

**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
Yuqi Yang Professional Member
Maureen Hopman Public Member

BETWEEN:

**THE COLLEGE OF TRADITIONAL
CHINESE MEDICINE PRACTITIONERS
AND ACUPUNCTURISTS OF ONTARIO** (Jaan Lilles and Laura Robinson
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-and- (Jacob Stilman
(for Phillip Tran
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PHILLIP TRAN (Johanna Braden,
(Independent Legal Counsel

Dates of Hearing: February 27 and 28, March
1, 2 and 3, 2017

DECISION AND REASONS FOR DECISION

This matter came on for hearing the week of February 27, 2017 before a panel of the Discipline Committee (the “Panel) at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

Publication Ban

At the request of the College, the Panel made an order prohibiting the publication and/or broadcasting of the name of the patient identified in this hearing, as well as any information that would reasonably identify the patient.

The Allegations

Allegations of professional misconduct against Phillip Tran (the "Member") were referred to the Discipline Committee of the College, in accordance with section 26(1) of the *Health Professions Procedural Code* (the "Code"), which is Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, C. 18 (the "RHPA"). They were set out in the Amended Notice of Hearing dated October 25, 2016, and 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. Sexually abused patient ██████ contrary to section 51(1)(b.1) of the Code and section 1(2) of Ontario Regulation 318/12;
2. Contravened the RHPA by performing an unauthorized controlled act, contrary to section 27(1) of the RHPA and sections 1(10) and 1(39) of Ontario Regulation 318/12;
3. Contravened a standard of practice of the profession contrary to section 1(1) of Ontario Regulation 318/12;
4. Contravened a standard of practice of the profession contrary to section 1(25) of Ontario Regulation 318/12 by failing to keep appropriate records;
5. Contravened the RHPA by using the title "Dr." contrary to section 33(1) of the RHPA and section 32 of Ontario Regulation 318/12; and
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 a member 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 Amended Notice of Hearing are as follows.

1. Mr. Phillip Tran holds a certificate of registration in the grandparent class. Mr. Tran's primary practice location is 1048-3025 Hurontario St., Mississauga, Ontario L5A 2H1.
2. On or about January 30, 2014 Mr. Tran sexually abused patient [REDACTED]. by, among other things, touching her vagina and clitoris and digitally penetrating her during the course of an acupuncture treatment;
3. On or about January 30, 2014, Mr. Tran fell below the standard of practice in his treatment of patient [REDACTED]. by, among other things, touching her vagina and clitoris, and digitally penetrating her, and by placing acupuncture needles in and around her vagina.
4. On or about January 30, 2104, Mr. Tran performed a controlled act he was not authorized to perform in respect of patient [REDACTED]., by among other things, touching her vagina and clitoris, and digitally penetrating her.
5. Mr. Tran failed to keep any patient records in respect of patient [REDACTED]. contrary to the professional standards of practice of the profession.
6. Mr. Tran, in the course of treating patient [REDACTED] used the restricted title "Dr."

Member's Position

The Member denied all allegations of professional misconduct in the Amended Notice of Hearing.

Overview

Mr. Tran, age 40, immigrated to Canada at age 14. He attended high school in Canada and later studied acupuncture in Vietnam. He described his understanding of English as limited and used the services of a Vietnamese translator at this hearing.

Mr. Tran commenced his practice of acupuncture in Ontario with his father in 2002. He has been a member of the College since 2013. At the time of the alleged incident, he maintained a busy practice at two locations, dividing his work week between his clinics in Ottawa and Mississauga. He averaged approximately 80 patients per week between the two locations, working 48 weeks of each year.

On January 30, 2014 he treated the complainant, [REDACTED], a woman who was then twenty-seven years old, who had telephoned for an appointment on the advice of her massage therapist. [REDACTED] was seeking help for a pain in her right shoulder resulting from a repetitive strain injury. She had not had previous acupuncture treatment and knew little about the treatment other than it involved the insertion of needles.

It is alleged that, during such treatment, Mr. Tran sexually abused [REDACTED] by touching her breast and nipple, massaging her vaginal area, touching her clitoris, inserting acupuncture needles outside her labia, and inserting his finger into her vagina. Mr. Tran's position was that none of this conduct occurred.

During the investigation of [REDACTED]'s complaint, the College alleged to have also found evidence that Mr. Tran had improperly used the title of "Dr." and was deficient in his record keeping. Such actions, the College alleged, contravened the standards of the profession and amounted to professional misconduct.

Appearing as witnesses for the College were the complainant [REDACTED] and Mr. Richard Kwan who was accepted by the parties and the Panel as an expert qualified to give opinion evidence on professional standards of practice of the profession, including the placement of acupuncture needles, appropriate clinical communication and touching, and record keeping.

Appearing for the Member were Ms. Amy Steffler and Ms. Amenaghawan Idahosa, both of whom are nurses who had examined [REDACTED] separately and on different dates, shortly after the alleged incident, for signs of acupuncture treatment and sexual assault. The Member also testified on his own behalf.

Several diagrams were also entered as exhibits, by both parties, purporting to be accurate indicators of the points of injection by Mr. Tran on [REDACTED]. As these diagrams differed at points critical to the Panel's findings regarding the propriety or impropriety of the placement of some acupuncture needles, the credibility and reliability of the evidences of Mr. Tran and [REDACTED] was of the essence.

After careful and lengthy deliberations, the Panel found that the College's evidence met the applicable standard of proof sufficient to prove Allegations # 1, 2, 3, 4, 5 and 6.

The Issues

The issues for the Panel to decide were as follows.

1. In the course of treating [REDACTED], did the Member:
 - a. touch [REDACTED]'s breast, including her nipple: and/or
 - b. touch [REDACTED]'s vaginal area in one or more of the ways that she described, including by placing needles on the side of her labia, massaging the vaginal area, touching her clitoris, and inserting his finger in her vagina?
2. Was the Member's record-keeping so deficient as to fall below the standards of practice of the profession?
3. Did the Member use the title "Dr."?

The parties agreed that if the Member touched ██████'s breast and/or nipple, or if he touched her vaginal area in any of the ways that she described, then the Member would be guilty of sexual abuse, breaching the standards of practice of the profession, and engaging in conduct that would reasonably be considered by the profession as disgraceful, dishonourable or unprofessional. If the Member inserted his finger in ██████'s vagina, it was also agreed that he would be guilty of Allegation 2, performing an unauthorized controlled act, since members of this College are not authorized to perform the controlled act of putting a hand, instrument or finger beyond the labia majora.

The Evidence

(a) Expert Evidence Regarding Acupuncture Generally

Mr. Richard Kwan was tendered by the College and accepted by the Panel as an expert witness qualified to give opinion evidence on the standards of practice of the profession. He stated that there are more than 369 traditional acupuncture points on the body, located on meridians which are channels of energy and body fluids. The acupuncture needles may be stimulated, including by rotating or thrusting deeper for greater effectiveness. He also testified that there are points in the body called "Ashi points", which are outside of the traditional acupuncture points and are not on meridians. These may also be utilized, with a patient's consent, to unlock areas of tenderness and sensitivity. Ashi points are patient-specific and located through palpitation, which determines areas of sensitivity particular to the patient. The patient must consent to testing around the Ashi point area. If the patient has not presented a complaint, the practitioner should not touch, insert needles or massage the area.

Acupuncture needles may sometimes leave visible marks, depending on conditions such as sensitivity of the area, skin reaction and alcohol use. In his written report, which was submitted as an exhibit, Mr. Kwan wrote that it is not appropriate to place acupuncture needles in or around female genitalia, with one exception. The one acupuncture point on the female genitalia is known as "Meeting of YIN" *Hui Yin* REN-1. It may be used only with a patient's consent. This acupuncture point is rarely used because of its invasive location and because there are many alternative points that can be used distally on the legs and lower abdomen to treat vaginal or gynecological problems. On cross-examination Mr. Kwan explained that "meridians" are pathways relating parts of the body. Stimulation at one point of the body can, by redirection of the pain, cause dull but not acute pain to be felt elsewhere.

Mr. Kwan also wrote in his report that it is never appropriate for a Traditional Chinese Medicine Practitioner or Acupuncturist to touch or come into contact with the female genitalia unless there is clinical relevance to the examination due to vaginal infection or skin condition around the genitalia. In such case, the use of medical gloves and consent from the patient would be required. Such consent, Mr. Kwan agreed, need not be in writing.

(b) Evidence Regarding the Treatment Session

Both ██████ and the Member testified about the acupuncture session that took place on January 30, 2014.

The evidence of ██████ and Mr. Tran regarding the early part of the acupuncture treatment was generally in agreement. Upon meeting, ██████ told Mr. Tran she was looking for treatment for neck and shoulder pain and stress. Mr. Tran testified that he can determine a patient's problems by

looking at their face and then asks about those problems. When Mr. Tran asked [REDACTED] about any other health concerns, [REDACTED] stated she was being treated for depression and sleep issues, had low blood pressure and was on several medications. Mr. Tran also inquired about [REDACTED]'s menstrual cycle, cramping and acne condition. He then told her that 3 months of twice weekly treatment would "fix everything", including the acne on her face and dimpled skin (cellulite) on her buttocks. Mr. Tran admitted however that he did not explain the treatment he was proposing. No paperwork was prepared at that time. Mr. Tran and [REDACTED] then passed through one treatment area to a further one at the back of the clinic. [REDACTED] passed by a patient who had acupuncture needles in her head and face, which made her feel nervous. The room in the back where [REDACTED] was treated was separated from the adjacent room by a screen-type room divider. [REDACTED] did not see any other person in the back room at the time.

Mr. Tran wanted to commence [REDACTED]'s treatment by applying needles to her ankle area. However, as [REDACTED] was wearing "skinny" jeans and she was unable to roll them up to access that area of her lower leg, Mr. Tran suggested that she remove her jeans in a nearby change room and apply a blanket (a bed-sized sheet) which he provided. This she did. [REDACTED] returned to the treatment room wearing what she described as a "tank top", bra and underwear (with a full paneled back and not a thong style), with the sheet wrapped around her waist and tucked in at the hip as one would wear a towel. [REDACTED] testified that she reminded Mr. Tran that she was seeking treatment for her shoulder and that Mr. Tran replied that he would "fix everything".

Mr. Tran asked [REDACTED] to lie on her back, on a treatment table, and then inserted an acupuncture needle into the top of her right ankle. Mr. Tran said something to the effect "See, not so bad". He was intending to reassure her. [REDACTED] acknowledged that she had barely felt the needle. Mr. Tran then proceeded with the treatment, while [REDACTED]'s eyes were closed, by inserting additional needles from the bottom of her body to the head, inserting needles on alternate sides along her legs, forearms, shoulders, throat, forehead and temple. The needles were inserted quickly. Their purpose was not discussed.

[REDACTED] stated that Mr. Tran then asked her permission to move her underwear down to access below her navel, which she agreed to. Mr. Tran then inserted three needles horizontally across her abdomen a few inches below her navel. She believed, but not with certainty, that another needle was inserted vertically below her belly button. She claimed that she was nervous but tried to remain open minded to her treatment. Mr. Tran then asked her to relax while he left the room for 20-30 minutes before returning to complete her treatment.

The testimonies diverge regarding the treatment upon Mr. Tran's return to the room. [REDACTED] testified that Mr. Tran directed her to lie on her left side, not quite in a fetal position with her legs at a 90 degree angle to her body with her right leg resting on her left leg. She testified that Mr. Tran asked her to lower her underwear. She was uncertain as to how far down the garment was pulled. Mr. Tran started to place needles from the neck downwards. [REDACTED] then felt that some of the needles in her collarbone area were moved or adjusted. She claimed that, while standing behind her, Mr. Tran asked her to lift her right arm. She testified that Mr. Tran touched the area at the front next to her right armpit "as if he was feeling for the right spot" and then inserted an acupuncture needle into her right chest area. She felt that pin being moved around or in and out. Then, she claims, she felt as though Mr. Tran massaged her right breast and touched her right nipple. The pin near her right

breast was painful, but, at the time, [REDACTED]. did not complain and in fact was impressed, thinking Mr. Tran had noticed and treated a swelling she had had with her right breast but which she had not told him about.

[REDACTED]'s evidence continued, stating Mr. Tran then placed additional needles in her right shoulder area and downwards on her back. [REDACTED]. recalled the sheet as lying across her body but does not remember if it was still tied or not. She alleges that Mr. Tran then placed his hand in her underwear, moving it down slightly. [REDACTED]. also testified that she felt Mr. Tran's hand touch the spot between her legs and vagina, as if he was looking to find the correct spot to place an acupuncture needle. She stated that Mr. Tran then placed a needle in the crease between her leg and vagina, on each side. She was "pretty sure" that she had opened her legs a bit to facilitate this. [REDACTED]. testified that Mr. Tran then touched her clitoris twice, massaged the area between her clitoris and urethra, and inserted what she thought was his finger in her vagina and moved it in a rhythmic massage fashion. She was unsure of whether the touching was part of the acupuncture treatment, but again, she thought Mr. Tran may have noticed something in her vaginal area that needed to be treated.

Mr. Tran denied that he ever touched [REDACTED]'s breast or vaginal area, and denied that he placed needles around her labia. He agreed that there was no clinical purpose to touch the vagina or insert a finger into her vagina, and that touching the vagina or clitoris in the way described by [REDACTED] would only be for sexual stimulation.

Mr. Tran's evidence was that he did not touch [REDACTED]. on her breast and/or in and around her vagina. He testified that he physically could not have done so, in light of [REDACTED]'s clothing and the sheet that was covering her. This evidence was challenged in cross-examination.

In terms of his access to [REDACTED].'s vaginal area, Mr. Tran stated that he touched and inserted four needles to [REDACTED].'s lower abdominal area. He also placed needles in her lower back and the backs of her legs. There was an issue about how many needles Mr. Tran had inserted just below [REDACTED]'s buttocks. He did not keep a contemporaneous record of the acupuncture points used. Instead, the Panel was given two different diagrams that Mr. Tran had prepared, both claiming to represent his treatment of [REDACTED]. One diagram (Exhibit 12C, prepared approximately February 2015) shows one acupuncture point in the crease between the buttock and upper thigh on [REDACTED].'s right leg. A second diagram (Exhibit 20, prepared approximately May 2016) shows four needle points in the crease between the buttock and upper thigh, two on each leg. Mr. Tran's evidence at this hearing as to which version was correct was inconsistent. He eventually was unable to give an answer other than, "If I'm right, I'm right; if I'm wrong, I'm wrong."

In light of the places that Mr. Tran acknowledges he placed needles (the lower abdomen, the lower back and the back of at least one, the right upper, thigh, Mr. Tran acknowledged the need to uncover [REDACTED]'s wrap to access her back and abdominal areas. He testified that he lifted the wrapped sheet to place some needles, such as to her abdomen, back and buttock, and then recovered those areas with the sheet. He said that he did not untie the wrap. He eventually confirmed in cross examination at this hearing that he had admitted during his criminal trial that while [REDACTED]. was in that position, it was possible for him to have access to her vaginal area.

In terms of his access to [REDACTED]'s breast, Mr. Tran said that it would have been impossible. He testified that when [REDACTED] was lying on her side, he could not see any part of her breast because the athletic-style tank top she was wearing was tight.

In terms of what happened towards the end of the acupuncture session, there are some differences between the evidence of [REDACTED] and Mr. Tran. Once all the needles were inserted on [REDACTED]'s back, Mr. Tran left the room again. [REDACTED] says she became upset and started crying. When Mr. Tran returned about 20 or 30 minutes later to remove the needles, Mr. Tran noticed her tears and asked if she was okay. She replied that she felt violated. This reply was not disputed. [REDACTED] then asked Mr. Tran if he did the same to all first time patients. She said his reply was "no". Mr. Tran agrees [REDACTED] asked him that question, but said his response was "yes", trying to convey that he treats all patients the same.

[REDACTED] says she changed her clothes right in the treatment room, without bothering to go back to the change room because she wanted to leave as quickly as possible. Mr. Tran recalls that [REDACTED] went to the change room. Mr. Tran testified that by this time there was another patient in the back treatment room. [REDACTED] does not recall this.

They both agree that [REDACTED] then went to the washroom, where she says she checked to see if all needles had been removed because she still had the sensation that some remained between her legs. On returning to the reception area Mr. Tran commented that she was stressed and asked about the vitamins she was taking. Mr. Tran gave [REDACTED] a container of pills and some papers. [REDACTED] picked up Mr. Tran's business card, paid her bill and left. The invoice for the treatment was \$55. [REDACTED] had handed Mr. Tran three \$20 bills and received \$5 change. Mr. Tran asked [REDACTED] to leave the \$5 change towards her next treatment but she said she was not returning. [REDACTED] had not paid for the \$8 worth of vitamin pills. On cross-examination Mr. Tran confirmed that as a result he told Officer Murphy, a police officer who later investigated [REDACTED]'s complaint, that maybe he should pursue a criminal complaint against [REDACTED].

(c) Events After the Treatment Session

[REDACTED] testified that she left the Member's clinic and went to her car. She saw a needle was still in her right ankle. She testified that she was suspicious about the propriety of her treatment and that she researched the internet, on her mobile phone while in her car, for information about "vaginal acupuncture." She didn't know whether if this was a legitimate treatment.

She proceeded to her job as she had been away on vacation and didn't want to take more time off. Upon returning home after work [REDACTED] reported the incident to her live-in boyfriend, saying "I think my acupuncturist fingered me". She also telephoned her mother, sister and a friend who advised her to tell the police and to call Telehealth. [REDACTED] claims that her boyfriend took photographs of her abdomen and genitals that evening to document what she says were the marks still on her body from the acupuncture needles. The photos from the camera's memory card were entered as exhibits. The time stamp on the photos indicated a time of 9:14 pm. [REDACTED] testified that she believed her phone recorded the time as being an hour later than it actually was, and she identified other photos she had taken (for

example, of her cell phone) to demonstrate that the pictures had been taken an hour before the time recorded on the photos.

█. then telephoned Telehealth and was directed to go to the emergency department of St. Joseph's Health Centre. There she was interviewed and examined by a nurse, Amy Steffler, who had been summoned from St. Michael's Hospital, and who served as a Primary Sexual Assault Examiner. Ms. Steffler inquired if █. had been penetrated by a penis to which █. replied "no". Ms. Steffler testified that █. claimed needles had been placed in her genital area during an acupuncture treatment and that she had been fondled by the acupuncturist. Ms. Steffler testified that she followed her standard protocol of interview and physical examination using a forensic evidence kit. Her examination of █. did not reveal any abnormalities although the lighting in the examination room was poor. She had looked for any bruising or injuries from sexual contact. She observed bruising in the right shoulder area and two pinpoint red marks on █.'s lower abdomen. She was unable to say what had caused the marks. She confirmed, in cross-examination, that her failure to note any marks or pinpoints in and around █.'s genitalia did not mean they were not present at the time of her examination, due to the "notoriously dark" lighting in the room and the nature of the injuries she was looking for. She was looking for "obviously visible" marks, and it was possible that because of the lighting and/by Ms. Steffler.or passage of time, needle marks around █.'s vaginal area were not visible

█ was then escorted by police officers to her home to retrieve her underwear and then to a police station where she waited a few hours before being taken to another police station where she was interviewed by Constable Murphy on the morning of January 31, 2014. During that interview she was offered a body diagram on which she marked the spots where she believed she had been touched and where she believed needles had been placed. That diagram was entered as an exhibit. Upon cross-examination by the Member's Counsel, █. admitted that she may not have been 100% accurate with the diagram at that time as she was upset and sleep deprived.

A few days later, on February 3, 2014, █. went to Women's College Hospital where she was seen by another nurse, Ms. Idahosa. Nurse Idahosa served in the sexual assault unit of the hospital. █. stated she had come to document acupuncture marks on her body. █. had brought along her camera with the pictures taken by her boyfriend the evening after the treatment. Ms. Idahosa was unable to see any marks on physical examination and could not identify the marks on the photos.

Mr. Kwan, who was accepted as an expert in traditional Chinese medicine and acupuncture, testified that the marks visible on the photos taken of █. after the incident were not inconsistent with acupuncture points.

█'s photos were entered as an exhibit. They display red marks in a symmetrical pattern on both sides in the pattern described by █. across her lower abdomen and in the creases between her legs and vagina.

(d) Evidence Regarding Record-Keeping

█ testified, without contradiction, that neither she nor Mr. Tran completed any paperwork at the time of their initial conversation, prior to commencement of treatment. She spoke with Mr. Tran in the reception area of the clinic and reported that she was seeking treatment for her right shoulder pain. She testified that Mr. Tran asked her additional questions about her medical history, and she advised him

in response to his questions that she was stressed and had some cramping during her menstrual cycle. She stated that while she was also experiencing anxiety and depression at that time, she did not recall if she reported those issues to Mr. Tran.

The College's record keeping policy is based on section 3(c) iii of the Jurisprudence Handbook and section 3.7 Risk Management: Patient and their Records, of the Safety Program Handbook, both of which are contained in courses that Mr. Tran had taken and passed by his admission. Nevertheless, Mr. Tran's only "record" regarding his treatment of [REDACTED]. were his drawings of [REDACTED]'s treatment points, one prepared about one year and the other about two years after [REDACTED]. attended his office. These, he stated, had been prepared upon the advice of his counsel at the time. He also stated that he has no additional records for [REDACTED].

Mr. Richard Kwan, an expert witness, submitted a report he had prepared for the College, assessing the adequacy of such records. Applying the College's standard of practice, Mr. Kwan found many required elements of proper records missing, such as personal and family data, emergency contact information, family doctor, past medical history, risk factors, allergic/drug reactions, Traditional Chinese Medicine diagnosis, treatment principles and strategies and consents to treatment. Mr. Kwan also noted the requirement that a member create their medical records at the same time as their patient encounter, and confirmed the failure to do so was a breach of the standards of the profession.

(e) Evidence Regarding the Use of the Title "Dr"

The College's evidence included samples of the following, all of which contained the title "Dr. Tran": Mr. Tran's business card; a receipt given to [REDACTED] dated January 30, 2014; and handouts, prepared in 1994, supplied by Mr. Tran to [REDACTED]., including one titled "Dr. Tran's Famous Rice Soup". None of these examples of the use of the title "Dr." were denied by Mr. Tran.

Section 33 of the *RHPA* prohibits the use of the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide health care to individuals in Ontario, unless the individual is a member of particular regulated health professions. Members of this College are not included in that group.

Submissions of Counsel

Both parties made detailed oral and written submissions, which the Panel reviewed carefully. The Panel also received oral advice at the conclusion of the hearing from its Independent Legal Counsel to which the parties had an opportunity to make submissions in response.

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 and the relevant factors to consider in assessing credibility.

(a) The College's Submissions

The College acknowledged that it bore the burden of proof, and that it had to prove the allegations on the balance of probabilities, based on clear, convincing and cogent evidence. The College submitted it had met this burden with respect to all allegations.

College Counsel submitted that the first three allegations relate to the Member's conduct with [REDACTED], and require the Panel to assess whether it believes [REDACTED]'s evidence that the Member touched her right breast and nipple without consent; touched her clitoris, massaged the area around her vagina, and inserted his finger into her vagina without consent and without clinical purpose; and placed acupuncture needles in her vaginal area without consent and without clinical purpose. If [REDACTED]'s evidence is believed, then College Counsel submitted that it was clear that the Panel should find that the Member engaged in sexual abuse, breached the standards of practice of the profession, and performed a controlled and unauthorized act.

College Counsel submitted that [REDACTED]'s testimony was compelling and should be accepted. It was not significantly undermined in cross-examination, and was supported by the confirmatory evidence of the photographs. Conversely, College Counsel argued that the Member's denials of having acted inappropriately with [REDACTED], should not be believed. College Counsel submitted the Member was evasive, non-responsive and argumentative. His evidence was inconsistent on key points. While some inconsistencies in a witness' evidence may not be significant, College Counsel submitted that the Panel should take note that the Member was demonstrably incorrect in his evidence given under oath on multiple occasions, even when he testified to having 100% accuracy about those events.

As to the allegation regarding record-keeping, the College Counsel submitted that members are required to produce and maintain records that are accurate, complete, legible and timely. Its Record Keeping Policy contains the standards expected of members to ensure compliance with the Standards of Practice and to protect public safety. The Record Keeping Policy requires that members maintain a daily appointment log and a confidential patient file that contains a patient health summary, a patient health record and billing records. It further provides that entries made to a patient record must be made at the time of consultation or immediately after.

Mr. Tran initially offered only a two page document consisting of various acupuncture points identified on a diagram of a human figure as his patient chart for [REDACTED]. He subsequently confirmed through his Counsel and his own testimony that that document was created about a year after [REDACTED]'s treatment and that he did not keep any contemporaneous records for [REDACTED].

Mr. Kwan's unchallenged opinion was that the purported chart fell below the standards of the profession with respect to record keeping, as it lacked each of the elements required by the College's Record Keeping Policy. He also noted the requirement that a member create their medical records at the same time as their patient encounter and confirmed the failure to do so was a breach of the standards of the profession.

College Counsel supported its allegation of improper use of the title "Dr." by Mr. Tran by pointing out that Section 33 of the *RHPA* prohibits the use of the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide health care

to individuals in Ontario, unless the individual is a member of particular enumerated regulated health professions. Members of the College are not presently entitled to use the title “doctor”. Further, section 1(32) of O. Reg 312/18 establishes that using a term, title or designation in respect of a member’s practice that is not authorized by the College is an act of professional misconduct, regardless of intent.

The uncontested evidence is that Mr. Tran provided █████ a business card, receipt, and materials which each included the use of the “Dr.” title in conjunction with his name in the course of her acupuncture treatment. Mr. Tran conceded that the “Dr.-AC” on his business card and receipt stood for “Doctor of Acupuncture”. Mr. Tran also confirmed, in cross-examination, he was aware that he was not permitted to use the “Dr.” title.

College Counsel asserted that it is no excuse that the materials containing the unauthorized title were created prior to enactment of the regulatory regime.

(b) The Member’s Submissions

The Member’s Counsel was forthright in stating that if the allegations of touching █████’s breast or clitoris, placing needles in the vaginal area or placing a finger in the vagina were found to be true, then such actions constitute sexual abuse as alleged. His position was not that █████ was perpetrating a deliberate falsehood. He accepted that █████ genuinely believed that she was sexually assaulted. He argued that her perceived experience was incorrect and had become reinforced and cemented by the many recounting of the event over the past three years. While not questioning the sincerity of her belief that she was sexually abused, he alleged she was not entirely forthright.

The Member’s Counsel described █████ as a young woman with significant anxiety issues, exacerbated by her heightened nervousness when attending the clinic. She may, Counsel argued, have mistaken sensations during the treatment due to her anxiety, nervousness and other health concerns, her lack of prior experience with acupuncture and the possibility of meridian pathways leading to sensation being felt in an area of the body away from the point of needle insertion. The Member’s Counsel pointed out that even after treatment █████ claimed to have felt as though needles might still be in place. He submitted that the concept of “de Qi”, described by Mr. Kwan, provides an explanation for a false sensation of sexual touching by █████

The Member’s Counsel, in argument, pointed to the failure of █████ to describe the other points of injection on her buttocks, lower leg and back of foot. He argued that Mr. Tran would not have been able to access the vaginal area due to █████’s legs being closed and would not have been able to access her breast and nipple due to the tank top she was wearing.

The Member’s Counsel argued that it was most unlikely that Mr. Tran, a very experienced practitioner, in a busy practice where the majority of his patients were female, with other patients nearby at the time of the allegations and no record of complaints over many years of practice, would have engaged in the behaviour alleged.

The Member's Counsel further argued that the inability of the nurse witnesses to confirm signs of acupuncture points in or near the vaginal area undermines █████'s allegations. Mr. Tran's Counsel also challenged the validity of the photos taken by █████'s boyfriend. He argued that the photos did not clearly show what the marks around █████'s labia were, and were just as likely to be razor burn or acne or some other mark as they were to be marks from acupuncture needles. He also submitted that the photos may not have been taken at the time claimed by █████. He asked the Panel to be suspicious of the fact that █████. had not apparently mentioned the photos when she was examined by Ms. Steffler and interviewed by police on the night and early morning following the alleged incident. The Member's Counsel suggested that perhaps █████ self inflicted needles to create marks that would be consistent with her allegations.

The Member's Counsel did not dispute that the testimony of Mr. Kwan and the materials entered as exhibits established that Mr. Tran had failed to maintain proper records according to the standards set by the College. He offered the hasty exit of █████. from the clinic, the busy practice and the failure of Mr. Tran to understand the strict formal requirements of his responsibilities, as a relatively new member of the College, as reasons for Mr. Tran's negligence in this area.

While the Member's Counsel acknowledged Mr. Tran's use of the title "Dr." on his business card and other materials, he pointed out that the materials had originated many years ago and were only still in use due to the oversight of Mr. Tran to correct them. He also argued that the Panel must be persuaded that the use of the title "Dr." on the materials was intended by Mr. Tran to self-identify as a doctor.

Decision

Having considered 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 Amended 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.

(a) Allegation 1 – that the Member sexually abused patient █████ contrary to section 51(1) (b.1) of the Code and section 1(2) of the *Ontario Regulation 318/12*

█████ alleges the Member touched her right breast and right nipple, inserted needles near her vagina, touched her clitoris and inserted his finger into her vagina with a rhythmic massage motion. The

Member admits that if this happened, it would be sexual abuse as defined by the Code. However, the Member denies any of this occurred.

The Panel concludes that the evidence of both Ms. Steffler and Ms. Idahosa, the two nurses who individually examined █████ on separate dates, was credible but inconclusive. It neither confirmed nor disproved the allegations at issue. Ms. Steffler did not note any needle marks in or around █████'s vaginal area when she examined █████ some hours after the acupuncture session. However, she had been trained to examine for signs of sexual assault but not for signs of acupuncture points. As well, she testified that the lighting in the examination room at St. Michael's Hospital had been "notoriously" poor. Ms. Idahosa failed to observe marks on █████'s abdomen or vaginal area when examining █████ and was also unable to identify the marks displayed in the photos offered by █████ This examination however was performed four days after the acupuncture treatment. There was no evidence that she had been trained to observe and identify acupuncture needle points. The Panel noted there were no significant discrepancies or inconsistencies between what █████ said to the nurses and her evidence at this hearing. The evidence of the two nurses was accepted as truthful, but neither confirmed nor contradicted whether the Member inserted acupuncture needles around █████'s labia, or whether sexual abuse took place.

Similarly, the evidence of Mr. Kwan was inconclusive on the issue of whether sexual abuse had actually occurred. He testified that the marks visible on the photos taken of █████ around her labia after the incident were not inconsistent with acupuncture marks. He could not confirm that they were made by acupuncture needles. This neither confirms nor disproves the allegation of improper placement of acupuncture needles during █████'s treatment.

Resolving the central allegation of sexual abuse requires the Panel to assess the credibility and reliability of the two main witnesses, Mr. Tran and █████ In assessing credibility, the Panel considered the following factors:

- the witness' opportunity to observe;
- the witness' capacity to remember;
- the overall probability or reasonability of the evidence;
- the internal consistency or inconsistency of a witness' evidence;
- the external consistency of the evidence, that is, whether it was consistent with other evidence the Panel accepts as credible;
- a witness' interest in the outcome of the case, with the important caveat that this cannot be used to shift the burden of proof away from the College or presume that the Member must be lying; and
- the appearance and demeanour of the witness, being alive to the challenges of assessing credibility based on a witness' demeanour.

In addition, the Panel recognized that assessing credibility requires the Panel to assess not only a witness' desire to tell the truth, but also their ability to do so. A witness may be honest but

mistaken. The Panel has to assess the reliability of a witness' evidence even when the Panel considers the witness to be doing his or her best to tell the truth. In this case, the essence of the Member's defence was that [REDACTED] honestly believed she had been sexually abused, but that her belief was unreliable.

Neither [REDACTED] nor Mr. Tran had perfect recall of all events. This is understandable. The Panel accepts that it is reasonable for a certain lapse of detail and memory regarding an event that occurred a few years prior to testimony. However, as explained below, the Panel found that [REDACTED] was more consistent than Mr. Tran in testimony and found that Mr. Tran's inconsistencies were material.

[REDACTED] appeared forthright and sincere in her evidence. It was clear to the Panel by her emotions and consistency in her evidence three years after the alleged assault that she sincerely believed that she had been sexually abused. The sincerity of her belief was not disputed by the Member's Counsel. There were no significant inconsistencies in her evidence. She had a good memory of Mr. Tran's office layout, having been able to prepare a detailed and reasonably accurate drawing of Mr. Tran's clinic. She recalled details such as the presence of a radio in the small, closet-like change room she had used. She was able to indicate to the questioning police officer the points near and on her vagina where she felt she had been improperly touched or had needles inserted, as supported by a diagram prepared with the police and submitted to Panel. This diagram was prepared the day following the alleged incident. Also, the photographs of her abdominal and vaginal area had been taken, according to [REDACTED], within 24 hours of her treatment by Mr. Tran, when acupuncture marks were more likely to be visible.

Her allegations to the College and her relating of her recall of events to two nurses and a police officer had remained consistent.

[REDACTED] readily acknowledged those areas of testimony where she was uncertain. For example, when Mr. Tran inquired of her medical history, she recalled advising him that she was stressed and had cramping during her menstrual cycle but she could not recall if she also reported problems with anxiety and depression. She admitted not recalling whether her cloth drape had been un-tucked when asked by Mr. Tran to lie on her left side in a fetal position. She conceded that she did not know exactly how her underwear was pulled down by Mr. Tran but claimed that it was moved down and was held down by her body weight once it had been moved.

[REDACTED] acknowledged that she did not visually observe Mr. Tran's treatment of her various body parts due to her eyes having been closed. However, she explained that she was apprehensive and sensitive to the application of the needles and touching of her body during an event unusual to her. On this issue, Mr. Tran's Counsel submitted that [REDACTED] might have imagined the sensations she described. He argued that the sensations could have been imagined due to one or more of various factors, including [REDACTED]'s emotions and nerves, her medical history, her medications, and the "De Qi" effect explained by Mr. Kwan. The Panel does not accept this argument. There was no expert or other evidence presented that emotion or other alleged medical conditions may have made [REDACTED] susceptible to false sensations of having her breast and nipple touched, her vagina massaged, needles placed by her labia, her clitoris rubbed and/or a finger being inserted in her vagina. As to the "De Qi" effect, the evidence of Mr. Kwan was that a patient could experience dull pain radiating from the needle point. A patient could be stimulated with a needle in one area of the

body, and experience dull pain or other sensations in a different part of the body. Again, this vague and general evidence does not show that acupuncture made it likely that [REDACTED]. would have experienced false sensations of having her breast and nipple touched, her vagina massaged, needles placed by her labia, her clitoris rubbed and/or a finger being inserted in her vagina. The sensations [REDACTED]. described were very specific and detailed. Mr. Kwan was not asked whether the “De Qi” effect could cause someone who was receiving needles on appropriate acupuncture spots to experience these specific feelings and sensations. [REDACTED]’s sensation of digital penetration of her vagina cannot be attributed to a “phantom sensation” as argued by Mr. Tran’s Counsel. Mr. Kwan had not used the term “phantom sensation”. No expert evidence was offered as to whether a needle manipulated in the shoulder area can give rise to sensations of the breast or nipple being touched. Likewise, no expert opinion was offered as to whether a needle applied to the buttock can cause a sensation in the area of the vagina.

The Panel considered the confirmatory evidence offered by the College, that being [REDACTED].’s photos which were entered as an exhibit. They display red marks in the pattern described by [REDACTED] across her lower abdomen and in the creases between her legs and vagina. The Panel concludes that a pattern of marks due to reasons other than needle points so consistent with the points described by [REDACTED] is most improbable. While they could be razor burn or acne or some other mark, they are in the pattern described by [REDACTED]. and consistent with the needle marks visible on her abdomen (where Mr. Tran admits to inserting needles). The Panel finds the marks are likely to be marks from acupuncture needles. They support [REDACTED].’s evidence, unless they were self administered to support her allegations. There was no evidence presented to support the suggestion of self-administration.

The Member’s Counsel challenged the validity of the photos. He pointed out that [REDACTED]. had not mentioned the pictures to either Officer Murphy or nurse Amy Steffler. The accuracy of the time stamp on the pictures was admittedly inaccurate by an hour or so. The Member’s Counsel argued that the pictures may have been taken after Officer Murphy’s interview and self inflicted to support [REDACTED].’s allegations. This, the Panel finds, is unlikely of a person apprehensive about and inexperienced and unknowledgeable about acupuncture. This argument was made by the Member’s Counsel after [REDACTED] had testified and after both parties had closed their case. [REDACTED]. was thus not given an opportunity to respond to the suggestion that she fabricated the spots around her labia or tampered somehow with the photos. Accordingly, the Panel placed little weight on the suggestion that [REDACTED]. made the marks herself.

The Panel considered the argument that the Member could not have physically touched [REDACTED]. as alleged by her, because (a) [REDACTED]’s tank top was too tight for the Member to access her breast; and (b) the combination of the sheet wrapped around [REDACTED]’s waist and her underwear made it impossible for the Member to access her vagina and place needles.

On the issue of the tank top, the Member’s Counsel argued that the top [REDACTED] had worn was a tight fitting “gym exercise” or “yoga” garment which would have prohibited access by Mr. Tran to the area of her breast and nipple. [REDACTED]’s evidence was that she was wearing a loose fitting “tank top” and as her bra was padded, an area between her breasts was open and accessible when she was lying on her side. It was never suggested to [REDACTED] on cross-examination that her tank top was so tight as to not allow Mr. Tran access to access her breast area. No evidence was presented by either party as to the range and styles of fitness garments known as tank tops. The Panel finds it difficult to imagine a tank top so tight that no one can place their hand underneath.

On the issue of access to [REDACTED]'s vaginal area, it is clear that while [REDACTED] was lying on her side with her knees bent upwards Mr. Tran had access to [REDACTED]'s lower back and upper inner thigh. He admitted in his criminal trial that he could have accessed [REDACTED]'s vaginal area. Mr. Tran asked the Panel to believe that he would not have been able to pull down [REDACTED]'s underwear as her body weight, while lying on her side, would have held the underwear in place. However, [REDACTED] explained that she may have facilitated Mr. Tran's access. She thought in the moment that it was part of the treatment. The Panel finds it difficult to believe that the weight of lying on one side prohibits a person's underwear from being pulled from the other side or in between the legs, especially if there is no resistance to having the underwear moved. The Panel finds that [REDACTED] might well have facilitated Mr. Tran's access to her genital area, as this was a reasonable response for [REDACTED] to have. It is common for a patient to place themselves in a position of vulnerability when they put trust in a health care professional to whom they have turned for help.

In contrast to [REDACTED], Mr. Tran's testimony was inconsistent and unreliable. Some examples of inconsistencies in his evidence are as follows.

- As a very busy practitioner who does not keep records of his patients and their treatment, Mr. Tran first claimed to remember the details of their treatment requirements and treatments upon facial recognition of his patients. Such claim of his recall ability is remarkable. On cross-examination Mr. Tran stated that he treats every patient the same. He stated he uses about 30-35 acupuncture points, varying one or two according to the needs of the patient. However, while he can recall patients by facial recognition, he acknowledged he could not recall every acupuncture point at each date of treatment. When asked if he remembered treating [REDACTED] he replied "a bit". There were many details regarding [REDACTED] he could not recall at the hearing. For example, when asked whether [REDACTED] had complained of depression and pain on her right side, he replied that he did not remember. The Panel is not as bothered by Mr. Tran's inability to remember these details from two years ago as it is by Mr. Tran's clearly untrue claim that he can recall everything he needs to recall about patients without records, by looking at their faces..
- Mr. Tran had testified at his criminal trial that [REDACTED] had told him she had problems due to a car accident that had occurred 3-5 years earlier. When it was pointed out to Mr. Tran that [REDACTED] had never been in a car accident, Mr. Tran responded by suggesting [REDACTED] had forgotten that she had been in such an accident due to her number of medical conditions. The Panel finds it to be most unlikely that a person would not be able to recall a motor vehicle accident in which injuries may have been incurred. The more likely explanation is that Mr. Tran was incorrect in recalling that [REDACTED] had told him about a car accident, but rather than admitting the mistake was his, he sought to undermine [REDACTED]'s reliability by suggesting her medical conditions made her so unreliable she would forget a car accident.
- Evidence was presented wherein Mr. Tran was inconsistent when describing the acupuncture points he had utilized on [REDACTED]. At three different times he made three different representations of what points he had used, each purporting to be accurate. He did not have a consistent explanation for the several differences they contained. For example, he had told the police and showed them, in a diagram he had himself prepared,

that he had inserted four needles to ██████'s buttock area as well as two to the inner thighs, but a diagram offered by him indicates only one. He stated "I don't think I did four, only one". On cross-examination however he said four again. He had been certain that the questioning police officer himself had placed acupuncture points on a diagram introduced as an exhibit but later admitted that he had been wrong, that he had entered them himself.

- Another inconsistency in Mr. Tran's testimony was his assertion that he had placed needles one-half way up the thighs of ██████ but had illustrated to the police in a taped interview that the location was on the inner upper thighs. The Panel was shown this portion of the videoed interview. He claimed that he had not been trying to hide his treatment to the upper thighs but had simply forgotten. His Counsel presented an argument that, had there been sexual abuse, Mr. Tran would not have acknowledged those needle points. His action in doing so, he said, was reflective of an innocent state of mind.
- Mr. Tran's testimony about whether or not he feels the patient's body to locate acupuncture points was inconsistent. On direct questioning, he stated that he touched the acupuncture point with his finger. On cross-examination he stated "I touch to get the right spot before inserting needle-push down and flick". However, in response to the question "do you sometimes need to feel to find the right spot" he replied "no, 90% of the time". He did confirm that his hand contacts the skin of the patient.

When questioned during cross-examination about inconsistencies between his evidence at this hearing and his evidence at the criminal trial, Mr. Tran's explanations were lacking. He often replied that if that's what he said then that is what he said. For example, while maintaining that he could not have accessed ██████'s vaginal area when she was lying on her side because her legs were closed and her underwear was being held down by her body weight, he admitted that at the earlier criminal trial he had testified that it was possible that he could have had access to her vagina during that part of the treatment. Mr. Tran was unable to explain this inconsistency.

Mr. Tran's Counsel elicited the statement from Mr. Tran that he was angry at the police station on hearing the allegations ██████ had made against him. This, he said, can be the reaction of an innocent person facing unfounded charges which endanger his reputation. Mr. Tran admitted, on cross-examination, that he had also been angry with ██████ for leaving the clinic with the vitamin pills he had given her without paying for them. Mr. Tran obviously has a significant self interest in the outcome of the hearing as it can potentially have a major impact on his reputation and earnings ability. His concern for his reputation was evident when he was questioned by the police about ██████. The Panel recognizes that the Member's interest in the outcome of this case is not proof that he is untruthful, and that all respondents in professional discipline matters - whether they are innocent or guilty of the allegations - have the same interest in the outcome.

While the Panel recognizes that a certain amount of detail can be forgotten due to the passage of time and that not every inconsistency is a sign of unreliability, the Panel concluded that Mr. Tran's testimony was unreliable. He was shown to be incorrect in his evidence given under solemn affirmation on several occasions, even when he had testified to having 100% certainty about those events.

Mr. Tran was evasive and argumentative. Instead of replying to some questions, he asked the College Counsel questions in return, such as “I made a mistake. Don’t you?” He did not appear to be concerned with important professional responsibilities, such as using proper titles, characterizing such as minor details. The Panel realizes that it seems unlikely that a practitioner would commit the acts alleged in a clinic where other patients may be nearby. However, the clear, consistent and detailed evidence of [REDACTED] was that the alleged acts occurred.

The Panel finds the evidence of [REDACTED] to be more reliable than that of Mr. Tran. [REDACTED]’s story has remained consistent fro relating it to several parties, including police and nurses, over a period of three years. Her sincerity was not seriously contested by Mr. Tran’s Counsel. There was no evidentiary basis to the argument that she imagined the detailed sensations she testified about.

It is the Panel’s finding that, based on all of the more reliable evidence, there is clear, cogent and convincing evidence that it is more likely than not that Mr. Tran touched [REDACTED].’s breast and vaginal area (including of her clitoris) and inserted his finger into her vagina for no clinical purpose and without her consent. These actions violated the sexual integrity of [REDACTED]. They constitute sexual abuse.

The Panel finds further that Mr. Tran’s penetration of [REDACTED]’s vagina with his finger, touching her clitoris and massaging her genitals in the manner described by [REDACTED]., all without any clinical purpose constitutes masturbation of the patient.

(b) Allegation 2 – that the Member contravened the RHPA by performing an unauthorized controlled act, contrary to section 27(1) of the RHPA and sections 1(10) and 1(39) of the *Ontario Regulation 318/12*

Section 27(1) of the RHPA provides as follows:

Controlled acts restricted

27(1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,

- (a) The person is a member authorized by a health profession Act to perform the controlled act; or
- (b) The performance of the controlled act has been delegated to the person by a member described in clause (a).

Controlled acts

(2) A “controlled act” is any one of the following done with respect to an individual: ..

- 6. Putting an instrument, hand or finger, ...
- v. beyond the labia majora,

The *Traditional Chinese Medicine Act, 2006*, S.O. 2006, c.27 does not permit a member to engage in the controlled act of insertion of an instrument, hand or finger beyond the labia majora.

As explained above, the Panel finds that the Member did penetrate ██████'s vagina with his finger. As penetration of the vagina is a controlled act that the Member is not authorized to perform, it follows from the Panel's findings that the Member is guilty of allegation 2.

(c) Allegation 3 – that the Member contravened a standard of practice of the profession contrary to section 1(1) of *Ontario Regulation 318/12*

As indicated above, based on the above evidence, the Panel finds that the Member placed needles near the patient's vagina, touched her breast and nipple, and touched her vaginal area including her clitoris and including by inserting his finger into her vagina. There is no issue that this conduct contravenes a standard of practice of the profession contrary to section 1(1) of *Ontario Regulation 318/12*.

Although the Panel has made a finding of sexual abuse, even if the Panel had not concluded that the Member's actions were of a sexual nature, the Panel still finds this touching was a contravention of the standard of practice. This is based on the admission of the Member that there would be no clinical purpose for any of this touching, and on the evidence of Mr. Kwan, who testified, among other things, that there was no recognized acupuncture point in the crease between the leg and the vagina.

(d) Allegation 4 – that the Member contravened section 1(25) of *Ontario Regulation 318/12* by failing to keep records as required by the standards of the profession

The fact that the Member's records for ██████ did not include key information prescribed by the College was admitted by the Member at the hearing during cross-examination and through his Counsel. The inadequacy of his record keeping in light of the College's standards was also confirmed by the testimony of the expert witness Richard Kwan.

Notwithstanding his admission, Mr. Tran attempted to justify his failure to keep appropriate and contemporaneous records on the basis that he could recall the specifics of his patients upon facial recognition. He testified that he treated, on average, about 80 patients per week for 48 weeks per year for 13 years. He stated that he commonly used only about 30 to 35 acupuncture points on each of his patients, only varying the treatment by a point or two depending on the patient's needs. It appears implausible to the Panel that he could accurately recall all relevant information about all patients, including acupuncture points used, and even if he could, that information is not documented and available to others. When asked if he remembered ██████, and her treatment he replied "a bit". Even if the Member could recall patients perfectly without written records, maintaining appropriate treatment records are a cornerstone of one's professional obligations.

Mr. Tran also attempted to justify his failure to prepare records for ██████, by her hasty departure upon completion of her treatment. This does not explain why he could not have documented ██████'s visit at a later time. More importantly, to safely practice on ██████, and to conform with the standards of practice of the College regarding record keeping, the Member he needed to have captured much of the information listed above as missing before commencing treatment on her.

Mr. Tran's Counsel argued that Mr. Tran, as a relatively new member of the College should be held to a lower standard of practice than might be appropriate after several years of practice. The standards of practice do not require perfection. However the Panel concluded that the Member's record keeping

had not met even a minimum standard as no records whatsoever had been prepared before or shortly after ██████'s treatment.

The Panel finds that by Mr. Tran's own admission and the above evidence, he has contravened to section 1(25) of *Ontario Regulation 318(12)* by failing to keep records in accordance with the standards of the profession.

(e) Allegation 5 - that the Member contravened the RHPA by using the title "Dr." contrary to section 33(1) of the RHPA and section 1(32) of *Ontario Regulation 318/12*

Section 33(1) of the RHPA prohibits any person from using the title "doctor", a variation of 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, unless they are a member of a particular health profession. Section 1(32) of *Ontario Regulation 318/12* prohibits members from using a term, title or designation in respect of the member's practice that is not authorized by the College.

At this hearing it was agreed by the parties that the Member was not permitted to use the title "Dr."

Mr. Tran would have been aware from his Jurisprudence course that the "Dr." title was not permitted to be used by him. He also confirmed in cross-examination that, as of the date of the treatment of ██████, he was aware that he was not permitted to use the "Dr." title. The College presented samples of Mr. Tran's business card and a receipt given to ██████, dated January 30, 2014 which showed "Dr. AC". He conceded that that title stood for "Doctor of Acupuncture". Also, on handouts given by the Member to ██████, apparently prepared in 1994, was one titled "Dr. Tran's Famous Rice Soup".

Mr. Tran did not deny his use of these three documents but pointed out that he had not identified himself as "Doctor" to ██████, nor were there any certificates or signs in the office containing "Doctor". This was confirmed by ██████. Mr. Tran's position was that as he had only been a member of his now regulated profession for three months as of January, 2014, he had not had a chance to change his old information. Mr. Tran admitted that he had amended his business hours on his card with a dark pen but when asked why he had not also blacked out the "Dr." title he responded that "I don't pay attention to little details". In cross-examination, the Member admitted that during discussions with Officer Murphy, when the Member was being questioned about ██████'s allegations, the Member had called himself a Doctor of Acupuncture. The Member's response was to say to College Counsel, "People make mistakes, don't you?"

The Member's Counsel described these uses of the term "Dr." as "vestiges" of the Member's former practice. While the Member's Counsel argued that Mr. Tran had not intended to mislead patients by the inclusion of the "Dr." title on his business card and other documents, the Panel finds that the use of unauthorized titles may nevertheless have such effect on members of the public. College Counsel cited *CTCMPAO v. Rea* dated February 17, 2017 on page 11 where the panel found that the use of unauthorized titles, including "Dr.", regardless of intent, constitutes professional misconduct.

The Panel finds, on Mr. Tran's admissions and the above evidence, that Mr. Tran used the title "Dr." contrary to sec. 33(1) of the RHPA and sec. 32 of *Ontario Regulation 318/12*.

(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*


The Panel considered the Member's conduct as a whole.

Mr. Tran's behaviour in ignoring standards of medical record keeping and in allowing the title "Dr." to be used on various documents available to the public demonstrates a serious disregard for his professional obligations. At the very least, it is conduct relevant to the practice of the profession that would reasonably be regarded by the profession as unprofessional.

His serious breach of professional standards, as accepted in Allegations 1, 2 and 3, merit the finding 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 a member as disgraceful, dishonourable, and unprofessional, contrary to section 1(48) of *Ontario Regulation 318/12*

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

Date: May 13, 2017

Signed:  _____
Henry Maeots, Chair
Yuqi Yang
Maureen Hopman