that:

- a. the Member be reprimanded;
- b. the Registrar be directed to revoke the Member's certificate of registration;
- c. The Member be required to reimburse the College for funding for therapy and counselling provided to Patient 1;
- d. The Member be required to provide security for funding for therapy and counselling for Patient 1 in the amount of \$16,060.00; and
- e. The member pay to the College costs in the amount of \$28,299.90.

Reasons for Penalty and Costs Decision

[47] The Panel finds that section 51(5) of the Code mandated the revocation of the Member's certificate of registration and the issuance of a reprimand. The Panel also finds that, notwithstanding such requirement, revocation and reprimand were justified by the member's acts of misconduct.

[48] The Panel also finds that an order requiring the Member to provide security for funding for therapy and counselling provided to Patient 1 is reasonable, consistent with penalties ordered in similar cases at this and other Colleges, and in the public interest. The Panel finds that all elements of the penalty will act as both a specific deterrent to the member and as a general deterrent to the profession. It sends a strong message to other members of the College that sexual abuse of a patient is strictly prohibited and carries very serious consequences.

[49] The Panel accepts the unchallenged report of the College's costs in this case. It finds that the amount requested is reasonable and in proportion to similar cases at this College where the member has been found guilty of the allegations they faced.

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

Date: January 21, 2019

Signed:



Henry Maeots, Chair
Barrie Haywood
Feng Li Huang