

**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***

PANEL:	Henry Maeots	Chairperson, Public Member
	Terry Hui	Member
	Yuqi Yang	Member

BETWEEN:

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

(
(Jaan Lilles and Madison Robins
(for the College
(
(
(
(

-and-

(Mark Baker and Liana Rossi
(for Jessica Rea
(
(

JESSICA REA

(Johanna Braden,
(Independent Legal Counsel
(

Dates of Hearing: September 29, 2016

DECISION AND REASONS FOR DECISION

This matter came on for hearing on September 29, 2016 before a panel of the Discipline Committee (the “Panel”) at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”). Following the hearing on September 29, 2016, the parties submitted their final arguments by way of written submissions.

The Allegations

The allegations against Jessica Rea (the “Member”) as set out in the Notice of Hearing dated October 16, 2015 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:

1. Contravened the *Regulated Health Professions Act* (the “RHPA”) by performing an unauthorized, controlled act contrary to Section 27(1) of the RHPA and sections 1(10) and (39) of *Ontario Regulation 318/12* of the Act;
2. Contravened a standard of practice of the profession contrary to section 1(1) of the *Ontario Regulation 318.12* of the Act;
3. Used a prohibited title, contrary to Section 33(1) of the RHPA and sections 1(32) and (39) of *Ontario Regulation 318/12* of the Act;
4. Permitted the use of testimonials in respect of your practice, contrary to section 1(30) of *Ontario Regulation 318/12* of the Act;
5. Breached the *Food and Drugs Act*, a statute for the purpose of protecting public health, contrary to section 1(40) of *Ontario Regulation 318/12* of the Act; and/or
6. Engaged in conduct or performed 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, contrary to section 1(48) of *Ontario Regulation 318/12* of the Act.

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

1. At all material times, Ms. Jessica Rea has been a member of the College in the grandparent class. Her primary practice address is located at 26 Meteor Drive, Toronto, Ontario, M9W 1A4.
2. Unless they have obtained authorization from an external source, members of the College are not authorized to perform the following controlled acts as set out in s. 27(1) of the RHPA:
 - a. performing a procedure on tissue below the dermis, or below the surface of a mucous membrane, other than TCM acupuncture; and
 - b. prescribing, dispensing or selling a drug.

3. The *Food and Drugs Act, R.S.C. 1985, c. F-27*, and applicable Regulations state the following:
 - a. medicinal leeches are considered a drug; and
 - b. in order to obtain and use medicinal leeches, a market authorization, or specific authorization to conduct a clinical trial, is required.
4. Since approximately 2011, Ms. Rea:
 - a. holds herself out as a hirudotherapist and uses medicinal leeches in her practice;
 - b. attached medicinal leeches to certain patients (humans and/or animals) so that the medicinal leeches can secrete substances into the blood of the patients;
 - c. prescribes, dispenses, and/or sells medicinal leeches;
 - d. does not have a market authorization, or a specific authorization to conduct a clinical trial with respect to the medicinal leeches; and/or
 - e. does not properly dispose of used medicinal leeches by flushing them down the toilet and not in proper biohazard waste containers.
5. Ms. Rea permitted testimonials from a patient, former patient, or other person (such as R&G, C.M.M., J.E. R.M., J.B. S.M., M.M. and/or C.D.) on her website, www.leechtherapy.ca in respect of her practice.
6. Ms. Rea used the terms, titles, or designations, “Advanced Chinese Medicine Practitioner”, “D.A.” and “D.Tcm” on her business card. These are not authorized by the College.

Member’s Position

At the hearing, the Member admitted the allegations of professional misconduct in paragraphs 1, 4 and 5 of the Notice of Hearing. The Panel conducted an oral plea inquiry and was satisfied that the Member’s admissions to those allegations were voluntary, informed and unequivocal.

After the hearing, in her written submissions delivered October 19, 2016, the Member asked the Panel to find her not guilty on allegation 5 despite her admission, on the basis that this allegation offended the rule against multiple convictions.

The Member denied allegations 2, 3, and 6 in the Notice of Hearing.

The Evidence

(a) Evidence at the Hearing

At the hearing the Panel heard oral evidence from three witnesses: Allan Mak, the College’s Registrar and CEO; Audrey Chen, an investigator retained by the College; and the Member herself. The witnesses identified exhibits that were admitted into evidence, including evidence

about the College's standards of practice, the Member's social media sites, the Member's business cards and other representations of her qualifications, and the Member's practice with respect to the purchase and importation of leeches. A general overview of the evidence is as follows.

Ms. Rea's practice of hirudotherapy was undisputed. Hirudotherapy is the practice of using leeches for a medicinal purpose. Ms. Rea has admitted to having attached leeches to patients so that the leeches would secrete a substance for a therapeutic purpose under the skin. Medicinal leeches are highly regulated by the *Food and Drugs Act* and the regulations thereunder. There are strict regulations governing the importation, sale, storage, use and disposal of these leeches.

Mr. Mak, testifying for the College, identified several websites associated with Ms. Rea as well as a Facebook page. On each of these websites Ms. Rea advertised her leech therapy services. On the website www.leechtherapy.ca (exhibit 9) there are numerous testimonials from clients pertaining to her performance of leech therapy. Ms. Rea has admitted that the website is hers and that she used or permitted the use of these testimonials. Mr. Mak also testified that his research uncovered a Health Canada webpage which detailed that leeches could only be used with a special market access or as part of a clinical trial.

On another website uncovered by Mr. Mak "Balance Acupuncture and Oriental Medicine", (exhibit 5) Ms. Rea had included a testimonial from a patient pertaining to her acupuncture practice.

A second witness for the College, Audrey Chen, had been retained by the College to prepare an investigative report. She testified that in her interview of Ms. Rea, Ms. Rea admitted that she practiced hirudotherapy. Ms. Rea advised Ms. Chen that at the end of therapy she disposed of the leeches by drowning them in alcohol and flushing them down the toilet. In a subsequent phone conversation, Ms. Rea told Ms. Chen that she had treated a horse and a dog with hirudotherapy.

The only witness in response to the allegations was Ms. Rea. She admitted, without qualification, that the RHPA and the *Food and Drugs Act* serve to protect the public. She also admitted that she had used testimonials on her website. She testified that she had not been aware that postings by other persons to her website were deemed to be testimonials by the College. She stated such postings were difficult to police. She testified that she has amended her website by removing any referrals to hirudotherapy as well as any testimonials. She claimed she had been delayed in these corrective actions as she had birthed a child and had lacked the time to do so. Likewise she had delayed amending her business cards as she had invested in a large quantity of them and lacked funds to replace them immediately.

Notwithstanding such admissions, Ms. Rea attempted to justify her use of leeches and her failure to comply with the Health Canada requirements on the basis that she thought she was importing non-medicinal leeches. Ms. Rea also stated she had relied on advice from her hirudotherapy course instructor who is neither a representative of Health Canada nor a TCM practitioner in Ontario.

(b) Evidence Post-Hearing

At the conclusion of the oral hearing, the Panel gave the parties an opportunity to present their submissions in writing. In addition to her written submissions, the Member also sent the Panel some new documents and information to be relied upon as new evidence. The College objected to the Panel receiving and relying upon this new evidence.

The Panel did not rely on any of the post-hearing evidence submitted by the Member. The admissibility of evidence at Discipline Committee hearings is governed by section 49 of the *Health Professions Procedural Code* (the “Code”), which provides that

49. Despite the *Statutory Powers Procedure Act*, nothing is admissible at a hearing that would be inadmissible in a court in a civil action and the findings of a panel shall be based exclusively on evidence admitted before it.

Both section 49 of the Code and section 15 of the *Statutory Powers Procedures Act* are clear that to be admissible, evidence must be admitted *at a hearing*. This ensures the other party can cross-examine and challenge the proposed evidence. The Discipline Committee’s Rules of Procedure set out that only three types of evidence are admissible at its hearings:

- (a) Evidence by agreement (Rule 26)
- (b) Evidence by affidavit (Rule 27)
- (c) Oral evidence by a witness or witness panel (Rule 28)

The proposed post-hearing evidence did not meet any of the criteria for admissibility. The Panel declined to review new documents and new facts which were submitted post-hearing.

Submissions of Counsel

Both parties made detailed written submissions, which the Panel reviewed carefully. The Panel also received advice in writing from its Independent Legal Counsel, which was disclosed to the parties so that the parties could make submissions about it.

There was no clear disagreement between the parties about the general legal principles applicable to this hearing, including on issues such as the burden and standard of proof, the rule against multiple convictions, and the relevant factors to consider in assessing credibility.

The particular arguments of counsel with respect to each allegation are described below, in the Reasons for Decision.

Decision

Having considered the admissions of the Member, the evidence led at the hearing, and the submissions of counsel, the Panel finds that the Member is guilty of professional misconduct as alleged in paragraphs 1, 2, 3, 4, 5 and 6 of the Notice of Hearing.

Reasons for Decision

The College bears the burden of proving the allegations of professional misconduct. The standard of proof is the civil standard which is the balance of probabilities: *F.H. v. McDougall*, [2008] 3 S.C.R. 41, 2008 SCC 53. The evidence needs to be sufficiently clear, cogent and convincing to persuade the Panel that it is more likely than not that the Member engaged in conduct that amounts to professional misconduct as defined in the RHPA and the Act.

Where a member admits allegations, the Panel finds that it should accept those admissions and make findings of professional misconduct, as long as the Panel is satisfied that (a) the admissions are voluntary, informed and unequivocal; and (b) there is sufficient evidence to conclude that the member did in fact commit professional misconduct as alleged.

(a) Allegation 1 – that the Member contravened the RHPA by performing an authorized, controlled act, contrary to Section 27(1) of the RHPA and sections 1(10) and (39) of Ontario Regulation 318/12 of the Act

This allegation was admitted by the Member at the hearing. There was sufficient evidence led at the hearing for the Panel to accept the Member's admission and make a finding of professional misconduct.

Ontario Regulation 318/12 (the "Professional Misconduct Regulation") provides that the following acts (among others) are forms of professional misconduct:

10. Performing a controlled act that the member is not authorized to perform; and.

39. Contravening, by act or omission, a provision of the Act, the RHPA, or the regulations under either of those Acts.

In order to prevent the unauthorized and unregulated practice of health care, section 27(1) of the RHPA prohibits persons from performing certain defined acts, called "controlled acts", in the course of providing health care services unless they are specifically authorized to do so by their college. It is a "controlled act" to perform a procedure on tissue below the dermis or below the surface of a mucous membrane. Section 4 of the Act authorizes members of this College to perform that controlled act only for the limited scope of performing a procedure on tissue below the dermis and below the surface of a mucous membrane for the purpose of performing acupuncture.

The uncontested evidence at the hearing was that leech therapy involves performing a procedure on tissue below the dermis for a purpose that is not acupuncture. The leeches inject a drug, hirudin, an anticoagulant, by puncturing the dermis. As such, it is beyond the scope of practice and a prohibited act for members of the College.

The Member's admitted conduct in practicing hirudotherapy therefore substantiates a finding against her on Allegation 1.

(b) Allegation 2 – that the Member contravened a standard of practice of the profession contrary to section 1(1) of the *Ontario Regulation 318.12* of the Act

Section 1(1) of the Professional Misconduct Regulation provides that it is professional misconduct for a member to contravene, by act or omission, a standard of practice of the profession or fail to maintain the standard of practice of the profession.

Both parties accepted that the evidence of the standard of practice of the profession is contained in exhibit 10, identified by Mr. Mak, which is the published Standards of Practice of the College. Standard of Practice 1 includes a requirement members adhere to all relevant provincial and federal regulation, and to all regulations made under the Act. Standard of Practice 2 includes a requirement that members must perform only those controlled acts that have been authorized under the legislation, and must not perform any procedure which may result in serious physical harm unless the procedure is within the scope of practice of the profession and authorized or permitted by legislation. Standard of Practice 3 includes a requirement for members to observe all relevant municipal, provincial and federal legislation and guidelines pertaining to health and safety.

The Member's defence is that because Allegation 2 relates to the practice of hirudotherapy, and because the Member has already admitted that she performed an unauthorized, controlled act as defined by the RHPA in administering leeches to patients, the Panel should not make a finding of professional misconduct under Allegation 2 because it would breach the rule against multiple convictions.

The parties were generally in agreement on the law with respect to the rule against multiple convictions, which the Panel understood as follows.

- The rule against multiple convictions is a principle derived from criminal law. It provides that an accused person should not be found guilty twice for the same act. It is considered unfair to find a person guilty of two offences that arise out of the same facts, and where the elements of the two different offences are the same or substantially the same. For the rule against multiple convictions to apply, there must be no additional or distinguishing element that goes to guilt in the offence for which a conviction is sought. See *R. v. Kienapple*, [1975] 1 S.C.R. 729; *R. v. Prince*, [1986] 2 S.C.R. 480.
- In Ontario, the Divisional Court held in *Carruthers v. College of Nurses of Ontario*, 1996 CanLII 11803 (ON SC), that the rule against multiple convictions applies to discipline hearings such as this one. The rule means that the Panel cannot make multiple findings of professional misconduct where the same or substantially the same elements make up the multiple offences.
- The rule against multiple convictions will apply if two or more allegations have the same *factual nexus* (that is, that they rely on the same facts) and the same *legal nexus* (that is, that they rely on the same legal issues and questions). It is not enough for the Member to show that some of the same facts relate to multiple allegations. Rather, the Member must show that some of the allegations are so similar to one another in both their factual and

legal elements that the Panel is essentially being asked to convict the Member more than once for the same matter.

Applying these principles to Allegation 2, the Panel finds that Allegation is distinct from the other allegations in the Notice of Hearing in that:

- it requires the College to prove the existence of a recognized standard of practice of the profession, which include in this case published standards of practice;
- it requires proof that the Member acted contrary to one or more standards of practice of the profession; and
- it considers the Member's conduct from the perspective of whether the Member has satisfied the minimum standards of practice required by all members of the profession, as articulated by the College's published Standards of Practice.

(c) Allegation 3 - that the Member used a prohibited title, contrary to Section 33(1) of the RHPA and sections 1(32) and (39) of *Ontario Regulation 318/12* of the Act

The Member's position is that the College has not proven this allegation to be true. Allegation 3 raises two related but somewhat different allegations.

A. Use of the Title "Doctor"

Section 33(1) of the RHPA prohibits any person from using the title "doctor", a variation or abbreviation of the title "doctor", or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals. It is accepted by the Member that if she had used the title "doctor", she would be guilty of professional misconduct as alleged in Allegation 3, since contravening the RHPA is defined as professional misconduct under section 1(39) of the Professional Misconduct Regulation.

The evidence relied on by the College is as follows.

- Ms. Chen, the investigator retained by the College, testified that included in the various diplomas and certificates hanging on the wall of Ms. Rea's practice facility was one referring to Ms. Rea as a "Dr. of Acupuncture". The certificate was from the Academy of Hirudotherapy (exhibit17).
- The Facebook page for Toronto Leech Therapy (which the Member used for professional purposes) included two links, posted by the Member, which referred to the Member as "Dr. Jessica Rae".

The Member denies that the certificate from the Academy of Hirudotherapy referring to her as “Jessica Rea, Dr. of Acupuncture” was hung in her office. She testified that the certificate had been sent to her already framed, and that she concealed it in a drawer in her office. The Member testified that she took it out of the drawer for the sole purpose of showing it to Ms. Chen, in order to answer Ms. Chen’s questions.

The Member admits that her professional Facebook page included two links that the Member had posted, directing people to videos whose titles referred to the Member as “Dr. Jessica Rae”. She denies this means that she was “using” the title “Dr.”, although she admitted in cross-examination that she is responsible for her websites.

To resolve the question of whether the Member displayed the certificate referring to her as “Dr. of Acupuncture”, the Panel was required to assess and weigh the evidence and the credibility and reliability of Ms. Chen and the Member. In doing this, the Panel was mindful that a credible witness is one who is truthful, reliable and accurate. A witness can be honest but mistaken. The Panel looked to the factors identified in such cases as *Re Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services* (1985), 51 O.R. (2d) 302 and *Stefanov v. College of Massage Therapists of Ontario*, 2016 ONSC 848. Those factors include:

- the witness’ appearance and demeanour,
- the witness’ opportunity to observe,
- the witness’ capacity to remember,
- the probability or reasonability of the evidence,
- the internal consistency or inconsistency of the evidence,
- the external consistency of the evidence, and
- the witness’ interest in the outcome of the case.

The Panel recognized that Ms. Chen has had extensive training and experience in investigating and preparing investigation reports. She has over twenty seven years of experience in Police Services in Toronto, including as a Detective investigator, as well as several years of experience as a Licensed Private Investigator. However, due to the passage of time, Ms. Chen was unable to clearly recall whether the diploma with the title “Dr.” had been on the wall or whether Ms. Rea retrieved it from her office. Ms. Chen’s written report did not address this specific point directly. Ms. Rea testified firmly that she did not display the diploma, but only retrieved it to show Ms. Chen in response to her questions. In light of this evidence, the Panel is unable to make a finding that Ms. Rea held herself out as a doctor through displaying her diploma in her office where patients and members of the public were likely to see it.

However, there was other evidence that the Member used the title “Dr” through the links on her Facebook page. The Member admitted that she posted to her professional Facebook page two links referring to her as “Dr”. Facebook is commonly used to communicate and advice between friends as well as members of the public. By posting items referring to herself as “Dr.” she has broadcast such qualification to others who may thereby be misinformed about her qualifications as a medical practitioner.

B. Unauthorized Term, Title or Designation

This allegation also includes a more general allegation that the Member used unauthorized terms, titles or designations. Section 1(32) 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 in respect of the member's practice that is not authorized by the College.

The evidence of what terms and designations the College had authorized was found primarily in exhibit 4, the College's Fact Sheet regarding Professional Titles and Designations, and the oral testimony of Mr. Mak. This evidence, which was not disputed by the Member, was that at all relevant times the only titles and designations authorized by the College were R.TCMP, and R.Ac.

Members are specifically prohibited from using any term, title or designation indicating or implying specialization. Exhibit 4 states that, "Accurate descriptions of one's additional education, training and certification can be included in one's biography and resume so long as they do not imply specialization. However, other than basic, legitimate educational degrees (eg, PhD), other terms, titles or designations cannot be used after one's name".

The College alleges that the Member used unauthorized terms, titles and designations as follows.

- "Advanced Practitioner of Chinese Medicine" (on the website www.tcmwoman.com);
- "D.Ac.", "D.ATCM", "D.CHM", "C.H.P." and "D.Tcm" (which the Member admits that she used on her business cards as well as her professional websites).

Mr. Mak testified that none of these terms, titles or designations are authorized by the College. Mak testified that educational institutions and diplomas are not vetted or approved by the College. However the use of any initials after a practitioner's name can imply specialization, which can be misleading. The use of D. ATCM for example, can create confusion in the mind of the public with respect to the specialization of "Dr." and could be viewed as an abbreviation of the title "Dr." which is expressly prohibited

Ms. Rea's explanation for her use of the titles "Advanced Chinese Medicine Practitioner" and the various letters that appeared on her business cards was based on a misunderstanding from an instructor at a school of Chinese Medicine, who told the Member that the designations on her academic certificates were permissible for the Member to use in her practice. The Member testified that she had used the titles D.Ac and D. ATCM in recognition of her academic achievements. She had also used the designations "D. Chm" (Diploma of Chinese Medicine) and "CHP" (Certified Hirudotherapy Practitioner).

The Member testified that she now understands that the use of any of these titles is prohibited and has replaced them with the authorized title R. TCMP on her current business cards. Her counsel described her as an "accidental" offender who has now changed her business cards after being approached by the College.

The Panel finds that the terms, titles and designations used by the Member were not authorized by the College. The Panel rejects Mr. Baker's argument that any lay person can recognize and distinguish between "D" and "Dr.", and finds that these could be misleading or confusing. The Panel finds that the titles and designations used by the Member on her business cards are not basic, legitimate educational degrees that most members of the public would recognize. The Panel also finds that the use of the title "Advanced TCM Practitioner" may be understood to indicate or imply specialization in the profession.

The Panel accepts that Ms. Rea may not have intended to mislead the public about her qualifications, but finds that the use of unauthorized titles may have had that effect on members of the public. For these reasons the Panel finds that Ms. Rea has committed an act of professional misconduct by using unauthorized titles contrary to section 1(32) of the Professional Misconduct Regulation.

(d) Allegation 4 - that the Member permitted the use of testimonials in respect of her practice, contrary to section 1(30) of *Ontario Regulation 318/12* of the Act

The Professional Misconduct Regulation for the College says that it is an act of professional misconduct for a member to use or permit the use of a testimonial from a patient, former patient or other person in respect of the member's practice. The Member admitted this allegation.

In this case, the evidence before the Panel includes printouts from the website www.leechtherapy.ca, which contains a section headed "Testimonials" (exhibit 2). The Member has admitted this is her website and that she used or permitted the use of these testimonials.

The Panel finds that this allegation is proven.

(e) Allegation 5 - that the Member breached the *Food and Drugs Act*, a statute for the purpose of protecting public health, contrary to section 1(40) of *Ontario Regulation 318/12* of the Act

Section 1(40) of the Professional Misconduct Regulation says that it is an act of professional misconduct for a member to contravene a law if the purpose of the law is to protect or promote public health. The relevant "law" in this case is the *Food and Drugs Act* and its regulations.

To decide this allegation, the Panel considered:

- whether the *Food and Drugs Act* (including its regulations) is a law whose purpose is to protect or promote public health; and
- whether the Member contravened this law by importing, selling, advertising, storing and disposing of leeches in a manner contrary to the *Food and Drugs Act* and its regulations.

At the hearing, the Member admitted this allegation. There was a considerable amount of

evidence proving that the Member imported and sold medicinal leeches obtained from an unauthorized supplier. She stored and disposed of them in a manner contrary to the *Food and Drugs Act* and its regulations. While the Member testified that she believed that at the time she was acting in accordance with the law, she realizes now that she was not.

Despite these admissions, in written submissions, the Member's counsel wrote, "Ms. Rea submits that this allegation should be rejected in its entirety since it violates the rule against multiple convictions".

Independent Legal Counsel's advice was that the Member should clarify whether the Member intended to withdraw her admission on Allegation #5 and, if so, on what basis. The Member elected to not make any response to Independent Legal Counsel's advice.

The Panel proceeded on the basis that the Member admitted this allegation. Her admission at the hearing was, like her other admissions, voluntary, informed and unequivocal, with full knowledge of the consequences of making the admission. There was sufficient evidence led to support the Member's admission.

Even though the Member clearly admitted this allegation at the hearing, the Panel considered whether the allegation should be dismissed based on the rule against multiple convictions. As with Allegation 2, counsel for the Member argued there was no meaningful distinguishing feature between this allegation and the others relating to Ms. Rea's practice of hirudotherapy. As there is no additional distinguishing element that must be proven by the College to achieve a conviction for this allegation, the rule of multiple convictions applies.

The Panel finds Allegation 5 is distinct from the other allegations in the Notice of Hearing. The Panel concluded that the Member has violated the *Food and Drug Act*, a law designed to protect public health. This allegation relates not only to how the Member used leeches in her practice (engaging in an unauthorized controlled act and breaching the standards of practice of the profession), but also reflects that the Member did not follow prescribed conduct in importing and disposing of medicinal leeches. The breaching of a law that is intended to protect public health is a distinct ground of professional misconduct, and the rule against multiple convictions does not apply.

(f) Allegation # 6 – that the Member engaged in conduct or performed 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, contrary to section 1(48) of Ontario Regulation 318/12 of the Act

Section 1(48) of the Professional Misconduct Regulation states that it is professional misconduct for a member to engage in conduct which, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.

The Panel considered the Member's conduct as a whole. Ms. Rea advertised and practiced her leech therapy service as part of her practice of Traditional Chinese Medicine. Such service is

regulated by Health Canada and is restricted to physicians who obtain permission for individual patients on a case-by-case basis through the Special Access Program. Ms. Rea admitted in her testimony that such therapy may have potential side effects, including infection, bleeding and bruising. There was no evidence to indicate that such had occurred with any of her patients. Ms. Rea also admitted that she had performed leech therapy on animals by request of their owners but not under the referral or supervision of a veterinarian. The position of the College of Veterinarians (exhibit 7), supported by the *Veterinarian's Act*, is that animal health care is restricted exclusively to veterinarians. The College alleges that such unauthorized practice constitutes disgraceful, dishonourable and unprofessional conduct within the meaning of section 1(48) of the Professional Misconduct Regulation.

Mr. Baker submitted that Ms. Rea had practiced leech therapy infrequently, once every month or so. She has stopped this practice as of January 2015. He argued that this area of practice had been a grey area prior to the establishment of the College. The Member never got negative results but did receive praise from her patients for positive results. She had received formal training in Hirudotherapy in the United States and was referred to her source for leeches by her instructor.

While Ms. Rea's conduct does not, in the Panel's opinion, display moral failings, it is conduct of more than mere errors of judgment. Her conduct has persistently and seriously displayed disregard for her professional obligations. The Panel concludes that on the totality of Ms. Rea's conduct members of the profession would reasonably view her conduct as unprofessional.

Finally, the Panel considered whether this allegation should be rejected because of the rule against multiple convictions, as submitted by the Member's counsel. The Panel found that Allegation 6 was distinct from the other allegations in the Notice of Hearing in that:

- There was at least one admitted factual particular (the Member's use of leeches on animals) that was not clearly covered by any of the other allegations of professional misconduct.
- This allegation requires the Panel to consider the Member's conduct from the perspective of members of the profession, rather than from the perspective of the federal government (as articulated in the Food and Drugs Act and its regulations), the Ontario legislature (as articulated in the RHPA) or the Council of the College (as articulated in the standards of practice).
- The unique questions posed by Allegation #6 are whether the proven facts are relevant to the profession, and whether members of the profession would reasonably view the Member's conduct as disgraceful, dishonourable, and/or unprofessional. These are different questions than the ones the Panel must ask itself with respect to the other 5 allegations in the Notice of Hearing.
- Allegation 6 also allows the Panel to consider the totality of the Member's proven conduct, rather than each proven particular in isolation.

The penalty hearing should be convened as soon as reasonably possible.

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

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

Date: ___February 17, 2017_____

Signed: _____

Henry Maeots, Chair
Terry Hui
Yuqi Yang