

**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: September 28, 2018 (decision); October 1, 2018 (reasons)

Indexed as: Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v XIANG (TINA) LAN and CHAO YAN, 2018 ONCTCMPO 29

Panel:	Henry Maeots	Chairperson, Public Member
	Barrie Haywood	Public Member
	Jin Qi (Jackie) Zeng	Professional Member

BETWEEN:

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

-and-

XIANG (TINA) LAN and CHAO YAN
Reg. No. 3875 and Reg. No. 3710

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(Andrew Porter for the College
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(Tracey Tremayne-Lloyd for the
(Member
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(Aaron Dantowitz
(Independent Legal Counsel
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(Date of Hearing: September 28, 2018

DECISION AND REASONS FOR DECISION

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on September 28, 2018 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

The Allegations

[2] The allegations against both Ms. Lan and Mr. Yan were set out in the Notice of Hearing dated August 16, 2016. After certain allegations were withdrawn with permission of the Panel, the allegations against Ms. Lan were that she:

- a) [*withdrawn*].
- b) Charged a fee that would be regarded by members of the profession as excessive in relation to a service provided, contrary to Section 1(20) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act, 2006*, S.O. 2006, c. 27.
- c) [*withdrawn*].
- d) [*withdrawn*].
- 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, 2006*, S.O. 2006, c. 27.

[3] The allegations against Mr. Yan were that he:

- a) [*withdrawn*].
- b) Charged a fee that would be regarded by members of the profession as excessive in relation to a service provided, contrary to Section 1(20) of Ontario Regulation 318/12 to the *Traditional Chinese Medicine Act, 2006*, S.O. 2006, c. 27.
- c) [*withdrawn*].
- d) 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, 2006*, S.O. 2006, c. 27.

[4] The particulars of the allegations in respect of both Members were set out as follows, in Schedule A to the Notice of Hearing:

1. Ms. Xiang (Tina) Lan and Chao Yan are registered Grandparented R. TCMP practitioners whose practice is located at 888 Dundas Street East, Mississauga, ON.

2. On or about December 7, 2015 Ms. Xiang (Tina) Lan and Mr. Chao Yan administered the herbal treatment ‘An Gong Niu Huang Wan’ to patient, Ms. Lisha Du, without a definitive physical response to acupuncture treatment, which was detailed in the treatment plan and consent provided by Mr. Shan He, Ms. Lisha Du’s legal representative.
3. Ms. Xiang (Tina) Lan and Mr. Chao Yan charged Mr. Shan He \$3,800 for the herbal treatment.
4. Ms. Xiang (Tina) Lan and Mr. Chao Yan verbally abused and communicated in an unprofessional manner with Mr. Shan He when he contacted them on or about December 10, 2015 to request a refund for the herbal remedy treatment. Ms. Xiang Lan and Mr. Chao Yan subsequently refused to speak to Mr. Shan He any further.
5. Ms. Xiang Lan thereafter further verbally abused Mr. Jay, Mr. Shan He’s representative when he attended at the clinic of Ms. Xiang (Tina) Lan and Mr. Chao Yan to discuss Mr. Shan He’s concerns.

Members’ Position

- [5] The Members each admitted the allegations in the Notice of Hearing that were not withdrawn. The panel conducted a plea inquiry in respect of each Member, and was satisfied that the Members’ 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, without the attachments referred to in the Agreed Statement of Facts.

Facts

Background

1. This matter came to the attention of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (“the College”) as a result of a written complaint from Shan He on December 13, 2015, relating to the care provided by Xiang (Tina) Lan and Chao Yan (the “Members”) to Ms. Lisha Du, He’s mother.
2. Xiang (Tina) Lan is a member of the College, Registration #3875.

- (a) At all relevant times, Chao Yan was a member of the College, Registration #3710.

Events at Issue

4. Ms. Du was admitted to Toronto Western Hospital (the “Hospital”) on December 2, 2015, having presented early that morning with incontinence, an inability to communicate and right-sided weakness. Subsequent investigations disclosed a large cerebral artery aneurism.
5. An emergency surgical hematoma evacuation and cerebral artery repair was attempted on December 2, 2015, following which Ms. Du was admitted to the Intensive Care Unit (“ICU”).
6. In the ICU, Ms. Du remained in a coma, and did not show any signs of neurological improvement. By December 6, 2015, Ms. Du was observed to have worsened neurologically. The advice of the care team at the Hospital at that point was that unfortunately there was no good medical or surgical intervention that could restore a meaningful quality of life for Ms. Du, and in the circumstances their recommendation was to remove life support for Ms. Du.
7. On December 6, 2015, Ms. Du’s family, consisting of Ms. Du’s husband Wenguang He, son Feng He, and Shan He spoke with the Members by phone for an initial consultation, They discussed Ms. Du’s condition, and inquired about possible Traditional Chinese Medicine (“TCM”) treatment options.

8. The Members prepared a record of the telephone interview, a copy of which, together with an official translation, is appended as Tab 1.
9. During this call, the Members recommended a TCM remedy, 'An Gong Niu Huang Wan', which had a "big chance of revival" but which cost an estimated \$5,000 CAD.
10. The Members also agreed to attend on Ms. Du in the Hospital and provide acupuncture at a cost of \$500 per session.
11. On December 7, 2015 Wenguang He and Shan He attended at the Members' clinic, executed a consent form, a copy of which is appended at Tab 2.
12. Wenguang He also signed a Treatment Plan, a copy of which is appended at Tab 3.
13. The Members and Ms. Du's family agreed that the An Gong Niu Huang Wan would be used only if the acupuncture treatment caused a physical response in Ms. Du.
14. The Treatment Plan does not record what type of physical response was required.

An Gong Niu Huang Wan

15. An Gong Niu Huang Wan is a recognized TCM remedy used to treat some patients who have suffered a stroke.
16. Historically, the formulation for the 'An Gong Niu Huang Wan' TCM remedy contained a number of herbal and animal product ingredients, including rhinoceros horn.

17. The An Gong Niu Huang Wan pill offered by the Members to Ms. Du was the traditional formulation which contained rhinoceros horn.
18. However, since at least 1993 the use of rhinoceros horn in the formulation of An Gong Niu Huang Wan has been prohibited in both China and in Canada pursuant to the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act* S.C. 1992 c. 53 (“WAPPRITA”), the legislative fulfillment of Canada’s commitments under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* (“CITES”).
19. A copy of a brochure published by Environment Canada that summarizes the restrictions that apply to the use of medicinal formulas that list or contain certain wildlife ingredients under WAPPRITA is appended as Tab 1 [sic].
20. As indicated in the Environment Canada brochure, Rhinoceros Horn is an Appendix I/II species in respect of which commercial trade is either banned, or which requires appropriate permits.
21. In 2012, the College published a *Safety Program for Traditional Chinese Medicine Practitioners and Acupuncturists* which appends the Environment Canada brochure, and provides, at page 88, that TCM practitioners “must be fully aware” of “the restrictions and requirements related to the importation and use of specific animal or plant parts or derivatives based on the classifications identified under CITES.” [Note: although not stated in the Agreed Statement of Facts, a copy of this document was also appended.]

22. During the relevant period, the Members did not hold any CITES permits permitting the possession or sale of medicinal formulas that contained rhinoceros horn.
23. Ultimately, the Members charged Ms. Du's family \$3,800 for the remedy, which was the price the Members paid for the pill, obtained from their TCM teacher.
24. A newer formulation of An Gong Niu Huang Wan which does not contain rhinoceros horn is widely available at a cost of approximately \$125-\$200 per pill.
25. The Members acknowledge that they should have offered the new formulation of the An Gong Niu Huang Wan remedy at the significantly reduced cost, and that the fee of \$3,800 charged for an An Gong Niu Huang Wan remedy in the circumstances of this case was excessive contrary to section 1(20) of Ontario Regulation 318(12) to the *Traditional Chinese Medicine Act*, 2006 S.O. 2006 c. 27.
26. The Members attended at the Hospital on December 7, 2015, obtained the patient's consent in the form required by the Hospital, and provided the acupuncture treatment as agreed.
27. There are no records prepared by the Members recording the TCM diagnosis reached following the Members' in-person assessment, regarding the acupuncture, nor regarding the presence or absence of a physical response.
28. The Members administered the An Gong Niu Huang Wan to Ms. Du.

29. The Members were paid \$500 cash for the acupuncture service provided on December 7, 2015.
30. A post-dated cheque for \$3,800 was also provided to the Members, which was subsequently cashed.
31. Ms. Du passed away December 9, 2015.
32. Representatives of Ms. Du's family subsequently attended at the Members' clinic to complain about the cost of the An Gong Niu Huang Wan remedy, and the circumstances leading to its administration to Ms. Du.
33. The Members refused all requests for a refund at that time.
34. Subsequent to service of the Notice of Hearing in this proceeding, the Members have voluntarily refunded \$3,800 to Ms. Du's family.

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 revised Notice of Hearing.

Reasons for Decision

- [8] The allegations of professional misconduct relating to charging an excessive fee, as set out in paragraph (b) of the revised Notice of Hearing, for both Members, are supported by paragraphs 23-25 in the Agreed Statement of Fact.
- [9] Likewise, the allegations of engaging in conduct unbecoming a practitioner of TCM, as set out in paragraph (e) of the revised Notice of Hearing regarding Ms. Lan and paragraph (d) regarding Mr. Yan, are supported by paragraphs 9, 10, 14, 22 and 27 in the Agreed Statement of Fact.

Penalty and Costs Submissions

- [10] The Members and the College have agreed on joint penalty submissions as well as a joint submission on costs. The Joint Submission was signed by both Members and contained the following:

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

1. The Members' Certificates of Registration shall be suspended for a period of two (2) months consecutive months, effective on a date to be determined by the College if the remedial steps set out in paragraphs 2 through 4 below, remitting the length of the suspension in its entirety, have not been completed within six (6) months of the date of the Committee's Order;
2. The Members shall complete a College approved course on record-keeping;
3. The Members shall complete a College approved ethics and professionalism course;
4. The Members 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. Upon successful completion by each Member of the steps provided for in paragraphs 2 through 4, above, each of their suspensions provided for in paragraph 1, above, shall be remitted in their entirety.
6. 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.
7. The Members shall pay to the College, within 6 months of the Discipline Committee's Order, contributions towards the investigation and prosecution costs of the College in the amount of \$2,000.00 CAD each, severally, for a total contribution of \$4,000.

Penalty and Costs Decision

[11] The Panel accepted the joint submission on penalty and costs and accordingly orders that:

1. The Members' Certificates of Registration shall be suspended for a period of two (2) consecutive months, effective on a date to be determined by the College if the remedial steps set out in paragraphs 2 through 4 below, remitting the length of the suspension in its entirety, have not been completed within six (6) months of the date of the Committee's Order;
2. The Members shall complete a College approved course on record-keeping;
3. The Members shall complete a College approved ethics and professionalism course;
4. The Members 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. Upon successful completion by each Member of the steps provided for in paragraphs 2 through 4, above, each of their suspensions provided for in paragraph 1, above, shall be remitted in their entirety.
6. 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.
7. The Members shall pay to the College, within 6 months of the Discipline Committee's Order, contributions towards the investigation and prosecution costs of the College in the amount of \$2,000.00 CAD each, severally, for a total contribution of \$4,000.

[12] The Members waived their rights to appeal the agreed-upon penalty and so the Panel reprimanded the Members at the hearing.

Reasons for Penalty and Costs Decision

[13] The Panel found that the admissions of professional misconduct contained in the Agreed Statement of Facts substantiated the allegations contained in the revised Notice of Hearing.

[14] 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.

[15] In assessing the appropriateness of the penalties proposed by the College and the Members the Panel considered the effectiveness of the proposed penalties to serve as both a specific deterrence in guiding the Members 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.

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

[17] The Members had also made restitution of the \$3,800 fee they had charged for the An Gong Niu Huang Wan medication, which was a further mitigating factor.

[18] The Panel found that the elements of penalty agreed to by the parties met all of the above considerations.

[19] The Panel also found that the order of \$2,000 each in costs was appropriate as the costs of the hearing were mitigated by the Members' co-operation and the withdrawal by the College of other allegations contained in the Notice of Hearing. Though such amounts are likely only a portion of the College's costs to investigate and present the hearing, they nevertheless impose some of the cost on the Members 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: October 1, 2018

Signed:



Henry Maeots, Chair
Barrie Haywood
Jin Qi (Jackie) Zeng