

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

PANEL:	Henry Maeots	Chairperson, Public Member
	Xianmin Yu	Professional Member
	Barrie Haywood	Public Member

BETWEEN:

THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO	(
	(Robin McKechny for the College
	(
	(Member not Present
	(
-and-	(
	(
SVETLANA KURKINA	(Edward Marrocco,
	(Independent Legal Counsel
	(
	(
	(Date of Hearing: October 10, 2017

DECISION AND REASONS FOR DECISION

This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) on October 10, 2017 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

Svetlana Kurkina (the “Member”) was not present, and not represented by counsel, despite having been advised as to, and provided with notice of, the date of the within hearing.

The Allegations

On January 13, 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:

Failure to formulate a TCM diagnosis

1. The Member provided acupuncture treatment to Patients #1, #2, #3 and/or #4 without first formulating, communicating and/or charting a traditional Chinese diagnosis.
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 a Standard of the Profession or failing to maintain the standard of practice of the profession;
 - (b) 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; and/or
 - (c) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of acupuncture of section 1 of Ontario Regulation 318/12.

False Accounts

3. The Member billed Patient #2 for 35 acupuncture treatments but only provided 20 acupuncture treatments.
4. On or about January 12, 2016, the Member billed Patient #2 twice for acupuncture treatments provided on January 12, 2016.
5. The Member billed Patient #3 for 22 acupuncture treatments but only provided 20 acupuncture treatments.
6. For each of these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the Code, namely:
 - (a) Paragraph 19: Submitting an account or charge for services that the member knows or ought to know is false or misleading;
 - (b) Paragraph 26: Signing or issuing a document that the member knows or ought to know contains false or misleading information;

- (c) 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; and/or
- (d) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of acupuncture of section 1 of Ontario Regulation 318/12.

Failure to Keep/Falsifying Records

- 7. On or about June 28, 2016 an undercover College investigator attended at the Member's clinic posing as a client ("Patient #5"). On or about July 7, 2016, a College investigator could not locate the patient records of Patient #4 and/or #5 at the Member's Clinic.
- 8. The Member did not create individualized treatment plans for Patients #1, #2, #3, and/or #4 but, instead, utilized pre-populated treatment plans to document the acupuncture treatment provided.
- 9. The Member used white out to alter entries in the patient records of Patients #1 and/or #2.
- 10. The Member admitted to a College investigator that she did not always document in her patient records after each patient visit.
- 11. The Member could not produce the appointment books for 2013, 2014, 2015 and/or 2016 to the College investigator.
- 12. For each of these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the Code, namely:
 - (a) Paragraph 25: Failing to Keep Records in accordance with the standards of the profession;
 - (b) Paragraph 27: Falsifying a record relating to the Member's practice;
 - (c) 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; and/or
 - (d) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of acupuncture of section 1 of Ontario Regulation 318/12.
 - (e) Providing acupuncture without informed consent

13. The Member had Patient #1 sign a consent form but it does not indicate that Patient #1 was made aware of the material side effects, alternative courses of action and/or the likely consequences of not having acupuncture.
14. There is no evidence in the patient charts of Patients #1, #2, #3 and/or #4 that the issues identified in paragraph 14 were discussed with the patients by the Member.
15. For each of these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the Code, namely:
 - (a) Paragraph 1: Contravening a Standard of the Profession or failing to maintain the standard of practice of the profession;
 - (b) Paragraph 3(i): Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose except with the informed consent of the patient;
 - (c) 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; and/or
 - (d) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of acupuncture of section 1 of Ontario Regulation 318/12.

Failing to Co-Operate with a College investigation

16. On or about September 14, 2016 the College investigator met with the Member for a pre-arranged interview. The Member advised the College investigator that:
 - (a) She had no more than 30 minutes for the interview and/or
 - (b) Only the most important questions should be put to her.
17. As a result of the comments made by the Member as set out in paragraph 17, the Member failed to cooperate fully with the College contrary to subsection 76(3.1) of the Code which states that “A member shall co-operate fully with an “:investigator.”
18. For each of these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the Code, namely:
 - (a) Paragraph 1: Contravening a Standard of the Profession or failing to maintain the standard of practice of the profession;
 - (b) Paragraph 39: Contravening a provision of the Act, or the *Regulated Health Professions Act, 1991*;

- (c) 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; and/or
- (d) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of acupuncture of section 1 of Ontario Regulation 318/12.

Performing a controlled act that the member is not authorized to perform

- 19. The Member injected ReDexis Ultra, Revanesse Pure and/or Revanesse Countour below the dermis of Patients #2, and/or #3.
- 20. The Member is not a member of a college that is authorized to “perform a procedure on tissue below the dermis.”
- 21. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the Code, namely:
 - (a) Paragraph 1: Contravening a Standard of the Profession or failing to maintain the standard of practice of the profession;
 - (b) Paragraph 39: Contravening a provision of the Act, or the *Regulated Health Professions Act, 1991*;
 - (c) 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; and/or
 - (d) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of acupuncture of section 1 of Ontario Regulation 318/12.

The Motion

The Member was not present and did not enter a plea to the allegations at this hearing. Rather, the College brought a motion to stay the proceedings on the basis of an Undertaking and Surrender Agreement signed by the Member on May 26, 2017 (the “Agreement”).

In the Agreement, the Member indicated she wished to surrender her Certificate of Registration and to forever withdraw from the practice of traditional Chinese medicine and acupuncture in Canada or the United States of America and any other jurisdiction in order to avoid having the allegations in the Notice of Hearing considered by the Discipline Committee in a full and open hearing.

In consideration of the College’s agreement to stay the proceedings at this time, the Member agreed to:

- To surrender her Certificate of Registration to the College by no later than June 1, 2017;
- To immediately resign from the College;
- To immediately cease using the title acupuncturist, and performing Traditional Chinese medicine (TCM) acupuncture or communicating a TCM diagnosis;
- To immediately refrain from practising and/or holding herself out as a TCM practitioner or acupuncturist in Canada, the United States of America and any other jurisdiction;
- To never apply for registration, licensure or similar status with the College or any other licensing body in any other jurisdiction that governs the practice of TCM or acupuncture;
- To never issue receipts for acupuncture or TCM to patients;
- To pay \$3000 to partially offset the College's costs of investigating this matter no later than June 1, 2018 and the Member acknowledged that the College was accepting such a small quantum in light of her severe financial circumstances; and
- To have the Agreement and/or its terms posted on the College Register, Website and publications.

In the Agreement, the Member further acknowledges that she understands and agrees to additional terms and conditions, including the following:

- Should she ever reapply for membership, registration, licensure or similar status with the College in the future, the College will be entitled to rely upon the Agreement in any registration or other similar proceeding as reason to deny her application.
- Should she ever reapply for membership, registration, licensure or similar status with the College or a regulator of TCM or acupuncture in the future, the College will be entitled to proceed with the Hearing (as described in the Notice) as well as for the breach of the Agreement and that the College will be entitled to rely upon the Agreement for that purpose.

Decision

Having considered the materials filed and the submissions of College counsel, the panel finds that it is in the public interest to grant the relief requested. The panel orders that the allegations of professional misconduct against the Member set out in the Notice of Hearing dated January 13, 2017 are stayed in accordance with the terms set out in the Undertaking and Surrender Agreement signed by the Member on May 26, 2017.

Reasons for Decision

The College's duty is to protect the public from professional misconduct and/or incompetence by its members. While a hearing has not been conducted and as such the allegations of misconduct have not been found proven, any concerns regarding the member's misconduct or incompetence

are allayed by the terms of the Undertaking and Surrender Agreement. Thereby the member is, by consent, barred from practicing as a TCM practitioner or acupuncturist in Canada, the United States of America or any other jurisdiction, a restriction that surpasses any possible order that may result from a discipline hearing before this College. By agreeing to contribute a sum to partially offset the College's costs of investigating this matter, the member also lessens the cost to be borne by the other members of this College.

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:

October 19, 2017

Date



Henry Maeots, Chairperson

Panel Members: Henry Maeots
 Xianmin Yu
 Barrie Haywood