

**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: **July 10, 2018**

Indexed as: **Ontario (College of Traditional Chinese Medicine
Practitioners & Acupuncturists of Ontario) v Xiao Chun
Xu, 2018 ONCTCMPO 26**

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

BETWEEN:

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

-and-

XIAO CHUN XU
Reg. No. 812

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(Madison Robins for the College
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(Michael Stelios (family member) for
(the Member
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(Aaron Dantowitz
(Independent Legal Counsel
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(Date of Hearing: July 10, 2018

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on July 10, 2018 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

[2] Xiao Chun Xu (the “Member”) was not represented at the hearing by a legal representative but was represented by a family member, Mr. Michael Stelios. By order dated July 7, 2018, made on the consent of the parties, the hearing proceeded partially electronically, with the Member and her representative, who are currently residing in Australia, participating by teleconference.

The Allegations

[3] The allegations set out in the Notice of Hearing dated December 7, 2017 are as follows:

THE ALLEGATIONS of professional misconduct are that Xiao Chun Xu:

- a) Signed or issued, in her professional capacity documents that she knew or ought to have known contained false and misleading statements contrary to section 1(26) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act*, S.O. 2006 c. 27.
- b) Falsified a record relating to the Member's practice contrary section 1(27) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act*, S.O. 2006 c. 27.
- c) Contravened, by act or omission, a term, condition, or a limitation on the Member's certificate of registration contrary to Section 1(41) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act*, S.O. 2006 c. 27.
- d) Engaged in conduct or performing an act relevant to the practice of the profession, having regard to all the circumstances, would reasonably be regarded by a member of the profession as disgraceful, dishonourable or unprofessional, contrary to Section 1(48) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act*, S.O. 2006 c. 27.
- e) Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of Traditional Chinese Medicine or Acupuncture contrary to Section 1(49) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act*, S.O. 2006 c. 27.
- f) The governing body of another health profession in Ontario, or the governing body of a health profession in a jurisdiction other than Ontario, has found that the member committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct contrary to Section 51(1)(b) of the *Health Professions Procedural Code*, which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991.

[4] Particulars of the allegations, which were set out at Schedule "A" to the Notice of Hearing, are as follows:

1. Section 5 of Ontario Regulation 27/13 to Traditional Chinese Medicine Act, S.O. 2006 c. 27 ("Registration Regulation") provides that it is a term condition and limitation of every certificate of registration that:
 1. The member shall provide the College with written details about any of the following that relate to the member no later than 30 days after the event occurs:
 - i. A finding of professional misconduct, incompetence or incapacity, or any similar finding, in relation to another regulated profession in Ontario or to any regulated profession in another jurisdiction.
 - ii. current proceeding for professional misconduct, incompetence or incapacity, or any similar proceeding, in relation to another regulated profession in Ontario or to any regulated profession in another jurisdiction. [...]
2. On April 30, 2014, Ms. Xu, who is also a member of the College of Massage Therapists of Ontario ("CMTO") was referred by the CMTO to the Discipline Committee in respect of certain specified allegations. The hearing proceeded January 20, 2015 by way of an Agreed Statement of Fact, and Joint Submission as to Penalty. The panel of the Discipline Committee (CMTO) found that Ms. Xu engaged in a number of acts of professional misconduct.
3. Ms. Xu did not advise the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario ("the College") of her referral to the CMTO Discipline Committee, nor the findings made and penalty imposed by the CMTO Discipline Committee, at any time prior to their discovery by the College in its review of the CMTO website.
4. On January 5, 2017 Ms. Xu signed at least two receipts for acupuncture treatments provided to "Nicole Wong" by Ms. Xu which had not in fact been provided by Ms. Xu.
5. Copies of Ms. Xu's patient file for "Ms. Wong" subsequently retrieved by the College in the course of its investigation disclosed handwritten treatment notes for the treatments which purportedly took place December 22 and 29, 2016. No such treatments were provided by Ms. Xu to Ms. Wong on those dates.

Member's Position

[5] The Member 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

[6] The evidence was tendered by way of an Agreed Statement of Facts. The Agreed Statement of Facts is reproduced below, with all names other than the Member's name redacted, and without the attachments referred to in the Agreed Statement of Facts.

Facts

1. Xiao Chun Xu ("Ms. Xu") is a Member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the "College"), with the Registration #812.

CMTO Discipline Proceedings

2. This matter came to the attention of the College following the conclusion of Ms. Xu's discipline proceedings at the College of Massage Therapists of Ontario ("CMTO") on or about January 20, 2015, in which Ms. Xu plead guilty, and was found, to having committed several acts of professional misconduct, including falsification of records relating to her massage therapy practice, signing or issuing a false document, and contravening a standard of practice of the profession or a published standard of the CMTO.

3. The Discipline Committee of the CMTO accepted a joint penalty submission, and imposed a penalty of a suspension of six months, with opportunities to remit up to two months of that suspension, a reprimand, and a payment of costs towards the CMTO's investigation and prosecution costs.

4. Ms. Xu was a Member of the College when the CMTO matter described above was referred to the CMTO's Discipline Committee on April 30, 2014, and when the finding and penalty were ordered on January 20, 2015.

5. Neither the referral to discipline, nor the findings arising from the CMTO discipline proceedings was communicated to the College by Ms. Xu as required by Section 5(1) 1. of Ontario Regulation 27/13 to the *Traditional Chinese Medicine Act, 2006*.

6. Ms. Xu was not aware of any obligation to report the finding of the CMTO Discipline Committee to the College.

7. Ms. Xu admits that her failure to provide the College with written details regarding both the initiation and conclusion of the CMTO discipline proceedings within thirty (30) days contravened a term, condition, and limitation of her certificate of registration and an act of professional misconduct contrary to section

1(41) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act, 2006*, and to section 51(1)(b) of the *Health Professions Procedural Code*, being Schedule II to the *Regulated Health Professions Act, 1991 S.O. 1991, c. 18*, as amended.

The College's Investigation

8. On April 13, 2015 a panel of the ICRC commenced a Section 75(1)(a) Investigation into the Member's practice with respect to Ms. Xu's failure to inform the College of the CMTO referral of Ms. Xu to discipline, and with respect to falsification of records and false statements relating to her TCM practice.

9. An interview with Ms. Xu was conducted at her home on December 16, 2016. Ms. Xu advised that she had in fact relocated to Australia with her husband, and had returned with her children for the school year.

10. Ms. Xu advised that she was not able to provide ten patient files from 2013 to 2015 as requested by the College's investigator, as she had taken all her treatment records with her to Australia. She also advised that she practiced one day per week at the Etobicoke Spa (also known as Royal Tulip Med Spa).

11. The College conducted further undercover investigation at Etobicoke Spa on December 28 and December 31, 2016.

12. The first attendance resulted in the Clinic issuing false receipts in respect of a \$500 "pre-payment package". The College's undercover investigation obtained \$500 in acupuncture receipts. As far as the College's investigation disclosed, Ms. Xu was not involved in this interaction. Both receipts issued in respect of the \$500 "pre-payment" were issued with the registration number "Li Qian", another member of the College with registration number #914.

13. A further appointment was then booked January 5, 2017 with "Susan" (Ms. Xu). At the conclusion of the appointment, during which Ms. Xu performed massage on the College's investigator, the College's undercover investigator indicated that she had an additional \$250 in acupuncture benefits that needed to be used before the end of the week.

14. At the request of the College's investigator and at the insistence of Silvia, the Clinic's owner/manager, Ms. Xu provided three acupuncture receipts dated December 22 and 29, 2016, and January 5, 2017 bearing her name and College registration information.

15. Ms. Xu admits that she did not provide acupuncture treatments, or any other treatment to the College's investigator on December 22 and 29, 2016 and that these receipts were false and misleading.

16. Ms. Xu provided a type of massage to the College's investigator on January 5, 2017 which Ms. Xu considers to have been similar to acupuncture. No acupuncture treatment was provided by Ms. Xu to the College's investigator on January 5, 2017.

17. Ms. Xu admits that she signed or issued, in her professional capacity, at least two receipts for acupuncture that she knew or ought to have known contained false or misleading statements contrary to section 1(26), and were falsified records contrary to paragraph 1(27) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act, 2006*.

Procedural Admissions

18. On December 7, 2017 the ICRC referred the matter to the Discipline Committee and issued the Notice of Hearing.

19. On January 8, 2018 Mr. Stelios, the member's husband, called the College and left a voicemail indicating that he and Ms. Xu intended to respond, but were out of the country for an extended period in late 2017. He confirmed that he and Ms. Xu could be reached at the email address "susan20101016@gmail.com".

20. The Notice of Hearing in this matter was thereafter served on the Member together with the College's Disclosure Brief at the above-noted email address. The Member acknowledges receipt of same.

21. At the pre-hearing conference held May 4, 2018 the Member and Mr. Stelios participated via telephone from Australia, and consented to a hearing date on July 10, 2018 at which they agreed to appear via teleconference or via videoconference.

22. The Member acknowledges, admits and agrees that these allegations are true.

Decision of the Panel

[7] 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

[8] The Panel found the evidence submitted at the hearing of admittedly false treatment sessions noted in the Members treatment records and admitting failure to maintain records to the College's standards substantiated the allegations contained in the Notice of Hearing and admissions of professional misconduct contained in the Agreed Statement of Facts.

[9] The Panel therefore found that the allegations of professional misconduct relating to the issuing of false receipts to a patient and creating a false patient record as set out in paragraph "a" to "f" on page 2 of the Notice of Hearing and as admitted in Agreed Statement of Facts are supported by the admitted facts, which are acknowledged at paragraph 22 to be true.

Penalty and Costs Submissions

[10] The Member and the College have agreed on joint penalty submissions as well as a joint submission on costs. The Joint Submission was signed on June 9, 2018 and is reproduced below:

The Member and the College agree that the joint submission on penalty shall include the following terms:

1. The Member's Certificate of Registration shall be suspended for a period of twelve (12) consecutive months, effective immediately upon the Discipline Committee's Order.
2. The Member shall attend a College approved course concerning her record-keeping.
3. The Member shall complete a College approved ethics and professionalism course.
4. The Member shall attend in person before a Panel of the Discipline Committee to receive a public, written reprimand which shall be recorded and published on the College Register.
5. The decision of the Discipline Committee in this matter shall be published in the ordinary course, which will include publication in the annual report of the College and the executive summary posted on the College's website.
6. The Member shall pay to the College, within 8 months of the Discipline Committee's Order, a contribution towards the investigation and prosecution costs of the College in the amount of \$3,000.00 CAD.

Penalty and Costs Decision

[11] The Panel accepts the joint submission on penalty and costs, and accordingly, makes an order in the terms of the Joint Submission as set out above.

Reasons for Penalty and Costs Decision

[12] The Panel was mindful that its penalty should not deviate from the joint submission of the parties unless it found such submissions to be largely unworkable.

[13] The Panel recognized that the penalty should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Member's practice.

[14] The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has cooperated with the College and, by agreeing to the facts and proposed penalty, has accepted responsibility. The panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

[15] The Panel believes that the reprimand suspension, TCLs and publication will act as a deterrent to the Member to similar behavior in the future. We are encouraged that she has recognized her mistakes through her cooperation in this matter.

[16] We further find that the profession as a whole will likewise view the penalty as deterrents to engaging in similar behavior.

[17] The public's confidence in the ability of the College to regulate its members and to protect the public is enhanced by the remedial provisions of the penalty as outlined in paragraph [10], above, sections #2 and #3.

[18] The Panel also found that the order of \$3,000.00 in costs was appropriate as the costs of the hearing were mitigated by the Member's full co-operation. Though such amount 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, whose behaviour was found to constitute professional misconduct, thereby lessening the costs to be borne the other members of the College.

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

Date: 17/09/2018

Signed:



Barrie Haywood, Chair
Feng Li Huang
Henry Maeots