

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

PANEL:

Henry Maeots, Chairperson
Terry Hui, Member
Poney Chiang, Member
Noel Wright, Public Member
Maureen Hopman, Public Member

BETWEEN:

COLLEGE OF TRADITIONAL)	
CHINESE MEDICINE PRACTITIONERS)	
AND ACUPUNCTURISTS OF ONTARIO)	Andrew Porter
)	for the College
- and -)	
)	
Zhi Hong Tang)	John Tao
)	for Zhi Hong Tang
)	
)	
)	Andrea Gonsalves
)	Independent Legal Counsel
)	
)	Heard: July 5, 2017

DECISION AND REASONS

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on July 5, 2017, at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (“the College”).

The Allegations

The Notice of Hearing against Zhi Hong Tang (the “Member”) was issued on December 11, 2015. At the hearing, pursuant to s. 40 of the *Health Professions Procedural Code*, the Panel permitted the Notice of Hearing to be amended to correct an error in the Notice of Hearing. Specifically, paragraph 2 of the Notice of Hearing had originally incorrectly referred to paragraph 25 of section 1 of Ontario Regulation 318/12, when it should have referred to paragraph 27.

In addition, Counsel for the College advised the Panel that the College was requesting leave to withdraw the allegations set out in paragraphs 3, 4 and 5 of the Notice of Hearing. The Panel granted this request.

As a result of the correction to paragraph 2 and the withdrawal of the allegations in paragraphs 3, 4 and 5, the allegations against the Member are as follows.

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

THE ALLEGATIONS of professional misconduct are that you:

1. Contravening, by act or omission, a standard of practice of the profession or failed to maintain a standard of practice of the profession contrary to Section 1(1) of Ontario Regulation 318/12.
2. Falsifying a record relating to the member’s practice contrary to Section 1(27) of Ontario Regulation 318/12.
3. [*withdrawn*]
4. [*withdrawn*]
5. [*withdrawn*]
6. 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 contrary to Section 1(48) of Ontario Regulation 318/12.

The particulars of the allegations appended at Schedule “A” to the Notice of Hearing are as follows.

1. Ms. Zhi Hong Tang at the material time had a Certificate of Registration with the College. Her primary practice location was out of her home at 3-44 Chester Le Blvd., Toronto, Ontario, M1W 2M8.
2. On or about May 19, 2015, Ms. Tang used a designation of Registered Massage Therapist in the course of her practice. Further, Ms. Tang has advertised her services using the RMT designation, which Ms. Tang does not have. This is all in contravention of the *Massage Therapy Act*.
3. On or about May 19, 2015, Ms. Tang issued a receipt for massage therapy bearing the name of her son, Di Sun.

4. On or about May 19, 2015, Ms. Tang's engaged in behavior and made remarks of a sexual nature to a client.
5. On or about June 2, 2015, in the course of an investigation by the College, Ms. Tang was shown not to have maintained proper records, including patient consents, health histories, treatment notes, appointment books, and other records as required.
6. On or about June 2, 2015, Ms. Tang failed to store and dispose of used acupuncture needles as required, by collecting them in an inappropriate container.

Member's Plea

The Member admitted the allegations set out in paragraphs 1, 2 and 6 of the Notice of Hearing. The Panel conducted an oral plea inquiry and was satisfied that the Member's admissions were voluntary, informed and unequivocal.

Evidence

Counsel for the College and the Member advised the Panel that agreement had been reached on the facts and introduced an Agreed Statement of Facts, which reads as follows.

1. On November 26, 2014 the College received a communication from an insurer raising a number of concerns with Zhi Hong Tang ("Ms. Tang" or "the Member").
2. By Notice of Appointment dated May 7, 2015, the College commenced a section 75 (1)(a) investigation into the Member's practice.
3. The College's investigator attended on May 19, 2015 at the Member's practice, operating as Lucy Health and Wellness and located at 44 Chester Le Boulevard, Toronto, Ontario, for a scheduled massage.
4. At the conclusion of the massage Ms. Tang, who identified herself as "Lucy", provided a receipt for massage therapy in the name of Di Sun, RMT. Di Sun is the Member's son. The Member is not a member of the College of Massage Therapists of Ontario, and is not an RMT. The receipt was made out in the name of the Investigator's wife.
5. The Investigator collected a Lucy Health and Wellness business card, which indicated that RMT services were available.
6. On June 2, 2015 another College Investigator attended to interview the Member.
7. The Investigator requested and was provided with four of Ms. Tang's patient charts. The patient charts provided by Ms. Tang did not contain any consent forms,

copies of receipts issued, medical history forms, or treatment records, as required. Ms. Tang also advised that she does not keep an appointment book, as required.

8. During the interview, the Member was observed to be using a small recycled plastic bucket to collect and store used acupuncture needles, which the Member admits is an inappropriate and unsanitary storage container.

9. In the Member's Response to the Registrar's Report dated September 3, 2015 the Member admitted that her record keeping practices fell well short of the College's requirements.

10. The Member acknowledges being served with the Notice of Hearing dated May 11, 2016.

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

The parties also agreed to enter as an exhibit the College's Record Keeping policy as evidence of the standards of practice of the profession with respect to record keeping.

Decision

The Panel finds that the Member committed acts of professional misconduct as alleged in paragraphs 1, 2 and 6 of the Notice of Hearing.

Reasons for Decision

The Panel considered the Agreed Statement of Facts and the Member's plea and finds that this evidence supports findings of professional misconduct as alleged in the amended Notice of Hearing.

Allegation 1 is supported by paragraphs 7 and 9 in the Agreed Statement of Facts. Ms. Tang failed to maintain patient charts according to the College's requirement, and the standard of practice of the profession as detailed in the College's "Record Keeping" policy, which was made an exhibit.

Allegation 2 is supported by paragraphs 4 and 5 of the Agreed Statement of Facts. The Member used a business card which indicated that she provided RMT services but she is not a member of the College of Massage Therapists of Ontario. Also, she provided a receipt for massage therapy in the name of her son and which was made out in the name of the patient/investigator's wife.

Allegation 6 is supported by the above referenced paragraphs as well paragraph 8, and the Member's admission that she has engaged in conduct or performed acts relevant to the practice of the profession which would reasonably be regarded by a member of the profession as disgraceful, dishonourable or unprofessional.

Penalty Submissions

Counsel for the College and the Member advised the Panel that a Joint Submission on Order had been agreed upon. The Joint Submission requested that this Panel make an order as follows.

1. The Member's Certificate of Registration shall be suspended, for a period of eight (8) consecutive months, effective on a date agreeable to the College;
2. The Member shall have an opportunity to remit the length of the suspension by a period of four (4) months, upon completion to the College's satisfaction of the requirements set out in paragraphs 3-7 below;
3. The Member shall attend at College-approved training concerning her record-keeping and professionalism obligations;
4. The Member shall deliver a written reflection piece, two to four pages in length, demonstrating the Member's understanding of her record-keeping and professionalism obligations as a member of the College;
5. The Member shall make reasonable efforts to remove the advertisement "Massage by Lucy" on www.getamassage.ca;
6. The Member shall take all necessary steps to amend the College's Register to include reference to the name "Lucy";
7. The Member shall discontinue use of the Lucy Health and Wellness business cards which suggest she provides RMT services.
8. The Member shall complete a Peer and Practice Assessment, at her own expense, focusing on record-keeping and professionalism issues within six months of the last day of the suspension provided for in paragraphs (1) and (2);
9. The Member shall attend in person before the Panel to receive a public reprimand which shall be recorded and published on the College Register;
10. 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, as well as a summary of findings also accessible through the website of the College;
11. The Member shall pay, within twelve (12) months of the last day of the suspension provided for in paragraphs (1) and (2), a contribution towards the investigation and prosecution costs of the College in the amount of \$2,500.00, failing receipt of which the contribution shall increase to \$4,000 payable within twenty four (24) months of the last day of the suspension.

With respect to paragraphs 3 to 7 of the Joint Submission, the parties advised the Panel of their joint intention and request that those elements of an order be made terms, conditions and limitations on the Member's certificate of registration, in addition to being requirements that the

Member would need to fulfil in order to remit the length of suspension by a period of four months, as set out in paragraph 2 of the Joint Submission.

Penalty Decision

The panel accepts the Joint Submission as to Order and accordingly orders:

1. That the Registrar be directed to suspend the Member's certificate of registration for a period of eight (8) consecutive months, effective on a date agreeable to the College;
2. That the Member shall have an opportunity to remit the length of the suspension by a period of four (4) months, upon completion to the College's satisfaction of the requirements set out in paragraph 3 below;
3. That the Registrar be directed to impose the following terms, conditions and limitations on the Member's certificate of registration:
 - a. The Member shall attend at College-approved training concerning her record-keeping and professionalism obligations;
 - b. The Member shall deliver a written reflection piece, two to four pages in length, demonstrating the Member's understanding of her record-keeping and professionalism obligations as a member of the College;
 - c. The Member shall make reasonable efforts to remove the advertisement "Massage by Lucy" on www.getamassage.ca;
 - d. The Member shall take all necessary steps to amend the College's Register to include reference to the name "Lucy";
 - e. The Member shall discontinue use of the Lucy Health and Wellness business cards which suggest she provides RMT services.
4. That the Registrar be directed to also impose as a term, condition and limitation on the Member's certificate of registration the requirement that the Member shall complete a Peer and Practice Assessment, at her own expense, focusing on record-keeping and professionalism issues within six months of the last day of the suspension provided for in paragraphs (1) and (2);
5. The Member shall attend in person before the Panel to receive a public reprimand which shall be recorded and published on the College Register;
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, as well as a summary of findings also accessible through the website of the College;

7. The Member shall pay, within twelve (12) months of the last day of the suspension provided for in paragraphs (1) and (2), a contribution towards the investigation and prosecution costs of the College in the amount of \$2,500.00, failing receipt of which the contribution shall increase to \$4,000 payable within twenty four (24) months of the last day of the suspension.

With respect to paragraphs 3 to 7, the Panel orders that those elements be made terms, conditions and limitations on the Member's certificate of registration, in addition to being requirements that the Member would need to fulfil in order to remit the length of suspension by a period of four months, as set out in paragraph 2 of the Joint Submission.

Reasons for Penalty Decision

The Panel understands that the penalty ordered should protect the public and enhance public confidence in the ability of the College to regulate its members. This is achieved through a penalty that addresses specific deterrence, general deterrence and, where appropriate, rehabilitation and remediation. The Panel also considered the penalty in light of the principle that joint submissions should be respected unless they fall so far outside the range of an appropriate sanction that they would bring the administration of justice at the College into disrepute, or are otherwise contrary to the public interest.

The Panel concluded that the proposed penalty is reasonable and in the public interest. The Member has co-operated with the College and, by agreeing to the facts and a proposed penalty, has accepted responsibility. The Panel finds that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

The Panel believes that the reprimand, suspension and publication will act as a deterrent to discourage the Member from similar behavior in the future. The Panel is encouraged that the Member has recognized her mistakes through her cooperation in this matter.

We further find that the reprimand, suspension and publication serve the purpose of general deterrence, as they convey to other members of the profession the consequences that likely await them if they engage in similar behaviour.

The public's confidence in the ability of the College to regulate its members and to protect the public is further enhanced by the remedial provisions of the penalty, in particular the terms, conditions and limitations on the Member's certificate of registration imposed under paragraph 3 and paragraph 4 of the penalty.

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



Henry Maeots, Chair

Terry Hui

Poney Chiang

Noel Wright

Maureen Hopman

July 10, 2017

Date