

**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 7, 2018

**Indexed as:** Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Xiao Jue Kang, 2018 ONCTCMPAO 24

<b>Panel:</b>	Henry Maeots	Chairperson, Public Member
	Ming Cha	Professional Member
	Ferne Woolcott	Public Member

**BETWEEN:**

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

**-and-**

**XIAO JUE KANG**  
Reg. No. 2958

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( Rebecca Durcan for the College  
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( Peter Cui for the Member  
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( Aaron Dantowitz  
( Independent Legal Counsel  
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( Date of Hearing: August 7, 2018

## **DECISION AND REASONS FOR DECISION**

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on August 7, 2018 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

### **The Allegations**

[2] The allegations set out in the Statement of Specified Allegations appended to the Notice of Hearing dated March 2, 2018 are as follows:

#### **The Member**

- 1) At all material times Xiao Jue Kang was a member of the College (the “Member”).
- 2) The Member has been a member of the College since 2014.
- 3) The Member owns and/or works at Kaya Wellness Centre (the “Clinic”).

#### **Issuing False Receipts to Patient #1 and creating false patient record**

- 4) On or about May 11, 2017, an undercover investigator of the College (Patient #1) attended the Clinic for a massage with a registered massage therapist.
- 5) Patient #1 asked the Member if she could receive an acupuncture receipt instead of a massage therapy receipt.
- 6) The Member originally offered Patient #1 a receipt for osteopathy services but then agreed to issue a receipt for acupuncture services.
- 7) Patient #1 paid \$500 in cash to the Member. The Member provided Patient #1 with a receipt indicating that Patient #1 had received six acupuncture treatments between approximately April 6 and May 11, 2017 (the “Receipt”).
- 8) The Receipt indicates that the Member provided the acupuncture treatments.
- 9) The Member asked Patient #1 to sign an attendance sheet indicating that she attended for acupuncture treatments on the dates identified on the Receipt.
- 10) The Member did not provide acupuncture treatments to Patient #1 on the dates as described in the Receipt.
- 11) The patient record for Patient #1 indicates the following:

- a. A receptionist at the Clinic made an error with the Receipt and/or
  - b. Patient #1 provided the registered massage therapist with \$500 in cash for future massage therapy treatments.
- 12) It is alleged that the above conduct constitutes professional misconduct pursuant to s. 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 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 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;
  - d. **Paragraph 27** - Falsifying a record relating to the member’s practice; and/or
  - e. **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.

### **Record Keeping**

- 13) In her interview with the College investigator, the Member confirmed that she does not maintain an appointment log.
- 14) The College’s *Standard of Practice (5) – Record Keeping* states that Members “must maintain a written or electronic daily appointment log that outlines the date, name and the time of the appointment for each respective patient.”

- 15) It is alleged that the above conduct constitutes professional misconduct pursuant to s. 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 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 25:** Failing to keep records in accordance with the standards of the profession; and/or
  - b. **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 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 Agreed Statement of Facts is reproduced below, without the attachments referred to in the Agreed Statement of Facts.

## **AGREED STATEMENT OF FACTS**

The parties hereby agree that the following facts may be accepted as true by the Discipline Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”):

### **The Member**

- 1) At all material times Xiao Jue Kang was a member of the College (the “Member”).
- 2) The Member has been a member of the College since 2014. A copy of her Member Profile is attached as **Tab “1”**.
- 3) The Member owns and works at Kaya Wellness Centre (the “Clinic”).

### **Issuing False Receipts to Patient #1 and Creating False Patient Record**

- 4) On or about May 11, 2017, an undercover investigator of the College (Patient #1) attended the Clinic for a massage with a registered massage therapist.
- 5) Patient #1 asked the Member if she could receive an acupuncture receipt instead of a massage therapy receipt.
- 6) The Member originally offered Patient #1 a receipt for osteopathy services, but then agreed to issue a receipt for acupuncture services.
- 7) Patient #1 paid \$500.00 in cash to the Member. The Member issued Patient #1 a receipt falsely indicating that Patient #1 had received six acupuncture treatments between approximately April 6 and May 11, 2017 (the "Receipt"). A copy of the Receipt is attached as **Tab "2"**.
- 8) It is agreed that the Receipt is a record relating to the Member's practice, an account, a charge for services and a document.
- 9) The Receipt falsely indicates that the Member provided the acupuncture treatments to Patient #1, and includes the Member's name and registration number.
- 10) The Member did not provide acupuncture treatments to Patient #1 on the dates as described in the Receipt.
- 11) The Member asked Patient #1 to sign an attendance sheet indicating that she attended for acupuncture treatments on the dates identified on the Receipt (the "Attendance Sheet"). A copy of the Attendance Sheet is attached as **Tab "3"**.
- 12) It is agreed that the Attendance Sheet is a record relating to the Member's practice.
- 13) The patient record for Patient #1, a copy of which is attached as **Tab "4"**, indicates the following:
  - a. A receptionist at the Clinic made an error with the Receipt.
- 14) It is agreed that the information contained in paragraph 13(a) is false and incorrect.
- 15) It is a standard of practice of the profession to issue complete and accurate receipts and to not ask patients to sign documents that contain false information. It is also a standard of the profession to maintain complete and accurate patient records.
- 16) It is agreed that the Member made efforts to contact Patient #1 so that an amended receipt could be issued and told Patient #1 to not submit the receipt to her insurers.

## Professional Misconduct

- 17) 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 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;
  - d. **Paragraph 27:** Falsifying a record relating to the member’s practice; and
  - e. **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.

## Record Keeping

- 18) In her interview with the College investigator, the Member confirmed that she does not maintain an appointment log.
- 19) The Member attempts to maintain a record of appointments but does not do so in a way that accords with College expectations.
- 20) The College’s *Standard of Practice (5) – Record Keeping* states that Members “must maintain a written or electronic daily appointment log that outlines the date, name and the time of the appointment for each respective patient.” A copy of the College’s Standards of Practice is attached at **Tab “5”**.

## Professional Misconduct

- 21) 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 25:** Failing to keep records in accordance with the standards of the profession; and
  - b. **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.
22. By this document the Member states that:
- a. she understands fully the nature of the allegations against her;
  - b. she has no questions with respect to the allegations against her;
  - c. she understands that by signing this document she is consenting to the evidence as set out in the Agreed Facts being presented to the Discipline Committee;
  - d. she understands that by admitting the allegations, she is waiving her right to require the College to prove the case against her and the right to have a hearing;
  - e. she understands that the decision of the Discipline Committee and a summary of its reasons, including reference to her name, may be published in the College’s annual report and any other publication or website of the College;
  - f. she understands that any agreement between her and the College with respect to the penalty proposed does not bind the Discipline Committee; and
  - g. she understands and acknowledges that she is executing this document voluntarily, unequivocally, free of duress, free of inducement or bribe, and that she has been advised of her right to seek legal advice and that she has had the opportunity to receive such advice.

### **Decision of the Panel**

[5] The panel accepted the admissions of professional misconduct set out in the Agreed Statement of Facts, and accordingly made findings of professional misconduct as alleged in the Notice of Hearing.

### **Reasons for Decision**

[6] The allegations of professional misconduct relating to issuing false receipts to a patient and creating a false patient record, as set out in paragraph 12 of the Statement of Allegations and as admitted in paragraph 17 of the ASF, are supported by paragraphs 4-11 in the ASF.

Likewise the allegations of substandard record keeping, as set out in paragraph 15 of the Statement of Allegations and as admitted in paragraph 21 of the ASF, are supported by paragraphs 13-15 and 18-20 in the ASF.

### **Penalty and Costs Submissions**

[7] The Member and the College have agreed on joint penalty submissions as well as a joint submission on costs. The Joint Submission was signed by the Member on July 16, 2018 and is reproduced below:

The College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”) and Xiao Jue Kang (the “Member”) agree and jointly submit that the following would be an appropriate order as to penalty and costs in this matter:

1. The Member 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 the text of the reprimand to appear on the public register of the College.
2. The Registrar is directed to immediately suspend the Member’s Certificate of Registration for a period of six (6) months, to commence immediately following the hearing, of which three (3) months shall be suspended if the Member completes the terms, conditions and limitations set out in paragraphs 3(a) and 3(b) of this order within three (3) months of the date of this order.
3. The Registrar is directed to immediately impose the following specified terms, conditions or limitations on the Member’s Certificate of Registration:
  - a. Requiring that the Member 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 the Member successfully complete the College's Record-Keeping E-Workshop, at her own expense, within six (6) months of the date of the Discipline Committee's order; and
  - c. Within thirty (30) days of the completion of the coursework as described in paragraphs 3(a) and 3(b), the Member shall provide the Registrar with a reflective essay, not to exceed one thousand (1000) words, setting out what she has learned during the investigation and her coursework, and how she will implement new strategies in her practice; and
  - d. Requiring that the Member participate in a College Assessment, focusing on ethical and record-keeping issues, at her own expense, within six (6) months of the resumption of her practice. The cost of the inspection shall not exceed \$500.00.
4. The Member is required to pay to the College costs in the amount of \$2,500.00 within two (2) months of the date of the Discipline Committee's order.

### **Penalty and Costs Decision**

[8] The Panel accepted the joint submission on penalty and costs and accordingly, made the order proposed in the joint submission. The Member waived her right to appeal the agreed-upon penalty and so the Panel reprimanded the Member at the hearing.

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

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

The Panel was mindful that its penalty should not deviate substantially from the joint submission of the parties unless it found such submission to be largely unsupportable.

In assessing the appropriateness of the penalties proposed by the College and the Member the Panel considered the effectiveness of the proposed penalties to serve as both a specific deterrence in guiding the Member's future behavior as well as a general deterrence to other members of the profession from engaging in similar conduct. The Panel also considered whether the proposed penalties would maintain public confidence in the College's ability to regulate its members and safeguard the public. As well, the Panel considered the prospects of remediation that would result from the prescribed terms of the penalty.

The Panel noted that, other than the misconduct admitted to, there were no aggravating factors to the Member's conduct. The Member had no other offences on record and had co-operated fully with the College in its investigation, thereby mitigating the cost and time required to reach resolution.

The Panel found that the elements of penalty agreed to by both parties met all of the above considerations. Also, on reviewing cases cited by Counsel, the Panel found the elements of penalty proposed to be within the range of penalties imposed by this and other Colleges for similar misconduct.

[10] The Panel also found that the order of \$2,500 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 cost on the Member whose behavior was found to constitute professional misconduct, thereby lessening the cost to be borne by the other members of the College.

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

Date: August 14, 2018

Signed:



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Henry Maeots, Chair  
Ming Cha  
Ferne Woolcott