

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

PANEL:	Henry Maeots	Chairperson, Public Member
	Feng Li Huang	Professional Member
	Martial Moreau	Public Member

BETWEEN:

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

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(Kelly Hayden and
(Graham Henry
((articling student) for
(the College
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-and-

(Yatwah Cheung
(self-represented
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YATWAH CHEUNG

(Aaron Dantowitz,
(Independent Legal Counsel
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(Dates of Hearing:
March 19, 20, 21, 22 and
23, 2018

In the Notice of Hearing, the Member's name was recorded as Mr. Yatweh Cheung. However, the Member's name appears everywhere in the evidence as Mr. Yatwah Cheung (or Yat Wah) Cheung. The Panel therefore uses the spelling Yatwah in these reasons.

DECISION AND REASONS FOR DECISION

This matter came on for hearing beginning on March 19, 2018 and continuing over five days to March 23, 2018 before a panel of the Discipline Committee (the "Panel") at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the "College").

The Allegations

Allegations of professional misconduct against Yatwah Cheung ("Member") were referred to the Discipline Committee of the College, in accordance with section 26 (1) of the *Health Professions Procedural Code* ("Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18 ("RHPA"). The allegations were set out in the Amended Notice of Hearing dated January 27, 2017. At the outset of the hearing, the College indicated it was seeking to withdraw Allegation #4 which the Panel permitted. The remaining allegations are as follows:

IT IS ALLEGED THAT you are guilty of professional misconduct under the *Traditional Chinese Medicine Act* (the "Act"), S.O. 2006, c. 27 and the Regulations thereto, all as amended.

The ALLEGATIONS of professional misconduct are that you have engaged in the following acts of professional misconduct:

1. Contravening, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession, contrary to Section 1(1) of *Ontario Regulations 318/12*
2. Using a prohibited title, contrary to Section 33(1) of the Act and Section 1(32) and (39) of Ontario Regulation 318/12.
3. Implying an unauthorized specialization in an area of practice, contrary to Section 1(33) of Ontario Regulation 318/12.
4. [*Withdrawn*]
5. Making a claim about a treatment that cannot be supported as reasonable professional opinion, contrary to Section 1(28) of Ontario Regulation 318/12.
6. Advertising you and your practice in a manner that is false or misleading and includes statements that are not factual and verifiable, contrary to Section 1(29) of Ontario Regulation 318/12.
7. Using testimonials in respect of your practice, contrary to Section 1(30) of Ontario Regulation 318/12.

8. Engaging in conduct or performing an act of relevant to the practice of the profession which having regard to all the circumstances would reasonably regarded by a member as disgraceful, dishonourable or unprofessional, contrary to Section(1)(48) of Ontario Regulation 318/12.

THE PARTICULARS OF THE ALLEGATIONS are that:

1. You operate a public website called (<http://uniquepowerfulsecretqigong.com>) (“the Website”) on which you, among other things,

- a) have used and continue to use the prohibited titles “Master” and “Grandmaster” in relation to your Traditional Chinese Medicine practice;
- b) claim that you have a specialization in the areas of qigong, sexual dysfunction, kidney dysfunction and liver dysfunction;
- c) advertise your practice using testimonials which you claim were written by patients;
- d) claim to have the ability to “cure” sexual dysfunction, enlarged prostate, kidney dysfunction and liver dysfunction, including preventing dialysis;
- e) claim to be the “No. 1” and the only instructor in the world of qigong for sexual dysfunction;
- f) claim that your qigong treatment has a “99.9%” success rate;
- g) claim that your qigong treatment outperforms other impotence treatment;
- h) post articles falsely claimed to be authored by a person named “Mei”;
- i) advertise the ability to treat kidney and liver dysfunction, which you do not have the knowledge, skills or judgment to treat;

2. You admitted to College investigators that you, among other things,

- a) have used and continue to use the prohibited titles “Master” and “Grandmaster” in relation to your Traditional Chinese Medicine practice;

- b) claim that you have specialization in the areas of qigong, sexual dysfunction, kidney dysfunction and liver dysfunction;
- c) advertise your practice using testimonials which you claim were written by patients, who's [sic] consent was not obtained;
- d) claim to have the ability to "cure" sexual dysfunction, enlarged prostate, kidney dysfunction and liver dysfunction, including hepatitis;
- e) claim to be the founder and only instructor in the world of qigong for sexual dysfunction;
- f) advise patients that your qigong treatment has a "100%" success rate;
- g) claim that your qigong treatment outperforms other impotence treatment;
- h) treat diseases of the liver and kidney, including hepatitis, which you do not have the knowledge, skills or judgment to treat;
- i) treat liver and kidney diseases using a liquid which is mixed with the patient's urine;

3. As a result of the above, you engaged in conduct and/or performed an act relevant to the practice of the profession that, having regard to all the circumstances, would be regarded by the profession as disgraceful, dishonourable or unprofessional.

Member's Position

At the outset of the hearing, the member entered his plea and denied all allegations of professional misconduct contained in the Amended Notice of Hearing.

Overview

Mr. Cheung is a Traditional Chinese Medicine ("TCM") Practitioner and Acupuncturist. He has been a registered member with the College since June 2013.

Mr. Cheung holds a certificate from the World Federation of Chinese Medicine and Acupuncture College in Toronto. It was a two-year program. He graduated in 2013. In 2012 and 2013, Mr. Cheung obtained a certificate from the World Federation of Acupuncture-Moxibustion Societies International Acupuncture.

He operates his business from his own home located at 763 Gerrard Street East, Toronto, Ontario and has been practicing TCM for approximately 20 years.

He lives upstairs with his wife while the downstairs is the clinic for his business. He normally treats patients six days a week from 10:30 A.M. to 5:30 P.M.

He resigned from the College August 1, 2017.

The Panel heard testimony from the following: Michele Pieragostini, Manager of Quality Assurance and Professional Practice for the College; Mr. Greg Hutchinson, private investigator and owner of Barker Hutchinson & Associates Ltd.; Ms. Robin Barker, private investigator, Barker Hutchinson & Associates Ltd.; Mr. Danny Li, TCM Practitioner; Mr. Aizhong Qiao, a patient of Mr. Yatwah Cheung and Mr. Yatwah Cheung himself:

The issues for the Panel to decide were as follows:

From June 2013 until the end of July, 2017 did Mr. Cheung

- Use an unauthorized title
- Imply, without authorization, a specialization in an area of practice of the profession
- Use testimonials to promote his practice
- Make unsupportable claims about his treatments
- Advertise himself/or his practice in a manner that was false or misleading and included statements that were not factual or verifiable
- Contravene by an act or omission a standard of practice of the profession or fail to maintain the standard of practice of the profession
- Engage in conduct or perform an act relevant to the practice of the profession which having regard to all the circumstances would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional

Having considered the evidence, the Panel has concluded that all allegations against Mr. Cheung have been proven on a balance of probabilities using clear, convincing and cogent evidence.

Summary of Key Evidence

i. Testimony of Michele Pieragostini

Ms. Pieragostini is Manager of Quality Assurance and Professional Practice for the College. Her role at the College is, among other things, to oversee investigations into allegations of professional misconduct.

Ms. Pieragostini identified the College's Safety Program (a.k.a. the "safety course handbook") and Jurisprudence Course Handbook as well as the Standards of Practice of the profession and Standard of Practice regarding Advertising.

Ms. Pieragostini testified that Mr. Cheung became a Grandparented Member of the College in June 2013 and remained so until he was administratively suspended in July 2017. He then resigned August 1, 2017.

As part of the Grandparent class, Mr. Cheung had to write and pass a Jurisprudence test based on the Jurisprudence Course Handbook and a safety test based on the safety course handbook in existence at that time.

Ms. Pieragostini also stated that, in October 2015, the College launched an investigation to determine if Mr. Cheung had committed acts of professional misconduct within the scope of his practice.

ii. Testimony of Greg Hutchinson

Mr. Hutchinson is a private investigator. The College appointed Mr. Hutchinson, as an investigator. His instructions were to proceed initially undercover to seek assistance from Mr. Cheung with his claimed personal health issues and to investigate whether the Member had committed acts of professional misconduct.

On November 6, 2015, Mr. Hutchinson made an appointment with Mr. Cheung to seek assistance with his erectile dysfunction, kidney and liver dysfunctions. A few days later, Mr. Hutchinson visited Mr. Cheung at his clinic. Mr. Cheung made no diagnosis. Rather Qigong treatments were discussed and Mr. Hutchinson was advised that his disorders would also be addressed and penile erections strong as iron could be expected. Also, Mr. Cheung claimed that with a secret liquid his kidney and liver disorders would be corrected. Mr. Cheung advised that during such treatment, Mr. Hutchison was to refrain from any western medicine or other TCM treatments. Mr. Cheung stated that five Qigong treatments would be required at a fee of \$300 per treatment.

The first visit was settled with a cash payment of \$250 as that was the only funds that Mr. Hutchinson was carrying with him. A receipt was produced for this amount, and Mr. Hutchinson and Mr. Cheung also discussed the issuing of a receipt for acupuncture at the end of treatment so that Mr. Hutchison could submit his receipt to his insurance company for reimbursement purposes.

A follow-up treatment was scheduled for the following week. However, Mr. Hutchison never returned.

iii. Testimony of Robin Barker

Ms. Barker, who identified herself to Mr. Cheung as an investigator for the College, met Mr. Cheung on two occasions, November 9, 2015 and January 20, 2016 to review his scope of operation.

During the first meeting with Mr. Cheung, Ms. Barker was advised that he wished to identify himself as “Master” or “Grandmaster” of Qigong. In June 2014, Mr. Cheung received a Certificate of Registration of copyright for the title “Unique Powerful Secret Qigong” from the Canadian Intellectual Property Office. Ms. Barker testified that this certificate was displayed in his clinic and also on his website.

Mr. Cheung stated that his area of specialty was sexual dysfunction, for both men and women, and also enlarged prostate, erectile dysfunction, impotence, premature ejaculation and liver dysfunction. He stated that almost 100% of his patients are treated for sexual dysfunction. He confirmed that his web site stated that he is the only person in the world teaching sexual Qigong and that he is “No 1 in the World.” Accordingly, he has told his patients his Qigong treatments are 100% effective and they must restrain themselves from taking Chinese herbs or western medicines to treat their kidney and liver dysfunctions.

He stated that he could cure kidney and liver dysfunctions with his secret liquid mixed with the patient’s urine. He also confirmed that his website states that he can cure kidney and liver failures.

Mr. Cheung also confirmed he was responsible for managing the content of his testimonials on his website. He indicated the testimonials were provided by his patients but could not provide copies supporting them. No consents were provided from the patients for their publications including personal information.

iv. Testimony of Danny Li

Mr. Li was called by the College and qualified by the Panel as an expert witness in TCM and the standards of practice of TCM to provide an opinion as to whether Mr. Cheung used inappropriate titles implying specialization in his area of practice; whether Mr. Cheung made a claim about a treatment that cannot be supported by reasonable professional opinion; whether Mr. Cheung contravened a standard of practice of the profession; whether Mr. Cheung advertised in a manner that was false or misleading; and whether Mr. Cheung’s advertisements included statements that are not factual and verifiable.

Mr. Li noted in his report (Exhibit 29, Tab 2) that when “a TCM Practitioner treats a disease...the practitioner should analyze the cause of the diseases, TCM pathology and clinical manifestations” to address the specific condition of the patient. Treatment to a patient should be based on specific diagnosis and treatment should include some specific treatment to achieve specific effect.

He explained "In TCM, sexual dysfunction is a symptom which may be caused by different diseases. The treatment should be based on the diagnosis for the root cause." Qigong treatment is one treatment modality, and must be applied in the same manner as other TCM methods.

Mr. Li observed that Mr. Cheung applied the same Qigong treatment for all patients, regardless of the root cause diagnosis. In his report, Mr. Li noted that Mr. Cheung "was not able to justify his treatment." He stated that Mr. Cheung never explained the specific effect of his treatment method.

Mr. Li opined in his report that Qigong practice is intended to benefit quality of life and promote good health rather than "cure" sexual dysfunction. He testified that Qigong is an exercise. He testified that he was not aware of any evidence that using a patient's urine could cure kidney dysfunctions, and noted in his report that there was no evidence Mr. Cheung's Qigong method could cure sexual dysfunction, or that his liquid mixed with the patient's urine can cure liver and kidney dysfunction.

Mr. Li testified that Mr. Cheung's claim as "No. 1 Qigong Master" cannot be substantiated and that his Qigong treatment could not be verified to be 100% effective.

It was Mr. Li's opinion that Mr. Cheung, as per Exhibit 29, Tab 3, failed to comply with the Standards and in particular the Standard of Practice on Diagnosis and Treatment.

With respect to advertising, Mr. Li explained that the College's Standard of Practice sets out in detail the requirements for practitioners.

With this reference, the Panel reviewed the text of the Standard of Practice with respect to Advertising which states that advertising is any message under the practitioner's direct or indirect control that communicates accurate information about his practice and services that are offered. Advertising is to be factual, accurate, easily verifiable, and independent of personal opinion, understandable and professionally appropriate. Advertising cannot guarantee treatment results and patient testimonials are unacceptable.

The Standard continues by stating that advertising must not be misleading either by leaving out relevant information, or by including non-relevant, false, or unverifiable information. Using titles that imply specialization and superior treatments compared to other practitioners is unacceptable.

In this regard, it was also stated by Mr. Li that Mr. Cheung failed to comply with the College Standard of Practice regarding Advertising.

v. *Testimony of Aizhong Qiao*

Mr. Qiao is a 43-year-old businessman that used the Qigong services of Mr. Cheung to improve his health conditions in 2017. According to his testimony, Mr. Qiao reported that he had a sexual dysfunction consisting of premature ejaculation, lack of hardness and duration. He also suffered from prostate enlargement. He reported he had no diagnosis performed on his health conditions by Mr. Cheung.

He reported there was a minor improvement in his health condition after six visits to Mr. Cheung's clinic. Greater health improvements came nine months after the six patient visits, he stated.

vi. *Testimony of Yatwah Cheung*

Mr. Cheung testified on his own behalf. He submitted in his testimony that the advertising surrounding his Qigong is separate from TCM. It has nothing to do, he said, with TCM. He alleged that his Qigong was different from what is taught in TCM schools.

He stated that Qigong mainly consists of exercises that improve general health and maintain health for the body such that there is no requirement for medication. With his DVD's his Qigong techniques can be taught to whomever is interested. No diagnosis is required and it has no side effect.

Mr. Cheung testified that his secret liquid could help kidney and liver dysfunctions provided that such dysfunctions are in their early stage. If these dysfunctions are in the advance stages, his secret liquid will have limited impact.

Mr. Cheung explained that whenever a small amount of the patient's urine is added to his secret liquid, the effectiveness of his secret liquid is increased.

Mr. Cheung reminded the Panel that he received a Certificate of Registration of copyright in 2014 for the title "Unique Powerful Secret Qigong" from the Canadian Intellectual Property Office.

Accordingly, Mr. Cheung testified that his plan is real and authentic. If a person is unable to practice his Qigong correctly, he would be able to correct them. Furthermore, Mr. Cheung acclaimed that he never received any complaints.

Mr. Cheung stated that his business card, street sign for his business at 763 Gerrard Street East, receipt book, website and newspaper advertisement in Epoch Times are primarily for Qigong publicity but all have a reference to TCM. According to Mr. Cheung the reference to TCM is simply to build trust and reliability for his patients. Mr. Cheung submitted that his Qigong treatments and TCM treatments are two different unrelated treatments.

Mr. Cheung strongly suggested to the Panel that the seven remaining allegations of this hearing should be withdrawn because they are without foundation. He requested that an impartial, sincere, and fair decision should be made to declare his innocence.

Submissions of the Parties

Legal Counsel for the College made oral and written submissions, which the Panel reviewed carefully. Mr. Cheung was not represented by Legal Counsel. He submitted his own oral submissions, which the Panel also reviewed in detail and took into careful consideration in its decision-making. Also, the Panel received oral and written advice at the conclusion of the hearing from its Independent Legal Counsel to which all parties had an opportunity to make submissions in response.

The parties were largely in agreement with respect to general legal principles applicable to this hearing, such as the burden and standard of proof and the relevant factors to consider in assessing credibility.

The College acknowledged that it bore the burden of proof, and that it had to prove the allegations on the balance of probabilities, based on clear, convincing and cogent evidence.

Although Mr. Cheung did not organize his submissions according to allegation, and it was not always clear what allegation he was addressing, in these reasons we have endeavored to capture the essence of his submissions, and grouped them according to the allegation that we consider them to be most relevant to.

Allegation 1: Whether Mr. Cheung contravened, by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession

College's Submission

College Counsel submitted that the evidence of Mr. Li, an expert witness on the Standards of Practice, as well as the jurisprudence and standard documents, establish that with respect to advertising, Mr. Cheung contravened the standards by guaranteeing results, using titles that suggested superiority, and advertising with the use of testimonials. According to Mr. Li, Mr. Cheung's website did not meet the requisite standard regarding advertising.

College Counsel also submitted that based on the evidence of Mr. Li, who was also an expert witness in TCM and Acupuncture, a TCM practitioner treats a severe condition such as kidney failure and liver failure by analyzing the cause of the diseases, TCM pathology and clinical manifestations. Then the practitioner makes a TCM diagnosis before establishing a treatment plan to address specific conditions of the patient. TCM treatment should be based on the diagnosis for the root cause.

In cross-examination Mr. Cheung showed that he had a lack of understanding about TCM pathology and clinical manifestation of these diseases.

As reflected in the opinion of Mr. Li, Mr. Cheung failed to provide the necessary knowledge, skills and judgment to ensure safe, effective and ethical outcomes for his patients. Mr. Cheung failed to adhere to the standards of practice of the profession.

Member's Submission

Mr. Cheung submitted that his unique powerful secret of Qigong should not be subject to the standards established by the profession. Rather he stated that his Qigong treatments should be separate and distinct from TMC standards of practice. He asserted that it is a separate identity.

Mr. Cheung contended that as he is the Master of Qigong and has the copyright of this Qigong masterpiece, his practice of Qigong is not to be subject to TCM standards of practice.

Mr. Cheung contended that he could teach anyone how to release their potential, unleash their untapped power, allow them to reach the pinnacle of their best performance and get rid of those other medications and farewell to those aphrodisiacs that harm the patients' systems.

Mr. Cheung submitted that his unique powerful secret of Qigong was designed for male and female sexual dysfunction, premature ejaculation, improvement of kidney and liver functions, impotence, prostate enlargement, constipation and much more, none of which is to be subject to TCM standard of practices.

Allegation 2: Whether Mr. Cheung used a prohibited title

College's Submission

College Counsel submitted that there are two parts to this allegation.

The first is that Mr. Cheung has used a prohibited title contrary to Section 132 of the Professional Misconduct Regulation.

College Counsel submitted through Ms. Barker's testimony that Mr. Cheung was using the title of "Master" and Grandmaster" to describe himself on his website. According to his website he described himself as Master Yatwah Cheung, founder of the Unique Powerful Secret Qigong. He claimed to be the only instructor of this form of Qigong in the world. He described his Qigong as a fusion of two main secrets combining internal methods with medical and science theories. The website stated, it is "Master Cheung" unique masterpiece.

However, College Counsel submitted that the only titles and designations authorized by the College were R. TCMP and R. Ac.

The second is that the subsection 1(39) of the Professional Misconduct Regulation makes it an act of professional misconduct to contravene a provision of the Regulated Health Professions Act. It is contrary to section 33(1) of that Act to use the “Doctor” title. However, the testimonials posted on Mr. Cheung’s website at the relevant times contain multiple references to Mr. Cheung as “Dr. Cheung”. College Counsel submitted that it is not necessary that the member intended to mislead the public in using unauthorized titles.

Member’s Submission

Mr. Cheung submitted that he has over 20 years of clinical experience. According to his website he is a sex Qigong Grandmaster. As described on his website, Mr. Cheung can teach a unique powerful skill that unleashes an untapped potential to reach peak performance. He can train anyone at any age including 80 years or older a super powerful sexual Qigong without drugs, herbs, sprays, equipment or use of sex toys.

He describes himself as Grandmaster Cheung who takes care of his patients and can treat a variety of diseases and disorders effectively.

Allegation 3: Whether Mr. Cheung is implying an unauthorized specialization in his practice

College’s Submission

College Counsel submitted that Section 1(33) of the Professional Misconduct regulation of the College states that it is an act of professional misconduct for a Member to use a term, title or designation indicating or implying a specialization in an area or areas of practice of the profession where the use of the term, title or specialty designation is not authorized by the College.

Whenever Mr. Cheung used the term Master or Grandmaster it implied an unauthorized specialization in the profession particularly when he described himself as Master or Grandmaster of Qigong.

College Counsel submitted that the Jurisprudence Handbook explains, “since the profession does not have recognized specialties, practitioners cannot use titles or designations inferring specialist status or certification. However, practitioners are free to describe their areas of practice so long as it does not imply specialist status or certification”.

Mr. Cheung, by designating himself as a Master or Grandmaster of Qigong, has indicated to the public that he has obtained a higher level of specialization. Such

specialization of Master and Grandmaster are not authorized in the Jurisprudence Handbook.

Member's Submission

Mr. Cheung submitted that his unique powerful secret Qigong should be treated separately from his TCM practice. His Qigong practice is very distinct and different than his TCM practice. They are two unrelated practices and as such his Qigong practice is not subject to the College's regulations.

Allegation 5: Whether Mr. Cheung made a claim about a treatment that cannot be supported as reasonable professional opinion

College's Submission

College Counsel submitted, based on Ms. Barker's testimony that Mr. Cheung ascertained to his patients 100% effectiveness for his treatments of sexual dysfunction. Furthermore, with the proper training of his Unique Powerful Secret Qigong, Mr. Cheung alleged that his patients' lives are extended and eliminated the need for western and herbal medicines.

College Counsel submitted, based on the evidence of Mr. Li, that Mr. Cheung was making a claim about a remedy, treatment or procedure that could not be supported by reasonable professional opinion. In his testimony, Mr. Li reported it is common understanding that Qigong practice is intended to benefit quality of life, rather than "cure" sexual dysfunction.

Mr. Cheung claimed that his Qigong liquid mixed with the patient's urine can cure liver and kidney dysfunction. However, College Counsel argued, Mr. Cheung has not provided sufficient evidence that his Qigong or solution remedy he used can actually achieve the claimed effect.

Member's Submission

Mr. Cheung used his own personal case as an illustration.

In 2009, Mr. Cheung reported that he had a kidney dysfunction. He consulted his family physician and a specialist. Neither one could help him with his kidney dysfunction. In short order, with the assistance of his Qigong liquid, his kidney disorders had dissipated.

Mr. Cheung maintained the addition of a small amount of his personal urine in the Qigong liquid accelerated the curing process.

To support this cure, laboratory testing of his kidneys occurred in 2009, 2011 and 2012. All testing produced results satisfactory to Mr. Cheung.

In 2012, Mr. Cheung indicated that he suffered from a liver dysfunction. Mr. Cheung consulted a specialist, who could not help him. For assistance, he turned to his Qigong liquid. Within a month, he claimed his liver disorders were cured. Again, he contended that laboratory testing confirmed these improvements.

Mr. Cheung maintained that his personal experience provides evidence of the effectiveness of his Qigong liquid, which since then he has offered to his patients.

Allegation 6: Whether Mr. Cheung has used advertising about himself and in his practice in a manner that is false or misleading and includes statements that are not factual and verifiable

College's Submission

College Counsel submitted that Mr. Cheung's statements regarding his treatment as having a "99.9%" success rate, as outperforming various other medications and as eliminating the need for future medications, are similarly not verifiable, or factual. There are numerous examples of such statements throughout all versions of Mr. Cheung's website and in his claims to College investigators.

College Counsel submitted that Mr. Li explained there are no studies or data available to support these claims. Such claims are misleading in that they purport to be based on scientific, rather than anecdotal evidence.

College Counsel submitted that the evidence put forward by Mr. Cheung to demonstrate the accuracy of his advertisements included i) his own blood tests, ii) the testimony of one of his patients Mr. Aizhong Qiao, and iii) e-mails from two patients have not been tested for the truth of their contents. The evidence is limited, anecdotal, and, nevertheless, does not provide a basis for the claims made by Mr. Cheung.

College Counsel submitted that Mr. Cheung's statements are inaccurate and misleading to the public and patients, as they purport to have evidentiary basis that simply does not exist.

College Counsel submitted that other statements on Mr. Cheung's website and promotional materials are not factual. For example, it is clearly inaccurate to claim that a treatment can make a patient's erection "hard as iron". Nor is the evidence to support the claim that the treatment will extend a patient's life or increase their volume of sperm. Again, these statements are made in such a way as to guarantee the results of treatment unequivocally, but there is no data to support these claims. The advertisements are therefore misleading.

Member's Submission

Mr. Cheung stated through his research on YouTube and Google he had discovered that he was the only person treating sexual dysfunction with Qigong.

Mr. Cheung maintained that he had a quality product and his patients told him that his treatments were more effective than Viagra or other medications.

Allegation 7: Whether Mr. Cheung used testimonials in respect of his practice

College's Submission

College Counsel submitted, based on Ms. Barker's testimony, that Mr. Cheung was responsible for managing the content of all his testimonials. Mr. Cheung submitted that he did not seek consent from his patients for publication of their testimonials on his website. Mr. Cheung affirmed that he had not retained copies of these testimonials.

In cross-examination, College Counsel brought to the attention of the Panel that from 11 testimonials, it was mentioned on 7 different occasions "my erection is as hard as iron" which suggested that these testimonials were written by Mr. Cheung.

Member's Submission

Mr. Cheung submitted that all testimonials on his website were written and submitted by his patients on their own. He submitted that these testimonials were not requested and that he had removed the names to remain anonymous.

Mr. Cheung submitted that his patient testimonials were simply submitted to a translator for translation and were then posted on his website.

Allegation No 8: Whether Mr. Cheung's conduct was disgraceful, dishonourable or unprofessional

College's Submission

College Counsel submitted that even where the same conduct forms the grounds for multiple allegations of professional misconduct, an allegation that a member was in breach of a standard of practice or committed disgraceful, dishonourable or unprofessional conduct is a separate basis upon which a finding of professional misconduct may be made, as it requires a different legal nexus between the misconduct and the allegation.

Accordingly, even if the facts relied on to support this allegation were the same as that relied on to support the other allegations of misconduct, this would be sufficient.

In this case, however, College Counsel argued, there are additional elements of Mr. Cheung's conduct, that, taken with the acts of professional misconduct, justify a finding on this allegation.

Specifically, College Counsel argued, that, as attested by Mr. Hutchinson and Ms. Barker, Mr. Cheung instructed his patients to stop using western or herbal medicine. As described by Mr. Li, TCM practitioners have a limited scope of practice in providing medical advice to patients and their current medication must be left to the physicians. In Mr. Li's opinion, Mr. Cheung exceeded the scope of his abilities and provided potentially dangerous advice to patients.

College Counsel submitted that Mr. Cheung's testimony demonstrated a disregard for his obligations as a member of the College and the standard of practice. On cross-examination Mr. Cheung stated:

- a) he could not remember ever seen a copy of the Jurisprudence Handbook, had never read a copy of the Jurisprudence Handbook, yet had passed the exam in 2013 when becoming a Grand-parented Member
- b) he was not fluent in English at the time he applied to become a Grand-parented Member despite declaring on his College application form that he was fluent in English. When asked about this declaration, he stated that "it was just a form. I just fill it and send it" and "if I hadn't put it down like that, I wouldn't have been allowed to apply."
- c) he had been a Grand-parented Member of the College for four years, yet, he only accessed the College website four times. He had never looked at any of the posted regulations or standard of practice of the profession.

College Counsel continued by stating Mr. Cheung's demonstrated disregard for the authority of the College and his professional obligations constitutes disgraceful, dishonourable and unprofessional misconduct. Mr. Cheung's disregard for the College's authority placed his patients at risk and reflects a lack of integrity and responsibility in the provision of health care, harming the reputation of both the member and the College. This goes directly to the heart of a member of this College's obligations as a professional. Flaunting this structure undermines the importance of self-regulation and diminishes the profession generally.

Member's Submission

Although the member did not make submissions specific to this allegation, the Panel concluded that the member denied this allegation as all other allegations were denied.

Decision

The College bears the onus of proving the allegations in accordance with the standard of proof, that being the balance of probabilities, based upon clear, cogent and convincing evidence.

Having considered the evidence and the onus and standard of proof, the Panel finds that the Member's practice of Qigong was subject to the jurisdiction of the College and that he has committed professional misconduct as alleged by each allegation in the Amended Notice of Hearing.

Reasons for Decision

I. Assessment of Credibility

College Counsel and Mr. Cheung gave fundamentally different accounts of the details of contravening, by act or omission, several allegations relative to the standard of practice of the profession or failing to maintain the standard of practice of the profession. Thus the Panel was required to assess the credibility of staff member, Ms. Pieragostini; two investigators, Mr. Hutchinson and Ms. Barker; expert witness, Mr. Li; patient of the member, Mr. Aizhong Qiao and the Member himself.

The Panel also considered inconsistencies in a witness's evidence, in light of the totality of the evidence, and corroborative evidence.

The Panel concludes that all witnesses are credible but that the testimony of Mr. Cheung is unreliable as it relates to his self-devised remedies.

II. Credibility of Ms. Michele Pieragostini

Ms. Pieragostini gave evidence at the hearing as a Representative for the College. She explained in detail that part of her role was to oversee investigations into allegations of professional misconduct. Her testimony was forthright and candid. She explained that all Members are expected to adhere to the College's regulations, guidelines and procedures. She explained that copies of these documents are readily available on the College website.

III. Credibility of Mr. Greg Hutchinson

Mr. Hutchinson's testimony supports the Member's version of events as articulated by the Member. Mr. Hutchinson was forthright about the details of his meeting with the Member, candid and answered all the questions without hesitation. He admitted that he was an investigator undercover. In cross-examination by the Member, he maintained his composure and he explained the purpose of his visit was to investigate the Member's place of practice. His testimony focused on the findings of his undercover investigation.

IV. Credibility of Ms. Robin Barker

Ms. Barker's testimony supports the Member's version of events as articulated by the Member. In testimony, Ms. Barker stated that she had explained the purpose of her visit prior to meeting the Member in November 2015 and in January 2016. Her testimony was consistent, believable and not disputed.

Her testimony reflected primarily her interview with the Member and the documentary evidence she recovered as part of her investigation. The Member, prior to the conclusion of the last meeting, signed at the bottom of each page of her documentary review. Her contemporaneous notes of the interview with the Member were unchallenged.

V. Credibility of Mr. Danny Li

Mr. Li gave evidence at the hearing as an expert witness in the area of TCM and the Standard of Practice of the profession. Mr. Li's credibility and ability to provide his opinion, as an expert witness were not in dispute with the Panel.

Without hesitation, Mr. Li confirmed through testimony that his professional experience, research and teaching, established his expertise with all treatment modalities involved in TCM including: acupuncture, qi gong, cupping, gua sha, tui na massage and herbal medicine. Mr. Li's testimony focused on the explanation of TCM concepts and the importance of the Standards of Practice.

Mr. Li testified that Mr. Cheung treated or attempted to treat a condition that he did not have knowledge, skill or judgment to treat; that Mr. Cheung made a claim or claims about a remedy, treatment, or procedure that cannot be supported by reasonable professional opinion; that Mr. Cheung's advertisement about himself as No. 1 Qigong Master with special extraordinary ability was not verifiable.

VI. Credibility of Mr. Aizhong Qiao

Mr. Qiao gave evidence as a patient of Mr. Cheung in 2017. Mr. Qiao's testimony was candid and straightforward. He explained that he sought treatment from Mr. Cheung for sexual dysfunction. After six visits, health improvements were minor. However, he stated, his health improvements were much greater after nine months from the beginning of his treatments.

VII. Credibility of Mr. Yatwah Cheung

Mr. Cheung testified that his Qigong treatments are separate from TCM. He clearly articulated that his Qigong treatments have a different modality than TCM treatments. He contended that his Qigong is very different from and unrelated to TCM. According to his testimony, his Qigong is a method of treatment that can cure

sexual dysfunction, and, that the ingestion of his Qigong special liquid mixed with the patient's urine can cure liver and kidney dysfunction. Accordingly, in his testimony, he attempted to demonstrate and substantiate that he has extensive experience in treating patients with Qigong to cure kidney and liver dysfunctions.

Mr. Cheung submitted that his Qigong treatment should not be subject to the standard of practice of the profession as it is unrelated to TCM practice.

Mr. Cheung submitted that Mr. Li's expert evidence should be refuted as he failed to understand the special powers of his Qigong modality.

Mr. Cheung submitted that Mr. Li, "talk about things he really didn't know". Mr. Cheung contended Mr. Li does not understand his Qigong and has not learned it. According to Mr. Cheung, Mr. Li associated yin yang, jin-qi-shen solely to TCM. According to Mr. Cheung, in his cross-examination, Mr. Li indicated jin-qi-shen could be used both in TCM and outside TCM. Mr. Cheung contended Mr. Li simply changed his mind and therefore is not sufficiently competent to comment on Mr. Cheung's invention.

It is the Panel's view that Mr. Cheung's testimony as it relates to the suggested remedies is unreliable as there is no evidence to support it. On this matter, Mr. Cheung's evidence also contradicts Mr. Li's expert evidence which the Panel finds more authoritative.

Allegation 1: Whether Mr. Cheung contravened a standard of practice of the profession

The Panel, on the basis of the evidence of Mr. Li, finds, on the balance of probabilities Mr. Cheung failed to:

- a) communicate a TCM diagnosis identifying a body system disorder as the cause of a person's symptoms
- a) formulate treatment according to patient's conditions
- b) justify treatment reasonably corresponding to pathogenic processes of patients
- c) adapt treatment according to patient characteristics and needs

Instead, Mr. Cheung admitted treating all his patients with the same remedy. He concurred that he did not perform any diagnosis of his patients.

The Panel accepts that TCM treatments should be based on the diagnosis for the root cause.

Also, evidence indicates Mr. Cheung was therefore unable to justify his treatments.

The Panel therefore finds that this allegation has been proven.

Allegation 2: Whether Mr. Cheung used a prohibited title in the course of his business

On his website, Mr. Cheung admitted having used the title “Master” and “Grandmaster” to describe his Unique Powerful Secret Qigong. He proclaimed he can teach his patients the secret to release their potentials, unleash their untapped power, and allow them to reach the pinnacle of their best performance. He claimed that he is Grandmaster Cheung that takes care of his patients.

His business card and newspaper ads also contained prohibited titles.

According to the Standard of Practice regarding Advertising, there are only two titles that can be used in the profession: R. TCMP, for a Traditional Chinese Medicine Practitioner and/or R. Ac., for an Acupuncturist.

The Panel concludes that there is ample evidence to find Mr. Cheung used a title or titles prohibited by the College’s Standard of Practice regarding Advertising.

Allegation 3: Whether Mr. Cheung is implying an unauthorized specialization in his practice

Through his website and advertisement in a local newspaper, Mr. Cheung indicated that his area of specialization was sexual dysfunction of men and women. He testified that almost 100% of his patients were treated for erectile dysfunction.

The Panel concludes on the balance of probabilities there is evidence to find that Mr. Cheung described himself with an area of unauthorized specialization prohibited by the Standard of Practice regarding Advertising. According to this Standard, the College does not currently have any areas of specialties, and, therefore to claim any level of expertise or specialty would be misleading the public.

Allegation 5: Whether Mr. Cheung made a claim about a treatment that cannot be supported as reasonable professional opinion

Mr. Cheung admitted that he provided a guarantee on the effectiveness of his treatments with super power sexual Qigong. According to his website, with the proper training of his Unique Powerful Secret Qigong, he could guarantee the effectiveness of his treatments.

According to Mr. Li, Mr. Cheung must follow the Standard of Practice established by the College. As a member of the College, Mr. Cheung cannot deviate from the standards of the profession, which is an established body of knowledge and reasonable professional opinion on how this knowledge should be applied. Mr. Cheung’s claims simply cannot be supported as reasonable profession opinion as they are not TCM related.

Mr. Cheung also failed to provide third party professional evidence to support or confirm his claims as to the effectiveness of his techniques and medications.

The Panel therefore concludes that this allegation has been proven.

Allegation 6: Whether Mr. Cheung has used advertising about himself and his practice that is false or misleading and includes statements that are not factual and verifiable

According to the College's Standard of practice, Advertising is restricted by the College's Professional Misconduct Regulation. Accordingly,

- Advertising must not state that receiving specific treatment will increase the chance of successful conception. Each patient will respond to treatment differently.
- Advertising cannot create a demand for unnecessary treatment
- Advertising must be mindful of all claims about a remedy. Treatment, device or procedure must be factual and verifiable
- Advertising must be in the same name used to register with the College
- Advertising is restricted to the title and designation provided to the member by the College
- Advertising is unauthorized to reflect any areas of specialty. To do so, would be misleading to the public
- When advertising in a different language, the member is to ensure that his registered name appears in the advertisement

According to the College's Standard of practice, advertising must be factual, accurate, easily verified, independent of personal opinion, understandable and professionally appropriate. It must not include any information that is misleading by either leaving out relevant information, or including non-relevant, false, or unverifiable information.

As explained by Mr. Li, there are no studies or data available to support treatments with 100% effectiveness. Such claims are misleading in that they purport to be based on scientific, rather than anecdotal evidence. Mr. Cheung's statements are inaccurate and misleading to the public and patients, as they purport to have an evidentiary basis that does not exist.

Mr. Cheung admitted that on his website he claimed to be No. 1 Qigong Master with special extraordinary abilities. According to his website, he is the only person teaching sexual Qigong. He claimed that his Qigong liquid was outperforming Viagra or various other impotence medications. He also alleged that his Qigong treatment was 100% effective which he explicitly enunciated with one of the investigators. This language is explicitly prohibited by the Standards of Practice, as explained in the Jurisprudence Handbook and it is not verifiable.

Mr. Cheung advertised himself and his practice by making statements on his newspaper advertisements that he was:

- a) "A lifesaver for kidney diseases, diabetes and liver diseases!"
- b) "Treatments with unique Qigong therapy and supernatural powers rather than relying on medication, bring back your masculinity and allow you to accomplish what others cannot"
- c) "No matter what your age, even if you're over 80, it will work for you!"

These statements are not factual or verifiable. These advertisements are therefore misleading to the public.

The Panel concludes that Mr. Cheung used advertising about himself and his practice that is false or misleading and includes statements that are not factual and verifiable.

Allegation 7: Whether Mr. Cheung used testimonials to promote his practice

Mr. Cheung admitted that he was responsible for managing the content of all his testimonials. He admitted that he had not sought consent from his patients for publication of their testimonials.

The Panel concludes there are grounds to find that Mr. Cheung used testimonials to promote his practice, which is a form of professional misconduct in and of itself, in addition to being prohibited by the College's Standard of Practice regarding Advertising. According to that Standard, Members may not post patient (or former patient) testimonials. Even if information is anonymized, it can still qualify as a testimonial.

Allegation 8. Whether Mr. Cheung's conduct was disgraceful, dishonourable or unprofessional

The Panel finds, based on the findings regarding allegations 1, 2, 3, 5, 6, and 7 that Mr. Cheung's actions constitute behaviour that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.

I, Henry Maeots, sign this Decision as Chairperson of this Discipline panel and on behalf of the members of the Discipline panel as listed below:

Date: June 21, 2018

A handwritten signature in black ink, appearing to read "H. Maeots". The signature is written in a cursive style with a large initial "H" and a stylized "Maeots".

Henry Maeots, Chairperson

Panel Members: Henry Maeots
 Feng Li Huang
 Martial Moreau