

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

<b>PANEL:</b>	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**

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( Robin McKechney for the College  
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( Member not Present  
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**-and-**

**ROCHEL YAKOBOV**

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( Edward Marrocco,  
( Independent Legal Counsel  
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( 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”).

Rochel Yakobov (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 February 21, 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 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**

- The Member provided acupuncture treatment to Patient #2, Patient #4, Patient #5 and/or Patient #6 without first formulating, communicating and/or charting a traditional Chinese medicine diagnosis.
- 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, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession; and/or
  - (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 by the profession as disgraceful, dishonourable or unprofessional of section 1 of Ontario Regulation 318/12.

### **Failure to keep records in accordance with standards**

- The Member did not create individualized treatment plans but used pre-populated treatment plans for Patient #1, Patient #2, Patient #3, Patient #4, Patient #5 and/or Patient #6.
- Despite using the pre-populated treatment plans as the patients' treatment plans, the Member did not always adhere to the pre-populated treatment plans.
- The Member advised the College investigator that if he deviated from the pre-populated treatment plans it would not be indicated in the patient chart.
- The Member performed laser therapy on Patient #1, Patient #2, Patient #3, Patient #4, Patient #5 and/or Patient #6 and did not document that he provided laser therapy in the patient chart.
- The Member did not maintain a patient chart for each patient but grouped family members together in one chart.
- The Member did not complete all entries in patient charts and would have another person in the office complete them.

- The Member did not consistently review the entries made by others and verify their accuracy.
- The Member was not always able to identify who made the chart entries.
- The Member was not always able to verify the accuracy of the entries as English is not his first language.
- The Member advised the College investigator that treatment notes weren't important.
- 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, by act or omission, a standard of practice of the profession or failing to maintain the standard of practice of the profession;
  - (b) Paragraph 25: Failing to keep records in accordance with the standards of the profession;
  - (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 of section 1 of Ontario Regulation 318/12.

**Providing acupuncture without informed consent**

- The Member utilized a consent form which did not indicate that patients were made aware of the material side effects, alternative courses of action and/or the likely consequences of not having acupuncture and/or laser acupuncture.
- There is no evidence in the patient charts of Patient #1, Patient #2, Patient #3, Patient #4, Patient #5 and/or Patient #-6 that the issues identified in paragraph 15 were discussed with the patients.
- 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, by act or omission, a standard of practice 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 or the patient's authorized representative;

- (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 acupuncture of section 1 of Ontario Regulation 318/12.

### **Signing a document that contains a false or misleading statement**

#### *Incomplete Patient Charts*

- On or about June 17, 2015, the Member signed a letter to Blue Cross Insurance and enclosed copies of the patient records for Patient #1, Patient #2, Patient #3, Patient #4, Patient #5 and/or Patient “#6. The Member advised Blue Cross Insurance that the copies were “true, accurate and complete.”
- On or about July 7, 2016, the College investigator retrieved the file of Patient #3.
  - (a) The Patient Entrance Forms dated November 4, 2013 and March 6, 2014 for Patient #3 are different than the one submitted to Blue Cross Insurance on or about June 17, 2015; and/or
  - (b) The consent form and/or the Confirmation of Acupuncture Sessions form for Patient #3 was present in the file and was not submitted to Blue Cross Insurance on or about June 17, 2015.

#### *Failure to write, sign and date all entries*

- On or about November 4, 2015, the Member signed a letter to the Inquiries, Complaints and Reports Committee of the College that stated he “wrote...signed and dated all clinical notes myself.”
- On or about July 12, July 13 or July 18, 2016, the Member subsequently admitted to the College investigator that he did not write, sign and date all of his clinical notes himself.
- For each of these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1Xc) of the Code, namely:
  - (a) Paragraph 26: Signing or issuing, in his or her professional capacity, a document that the Member knows or ought to know contains a false or misleading statement;
  - (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 by the profession 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 traditional Chinese medicine or acupuncture of section 1 of Ontario Regulation 318/12.

### **Performing an unauthorized controlled act**

- On or about May 20, 2016, the Member performed the controlled act of moving the joints of the spine beyond a patient's usual physiological range of motion using a fast, low amplitude of thrust (the “controlled act”).
- The Member did not obtain informed consent from the patient prior to performing the controlled act.
- The Member is not authorized to perform the controlled act as he is not a member of the following:
  - a. College of Chiropractors of Ontario
  - b. College of Physicians and Surgeons of Ontario
  - c. College of Naturopaths of Ontario
  - d. College of Physiotherapists of Ontario.
- 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, by act or omission, a standard of practice 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 10: Performing a controlled act that the member is not authorized to perform;
  - (d) 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
  - (e) Paragraph 49: Engaging in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture of section 1 of Ontario Regulation 318/12.

## **Using the title Massage Therapist**

- On or about May 10, 2016, an undercover investigator obtained a copy of the Member's business card at or near the Member's clinic which identified the Member as a massage therapist.
- On or about July 7, 2016, a College investigator obtained a copy of the same business card as described in paragraph 6 at or near the Member's clinic which identified the Member as a massage therapist.
- On or about July 7, 2016, a College investigator obtained a copy of another business card at or near the Member's clinic which identified the Member as a massage therapist.
- The Member is not authorized to use the protected title “massage therapist” as he is not a member of the College of Massage Therapists of Ontario.
- 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, by act or omission, a standard of practice 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 by the profession 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 traditional Chinese medicine or 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 June 2, 2017 (the “Agreement”).

In the Agreement, the Member indicated he wished to surrender his Certificate of Registration and to forever withdraw from the practice of traditional Chinese medicine and acupuncture in Canada and 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 his Certificate of Registration to the College by no later than June 6, 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 practicing and/or holding himself 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 per the payment schedule in the Agreement and acknowledging that the College is accepting such a small quantum in light of his 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 indicated that he understands and agrees to additional terms and conditions, including the following:

- Should he 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 his application.
- Should he 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 February 21, 2017 are stayed in accordance with the terms set out in the Undertaking and Surrender Agreement signed by the Member on June 2, 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 which

may result from a discipline hearing before this College. Also, by agreeing to contribute a sum to partially offset the College's costs of investigating this matter, the member 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

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

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Henry Maeots, Chairperson

Panel Members:     Henry Maeots  
                              Xianmin Yu  
                              Barrie Haywood