



## DECISION AND REASONS FOR DECISION

- [1] This matter came on for hearing before a panel of the Discipline Committee (the "Panel") on July 10, 2019 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists (the "College").

### **The Allegations**

- [2] The allegations set out in the Notice of Hearing dated February 26, 2019, ( the "Notice of Hearing") under the section titled Statement of Specified Allegations are as follows:

1. Uladzimir Tupeika (the "Member") has been a member of the College since September 19, 2013.
2. At all material times, the Member worked as an acupuncturist at IWA Medical Plus at 261 Finch Avenue in Toronto, Ontario, also known as Ivy Clinic (the "Clinic").

### **Submitting a Claim for Services Not Provided**

3. It is alleged that on or about January 12, 2016, Patient 1 (an undercover investigator) attended at the Clinic and received massage therapy treatment from AK.
4. It is alleged that Patient 1 paid the Clinic \$85.00 and was advised that the Clinic would submit an invoice to Great-West Life Assurance Company ("Great-West Life") for \$500.00-worth of treatments.
5. It is alleged that on or about January 20, 2016 , Great-West Life received a claim for \$520.00 from the Clinic enclosing an invoice ("the Invoice") and a Great-West Life Healthcare Expenses Statement (the "Claim Form") for eight acupuncture treatments purportedly provided by the Member to Patient 1 in October and November 2015.
6. It is alleged that the Member did not provide acupuncture services as described in the Invoice and Claim Form.
7. It is further alleged that Patient 1 never received treatment from the Member.

### **Falsifying Documents Related to the Member's Practice**

8. It is alleged that the Clinic subsequently submitted a patient record for Patient 1 to Great-West Life, including the following documents (the "Patient Record"):
  - a. A Consent to Treatment for the Acupuncture form dated October 16, 2015, purportedly completed by Patient 1, bearing the Member's signature and stamp;
  - b. A Medical History Form dated October 16, 2015, purportedly completed by Patient 1;
  - c. A Sign In Sheet for the eight acupuncture treatment sessions, purportedly completed by Patient 1; and
  - d. A handwritten Acupuncture Treatment Plan with treatment notes for eight acupuncture treatment sessions, bearing the Member's stamp. It is

alleged that the Member did not provide acupuncture services as described in the Patient Record.

9. It is alleged that the Member did not provide acupuncture services as described in the Patient Record.
10. It is further alleged that Patient 1 did not complete the documents included in the Patient Record.

#### **Acts of Professional Misconduct**

11. It is alleged that the above conduct constitutes professional misconduct pursuant to s 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;
  - 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 27:** Falsifying a record relating to the member's practice; and/or
  - f. **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.

#### **Member's Position**

- [3] The Member was present with counsel and admitted the allegations in 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 evidentiary portion of the Agreed Statement of Facts is reproduced below, without attachments:
  1. At all material times Uladzimir Tupeika ("Mr. Tupeika") was a member of the College.
  2. Mr. Tupeika has been a member of the College since 2013. A copy of Mr. Tupeika's Member Profile is attached as **Tab "A"**.

3. At all material times, Mr. Tupeika worked as an acupuncturist at Iwa Medical Plus at 261 Finch Avenue in Toronto, Ontario, also known as Ivy Clinic (the "Clinic").
4. Mr. Tupeika has provided the College with evidence of his financial situation which indicates that he and his family have significant financial difficulties.

#### **Submitting a Claim for Services Not Provided**

5. It is agreed that on or about January 12, 2016 , Patient 1 (an undercover investigator) attended at the Clinic and received massage therapy treatment from AK.
6. Patient 1 paid the Clinic \$85.00 and was advised that the Clinic would submit an invoice to Great-West Life Assurance Company ("Great-West Life") for \$500.00- worth of treatments.
7. It is agreed that on or about January 20, 2016 , Great-West Life received a claim for \$520.00 from the Clinic enclosing an invoice ("the Invoice") and a Great-West Life Healthcare Expenses Statement (the "Claim Form") for eight acupuncture treatments purportedly provided by Mr. Tupeika to Patient 1 in October and November 2015 . A copy of the Invoice is attached as **Tab "B"**. A copy of the Claim Form is attached as **Tab "C"**.
8. It is agreed that Mr. Tupeika did not provide acupuncture services as described in the Invoice or Claim Form.
9. It is further agreed that Patient 1 never received treatment from Mr. Tupeika.
10. It is agreed that the Invoice and the Claim Form are records related to Mr. Tupeika's practice.
11. It is a standard of practice of the profession to issue complete and accurate information related to billing or payment and to not submit documents that contain false information. It is also a standard of the profession not to submit an account or charge for services that a member knows or ought to know is false or misleading. A copy of the College's Standard of Practice (5) - Record Keeping is attached as **Tab "D"**.

#### **Falsifying Documents Related to the Member's Practice**

12. The Clinic subsequently submitted a patient record for Patient 1 to Great-West Life, including the following documents (the "Patient Record"), copies of which are attached as **Tab "E"**:
  - a. A Consent to Treatment for the Acupuncture form dated October 16, 2015, purportedly completed by Patient 1, bearing Mr. Tupeika's signature and stamp.
  - b. A Medical History Form dated October 16, 2015, purportedly completed by Patient 1.
  - c. A Sign In Sheet for the eight acupuncture treatment sessions, purportedly completed by Patient 1.
  - d. A handwritten Acupuncture Treatment Plan with treatment notes for eight acupuncture treatment sessions, bearing Mr. Tupeika's stamp.

13. It is agreed that Mr. Tupeika signed the Consent to Treatment for the Acupuncture form dated October 16, 2015 (see the Patient Record, Tab "E").
14. It is agreed that Mr. Tupeika completed and stamped the Acupuncture Treatment Plan (see the Patient Record, Tab "E").
15. It is agreed that Mr. Tupeika did not provide acupuncture services as described in the Patient Record.
16. It is further agreed that Patient 1 did not complete the documents included in the Patient Record.
17. It is agreed that the Patient Record is a record related to Mr. Tupeika's practice.
18. It is a standard of practice of the profession to issue records and reports that are always accurate and complete, and not to falsify a record relating to the member's practice. It is also a standard of the profession not to sign or issue a document that the member knows or ought to know is false or misleading. A copy of the College's Standard of Practice (5) - Record Keeping is attached as Tab "D".

#### **Professional Misconduct**

19. 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;
  - 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 27:** Falsifying a record relating to the member's practice; and
  - f. **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] As confirmed by the Panel at the conclusion of the hearing, the Panel accepts the admissions of professional misconduct set out in the Agreed Statement of Facts, and accordingly makes findings of professional misconduct as alleged in the Notice of Hearing.

### **Reasons for Decision**

[6] 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. Tupeika engaged in each of the allegations of professional misconduct as alleged.

### **Penalty and Costs Submissions**

[7] The Member and the College put forward joint penalty submissions as well as a joint submission on costs (collectively the "Joint Submission"). The Joint Submission was signed by the Member on May 30, 2019 and is reproduced below. The Parties jointly submitted that the following would be an appropriate order as to penalty and costs in this matter:

1. Mr. Tupeika 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. Tupeika's Certificate of Registration for a period of six (6) months, to commence immediately following the hearing.
3. The Registrar is directed to immediately impose the following specified terms, conditions and limitations on Mr. Tupeika's Certificate of Registration:
  - a. Requiring that Mr. Tupeika successfully complete an ethics course, pre-approved by the Registrar, at his own expense, within six (6) months of the date of the Order of the Discipline Committee.
  - b. Requiring that Mr. Tupeika successfully complete the College's Record Keeping E-Workshop, at his own expense, within six (6) months of the date of the Order of the Discipline Committee.
  - c. Requiring that Mr. Tupeika complete a 1000-word reflective essay demonstrating his understanding of his ethical obligations as a member of the College, within six (6) months of the date of the Order of the Discipline Committee.
  - d. Requiring that within two (2) years of his return to practice, Mr. Tupeika must participate in up to three (3) practice assessments conducted by a College-appointed assessor, at his own expense. The cost of each assessment shall not exceed \$600.00.
4. Mr. Tupeika is required to pay to the College costs in the amount of \$1,000.00 within six (6) months of the date of the Order of the Discipline Committee.

### **Penalty and Costs Decision**

[8] The Panel accepted the position put forward on the Joint Submission, and as set out in paragraph 7 of these Reasons, and hereby orders accordingly.

### **Reasons for Penalty and Costs Decision**

[9] The Panel accepts the principle that a Joint Submission on penalty should only be rejected if it is truly unreasonable, unconscionable or would otherwise undermine the publicly perceived integrity of the discipline process. As the Panel finds that the Joint Submission is fair, reasonable and in the public interest, it accepts it.

[10] The facts in this case represent a serious lapse in judgment which Mr. Tupeika has acknowledged and admitted. The Panel further notes that Mr. Tupeika 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. Tupeika has helped to avoid the costs of a lengthy hearing.

[11] The Panel is satisfied that the length of the suspension is warranted in this matter given the seriousness of the misconduct which relates to falsifying billings for the Member's personal gain.

[12] The Panel is also of the view that the subsequent inspection of Mr. Tupeika's practice will reinforce his commitment to uphold the standards of the profession.

### **Cost Award**

[13] The Panel imposed a cost award in the amount of \$1,000.00 in partial payment of the College's investigation and prosecution costs.

[14] In arriving at its decision, the Panel considered the amounts imposed in previous decisions.

[a] In the case of CTCMPAO v. Yu-Zhen Ma case number 3294, it was found that the Member had engaged in professional misconduct, including: contravening, by act or omission, a standard of practice of the profession or failing to maintain a standard of practice of the profession; submitting an account or charge for services that the member knew or ought to have known was false or misleading; signing or issuing, in her professional capacity, a document that the member knew or ought to have known contained a false or misleading statement; falsifying a record relating to the member's practice; and/or engaging in conduct or performing an act relevant to the practice or the profession that having regard to all circumstances, would reasonably be regarded as disgraceful, dishonorable or unprofessional. In that matter the Member was assessed costs in the amount of \$2,500.00 to contribute to the College's costs.

[b] In the case of CTCMPAO v. XIAO CHUN XU, case number 812, it was found that the Member had engaged in professional misconduct including; falsifying a record relating to her practice; and engaging in conduct or performing an act, in the course of practicing the profession, that having regard to all of the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional. The Member was assessed costs in the amount of \$3,000.00 in that case.

[15] The Panel is satisfied that, in this matter, ordering costs in the amount of \$1,000.00 was appropriate as the costs of the hearing were mitigated by the Member's full cooperation. The Panel also considered the Member's financial circumstances as detailed in "Agreed

Statement of Facts”. Though the amount ordered is likely only a small portion of the College’s costs to investigate and present the hearing, it nevertheless imposes some of the costs on the Member, thereby lessening the costs to be borne by the other members of the College.

[16] At the conclusion of the hearing, Mr. Tupeika waived his right to appeal and an oral reprimand was delivered by the Panel

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



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Barrie Haywood, Chairperson

Panel Members:      Barrie Haywood  
                             Henry Maeots  
                             Matthew Colavecchia