

**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****

**Decision Date:** January 19, 2023

**Indexed as:** Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Jeff McMackin, 2023, ONCTCMPAO 21

<b>Panel:</b>	Matthew Colavecchia	Chairperson, Professional Member
	Iftikhar Choudry	Public Member
	Judy Cohen	Public Member

**BETWEEN:**

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

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( Anastasia-Maria Hountalas for the  
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**-and-**

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**JEFF MCMACKIN**

( Carley Reynolds for the Member  
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Fredrick Schumann  
Independent Legal Counsel

Date of Hearing: November 28, 2022

**DECISION AND REASONS FOR DECISION**

[1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) of the College of Traditional Chinese Medicine Practitioners and Acupuncturists (the “College”), on November 28, 2022, via videoconference.

## **The Allegations**

[2] The allegations were set out in a Statement of Allegations appended to the Notice of Hearing. The Statement of Allegations is reproduced as Appendix “A” to these reasons.

## **Member’s Position**

[3] The Member admitted the allegations in the Notice of Hearing. The panel conducted a plea inquiry and was satisfied that the Member’s admissions were voluntary, informed and unequivocal.

## **The Evidence**

[4] The evidence was tendered by way of an Agreed Statement of Facts. The substantive portion of the text of the Agreed Statement of Facts is reproduced below:

### **The Member**

1. At all material times, Jeff McMackin (the “Member”), was a member of the College.
2. The Member became a Grandparented member (R. TCMP, R. Ac.) on or about August 1, 2013 and transferred to the General class (R. TCMP, R. Ac.) on or about November 20, 2015. A copy of the Member’s public register profile is attached as **Tab “A”**.
3. At the material times, the Member was self-employed and worked in a clinic in Collingwood, Ontario.

### **Patient Communication and Boundaries**

4. The Member treated the Patient from August 2018 to September 2019. It is agreed that, during the course of their therapeutic relationship, the Member did the following:
  - a. Failed to consistently obtain informed consent to treat the Patient;
  - b. Failed to discuss a treatment plan with the Patient at every visit as required, but did so on some occasions;
  - c. Failed to clearly communicate the clothing removal process to the Patient as required;
  - d. Rolled up the Patient’s pants during treatment without advising her in advance and without seeking informed consent to do so;
  - e. Failed to provide draping to the Patient during treatment at every visit as required, but did so on some occasions;
  - f. Hugged the Patient on three (3) occasions in the clinic;

- g. Asked the Patient to put her number into his phone so that they could discuss the Member potentially adopting a kitten from the Patient's acquaintance. The Patient agreed to this particular correspondence; and
  - h. Used the Patient's phone number to discuss various other personal and financial matters with the Patient during treatment and via text message, including but not limited to:
    - i. His fitness regime;
    - ii. An escape room;
    - iii. A TV show; and
    - iv. His income.
- 5. It is agreed that on September 27, 2018 at 10:04 PM, the Member sent the Patient a video of his cat via text message. When the Patient responded on September 28, 2018 that the Member's cat needed a puppet to wrestle with, the Member responded, "I want a puppet to wrestle with". If the Member were to testify, he would state that he was referencing his high stress levels at the time. It is agreed that although this correspondence was of an inappropriate personal nature, it was not of a sexual nature.
- 6. It is further agreed that the following occurred during a treatment session in or about October 2018:
  - a. After the Patient undressed to her bra, the Member returned to the treatment room and found the Patient lying prone on the treatment table. The Patient had not removed her bra as she was not certain that this was required for treatment.
  - b. The Member advised the Patient that the bra needed to be unclasped.
  - c. The Patient expected the Member to leave the room so she could change, but instead the Member asked if he could unclasp the bra. When the Patient said yes, the Member proceeded to unclasp her bra.
- 7. It is agreed that the Member did not have informed consent to unclasp the Patient's bra as set out in paragraph 6 above.
- 8. It is further agreed that hugging the Patient and discussing personal and financial matters with the Patient during treatment and via text message constitutes a violation of professional boundaries.
- 9. A redacted copy of text message exchanges between the Patient and the Member is attached as **Tab "B"**.

10. If the Member were to testify, he would state that at the time in question his marriage was falling apart. He was also struggling with his sexual orientation and attempting to come out.

### **Sexual Abuse**

11. It is agreed that during a treatment session on September 10, 2019, the Member told the Patient that he wanted to open a clinic called “Pilates Fuck” where rooms of Pilates equipment could be rented for sexual encounters.
12. It is agreed that this remark is of a sexual nature and not of a clinical nature appropriate to the service provided.
13. The Patient did not return for treatment with the Member following this appointment.

### **Standards of Practice**

14. The College’s Standard for Communication, a copy of which is attached as **Tab “C”**, states that members must do the following:
  - a. provide clear and understandable information to the patient prior to, during and after treatment;
  - b. carry out examinations or treatment only with the informed consent of the patient;
  - c. observe all relevant legislation, such as the *Health Care Consent Act*, and all CTCMPAO guidelines pertaining to consent;
  - d. observe the RHPA and all guidelines of the College pertaining to boundaries and the prevention of sexual abuse; and
  - e. use a range of communication skills to develop and maintain effective professional relationships.

### **Admission of Professional Misconduct**

15. It is agreed that the above-noted conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Health Professions Procedural Code (the “Code”), being Schedule 2 to the *Regulated Health Professions Act, 1991* (the “RHPA”), in that the Member sexually abused the Patient (more particularly made remarks of a sexual nature).
16. It is further agreed that the above-noted conduct constitutes professional misconduct pursuant to section 51(1)(c) of the Code and as set out in the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006* (the “Act”):

- 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 (more particularly Standard for Communication);
- b. **Paragraph 3:** Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose except, i. with the informed consent of the patient or the patient's authorized representative, or ii. as required or authorized by law;
- 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 by the profession as disgraceful, dishonourable or unprofessional; and
- d. **Paragraph 49:** Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture.

### **Decision of the Panel**

[5] The panel found that the Member had engaged in professional misconduct as alleged in the Statement of Allegations and as admitted in the Agreed Statement of Facts.

### **Reasons for Decision**

[6] First, under the legislative scheme, "sexual abuse" of a patient by a member includes "behaviour or remarks of a sexual nature by the member towards the patient" other than those that are of a clinical nature appropriate to the service provided. The Member's comment to the patient about opening a Pilates clinic were of a sexual nature and not of a clinical nature. Therefore, they constituted sexual abuse as defined in the legislative scheme.

[7] Second, the Member's conduct did not comply with the College's Standard for Communication. This standard requires members, among other things, to provide clear and understandable information to the patient, prior to, during, and after treatment; and obtain informed consent for all examinations and treatments. The Member has admitted that on some occasions he did not do so. The same conduct also constitutes professional misconduct under paragraph 3 of the regulation, since it requires informed consent.

[8] The Member's admitted conduct would be reasonably regarded by the profession as disgraceful, dishonourable, or unprofessional. It would also be reasonably regarded by the profession as unbecoming a practitioner of traditional Chinese medicine.

### **Penalty and Costs Submissions**

[9] The Member and the College agreed on a joint submission on penalty and costs. The Joint Submission was signed by the Member on October 3, 2022 and the substantive portion of the Joint Submission is as follows:

1. The Member is required to appear before a panel of the Discipline Committee immediately following the hearing of this matter to be reprimanded, with the fact of the reprimand and a summary of the reprimand to appear on the public register of the College.
2. The Registrar is directed to immediately suspend the Member's Certificate of Registration for a period of four (4) months with one (1) month remitted, to commence immediately following the hearing.
3. The Registrar is directed to immediately impose the following specified terms, conditions and limitations on the Member's Certificate of Registration:
  - a. The Member is required to successfully complete the PROBE ethics course at his own expense, within six (6) months of the date of the Order of the Discipline Committee.
  - b. The Member is required to reimburse the College for funding provided to the Patient for therapy and counselling provided under the program established under section 85.7 of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Profession*, up to the maximum allowable amount of \$17,370.00.
  - c. The Member is required to post security for that funding in the amount of \$14,000.00, in eighteen (18) monthly installments, with the first installment due thirty (30) days from the date of the Discipline Committee's Order. Installments #1-17 will be in the amount of \$777.78 and Installment #18 will be in the amount of \$777.74.
4. The Member is required to pay to the College costs in the amount of \$5,000 within thirty (30) days of the date of the Discipline Committee's Order.
5. The Member acknowledges that this Joint Submission as to Penalty and Costs is not binding upon the Discipline Committee.
6. The Member acknowledges that he has received independent legal advice.

### **Penalty and Costs Decision**

[10] After considering the joint submission and the submissions of the parties, the Panel decided to accept the Joint Submission, and therefore made an order in the terms of the Joint Submission.

[11] The Member waived his right to appeal the reprimand portion of the penalty, and so the reprimand ordered by the Panel was delivered at the conclusion of the hearing.

### **Reasons for Penalty and Costs Decision**

[12] We were required to accept the joint submission unless to do would bring the administration of justice into disrepute or be contrary to the public interest: *R v Anthony-Cook*, 2016 SCC 43; *Ontario (College of Traditional Chinese Medicine Practitioners & Acupuncturists of Ontario) v Xu*, 2020 ONCTCMAPO 12.

[13] We concluded that the joint submission would not bring the administration of justice into disrepute or be contrary to the public interest. In particular, along with the joint submission, we were shown other cases from this and other colleges that were similar in nature and the accompanying penalties. While each case is different, the penalties in those cases were not out of line from those suggested to us in the joint submission. As such, we were inclined to accept the jointly submitted penalties.

I, Matthew Colavecchia, sign this decision as chairperson of the Panel and on behalf of the Panel members listed below.

Date: January 19, 2023

Signed:



Matthew Colavecchia  
Iftikhar Choudry  
Judy Cohen

## APPENDIX “A” – STATEMENT OF ALLEGATIONS

1. Jeff McMackin (the “Member”) became a Grandparented member (R. TCMP, R. Ac.) of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario on or about August 1, 2013 and transferred to the General class (R. TCMP, R. Ac.) on or about November 20, 2015.
2. At the material times, the Member was self-employed and worked in a clinic in Collingwood, Ontario.

### The Patient

3. The Member treated the Patient from approximately August 2018 to September 2019.
4. It is alleged that the Member:
  - a. Did not obtain informed consent to treat the Patient;
  - b. Did not discuss a treatment plan with the Patient;
  - c. Did not clearly communicate the clothing removal process to the Patient;
  - d. Removed the Patient’s socks and rolled up her pants without advising her in advance and/or seeking consent to do so;
  - e. Did not provide draping to the Patient during treatment;
  - f. Hugged the Patient and/or asked the Patient to hug him;
  - g. Asked the Patient to put her number into his phone and/or if they could exchange phone numbers;
  - h. Discussed personal and/or financial matters with the Patient during treatment and/or via text message including but not limited to:
    - i. His fitness regime;
    - ii. An escape room;
    - iii. A TV show;
    - iv. His income; and/or
    - v. Asking the Patient to not disclose certain disclosures made by him to his wife.
5. It is alleged that the Member sent the Patient a video of his cat. It is alleged that the Patient responded that his cat needed a puppet to wrestle with. It is alleged that the Member responded, “I want a puppet to wrestle with.”



6. It is alleged that at an appointment, the Member returned to the treatment room and found the Patient lying prone on the treatment table. The Patient had not removed her bra as she was not certain that this was required. It is alleged that the Member advised the Patient that the bra needed to be removed. It is alleged that the Patient expected the Member to leave the room. It is alleged that the Member asked if he could unclasp the bra. It is alleged that when the Patient said yes he proceeded to do so and/or removed the bra and/or flung it on to a chair.
7. It is alleged that on the last appointment the Member told the Patient that he wanted to open a clinic called “Pilates Fuck” where rooms of Pilates equipment could be rented for sexual encounters.

### **Alleged Acts of Professional Misconduct**

8. It is alleged that the above conduct constitutes professional misconduct pursuant to section 51(1)(b.1) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act* in that the Member sexually abused the patient (behaviour or remarks).
9. It is alleged that the above conduct also constitutes professional misconduct pursuant to section 51(1)(c) of the Health Professions Procedural Code, being Schedule 2 of the *Regulated Health Professions Act* and as set out in one or more of the following paragraphs of section 1 of Ontario Regulation 318/12 made under the *Traditional Chinese Medicine Act, 2006*:
  - 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 (more particularly Standard for Communication);
  - b. **Paragraph 3:** Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose except, i. with the informed consent of the patient or the patient’s authorized representative, or ii. as required or authorized by law.

- 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 by the profession 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 traditional Chinese medicine or acupuncture.