

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

PANEL:	Henry Maeots	Chairperson, Public Member
	Terry Hui	Professional Member
	Barrie Haywood	Public Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO	(
	(Rebecca Durcan for the College
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	(Member self-represented
	(
-and-	(
	(
YU-ZHEN MA	(Fredrick Schumann,
	(Independent Legal Counsel
	(
	(
	(Date of Hearing: June 7, 2018

DECISION AND REASONS FOR DECISION

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

Yu-Zhen Ma (the “Member”) was present and was not represented by counsel.

The Allegations

On December 7, 2017, the College issued a Notice of Hearing against the Member (the “Notice”), alleging that the Member had engaged in professional misconduct under the *Traditional Chinese Medicine Act, 2006* (the “Act”) and related regulations pursuant to sections of the Health Professions Procedural Code (the “Code”) which is Schedule 2 to the *Regulated Health Professions Act, 1991*, in that:

1. In exchange for \$2,000.00 in cash, the Member provided Patient #1 with signed receipts for acupuncture and massage therapy for Patient #1 and his family without having provided acupuncture and massage therapy to Patient #1 and his family on the dates indicated on the receipts.
2. For this reason, it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the Code, namely:
 - (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 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 as disgraceful, dishonourable or unprofessional.

The Hearing

The Member was present and represented herself at the hearing. Her spouse was present and assisted her.

The parties presented a signed agreed statement of facts (the "ASF") dated April 24, 2018. In the ASF, the Member admitted to the substance of the allegations in the Notice of Hearing. At the hearing, the Member confirmed her agreement with the ASF and accordingly pleaded guilty to the allegations of professional misconduct in the notice of hearing.

The parties indicated that they had agreed on certain elements of the appropriate penalty and wished to present those elements as a joint submission. The parties did not agree on whether the Member's Certificate of Registration should be suspended, and for how long. The penalty elements on which the parties agreed were:

- The Member would be reprimanded and a summary of the reprimand would appear on the public register of the College;
- The Member would be required to successfully complete an ethics course, pre-approved by the Registrar, at her own expense, within six months of the date of this Committee's order;
- The Member would be required to deliver to the College a written reflection piece, two to four pages in length, demonstrating her understanding of her ethical obligations as a member of the College, within one month of successfully completing the ethics course

stipulated above;

- The Member would be required to participate in a College Assessment, focusing on record-keeping and ethical issues, within six months of the date of the order (if her Certificate of Registration were not suspended) or of the date of the end of the suspension period (if her Certificate of Registration were suspended).

In addition, the Member consented to an order to pay the College's costs in the amount of \$2,500.00 within six months of the date of the order.

College counsel submitted that the Member's Certificate of Registration should be suspended for six months but that the order should provide that the period of suspension would be reduced to three months if the Member completes reflection piece and the ethics course as required by the order. The Member submitted that there should be no suspension but if there was, it should be no longer than one month.

Decision

At the hearing, after having considered the materials filed and the submissions of College counsel and of the Member, the panel announced that it would impose the agreed-upon terms. In respect of the suspension, the panel accepted the position of College counsel and imposed a six-month suspension that would be reduced to three months if the Member completed the reflection piece and ethics course as required by the order.

The Member waived her right to appeal the agreed-upon elements of the penalty (while not waiving her right to appeal the suspension, if any), and so the panel reprimanded the Member at the hearing.

The panel stated that written reasons for penalty would follow. These are those reasons.

Reasons for Decision

The Panel found that the evidence submitted at the hearing of admittedly false treatment sessions noted in the Member's treatment records substantiated the allegations contained in the Notice and the admissions of professional misconduct contained in the ASF.

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

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. However, in regard to suspension or the length thereof, the Panel found that the seriousness of the misconduct merited a period of suspension. In reviewing penalties imposed by other Colleges for very similar misconduct, the Panel found a range of suspensions from one month to eight months, with only some providing terms to shorten the period of suspension.

The Panel therefore found that a period of six months, with the opportunity to have it reduced to 3 months by meeting the other terms of the penalty, was appropriate. The Panel concluded that the Member felt sincere remorse and regret for her behavior and were confident that the successful completion of the terms imposed would be successful in remediating the Member.

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 such cost on the Member whose behaviour was found to constitute professional misconduct, thereby lessening the cost to be borne by the other members of the College.

Dated June 11, 2018

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:



Henry Maeots, Chairperson

Panel Members: Henry Maeots
 Terry Hui
 Barrie Haywood