

**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**

B E T W E E N:

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

-and-

NATHALIE XIAN YI YAN

NOTICE OF HEARING

TO: Ms. Nathalie Xian Yi Yan
109-132 Parkdale Ave. S
Hamilton, ON L8K 3P3

THE INQUIRIES, COMPLAINTS AND REPORTS COMMITTEE OF THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO (the "College") has directed that specified allegations of professional misconduct be referred to the Discipline Committee of the College, in accordance with section 26(1) para 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").

IT IS ALLEGED that you are guilty of professional misconduct under the *Traditional Chinese Medicine Act*, S.O. 2006, c. 27 (the "Act") and the Regulations thereto, all as amended.

THE ALLEGATIONS of professional misconduct are that you have engaged in the following acts of professional misconduct pursuant to s. 51(1)(c) of the Code:

1. Contravened, by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession contrary to section 1(1) of *Ontario Regulation 318/12*;
2. Failed to cooperate with an investigator contrary to section 76(3.1) of the Code, which is an act of professional misconduct under section 1(39) of *Ontario Regulation 318/12*;
3. Failed to comply with an order of a panel of a Committee of the College contrary to section 1(44) of *Ontario Regulation 318/12*;
4. Failed to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned contrary to section 1(45) of *Ontario Regulation 318/12*;
5. Failed to reply appropriately and within a reasonable time to a written inquiry or request from the College, contrary to section 1(47) of *Ontario Regulation 318/12*;
6. Engaged in conduct 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, contrary to section 1(48) of *Ontario Regulation 318/12*;
7. Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to section 1(49) of *Ontario Regulation 318/12*.

THE SPECIFIED ALLEGATIONS are attached to this Notice of Hearing as Schedule "A".

A PRE-HEARING CONFERENCE will be held at a date and location to be set by the Registrar.

A PANEL OF THE DISCIPLINE COMMITTEE WILL HOLD A HEARING under the authority of sections 38 to 56 of the Code for the purpose of deciding whether the allegations are true.

TAKE NOTICE THAT the hearing will be held before a panel of the Discipline Committee (the "Panel") at a place, date and time to be determined by the

Registrar of the College. You may have a representative appear on your behalf. The panel may, on that date, either hear evidence and make its determination respecting the allegations set out above or set a further date for such hearing and determination.

YOU ARE ENTITLED to be present at the Hearing, and to be represented by legal counsel. If you fail to attend at the time and place set for the Hearing, the Hearing may proceed in your absence and you will not be entitled to any further notice of the proceedings.

SUBSECTION 51(2) OF THE CODE PROVIDES THAT if the Panel finds you guilty of professional misconduct, it may make an order, doing one or more of the following:

1. Directing the Registrar to revoke your certificate of registration.
2. Directing the Registrar to suspend your certificate of registration for a specific period of time.
3. Directing the Registrar to impose specified terms, conditions and limitations on your certificate of registration for a specified or indefinite period of time.
4. Requiring you to appear before the panel to be reprimanded.
5. Requiring you to pay a fine of not more than \$35,000 to the Minister of Finance.
 - 5.1 If the act of professional misconduct was the sexual abuse of a patient, requiring you to reimburse the College for funding provided for that patient under the program required under section 85.7.
 - 5.2 If the panel makes an order under paragraph 5.1, requiring you to post security acceptable to the College to guarantee the payment of any amounts you may be required to reimburse under the order under paragraph 5.1 1991, c. 18, Sched. 2, s. 51 (2); 1993, c. 37, s. 14 (2).

TAKE NOTICE that, pursuant to paragraph 53.1 of the Code, the Panel may make an order requiring you to pay all or part of the College's legal costs and expenses, including the College's costs and expenses incurred in investigating the matter and incurred in conducting the Hearing.

AND TAKE NOTICE that the College intends to introduce any writings and/or records that were made in the usual and ordinary course of business as business records under section 35 of the *Evidence Act*, R.S.O. 190, c. E.23, as amended.

AND TAKE NOTICE that you must make disclosure in accordance with section 42.1(1) of the Code, which states as follows:

Evidence of an expert led by a person other than the College is not admissible unless the person gives the College, at least ten days before the hearing, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.

AND TAKE NOTICE that you must make disclosure in accordance with rules 11, 12 and 13 of the *Rules of Procedure of the Discipline Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario*, which state as follows:

11.1 Each party to a proceeding shall deliver to every other party (a) a list of, and (b) if not previously produced, copies of, all documents that the party intends to produce or enter as evidence at the hearing, as soon as is reasonably practicable after the Notice of Hearing is served, and in any case, at least 10 days before the commencement of the hearing on the merits.

11.2 A party who does not disclose a document or thing in compliance with sub-rule 11.1 may not refer to the document or thing or introduce it in evidence at the hearing without leave of the Panel, which may be on any conditions that the Panel considers just.

12.1 A party to a proceeding shall serve every other party a list of the witnesses the party intends to call to testify on the party's behalf at the hearing, at least 10 days before the commencement of the hearing.

12.2 If no affidavit has been served in accordance with rule RULE 27, and material matters to which a witness is to testify have not otherwise been disclosed, a party to a proceeding shall provide to every other party a summary of the evidence that the witness is expected to give at the hearing, at least 10 days before the commencement of the hearing.

12.3 A witness summary shall contain:

(a) the substance of the evidence of the witness;

- (b) reference to any documents to which that the witness will refer;
and
- (c) the witness's name and address or, if the witness's address is not provided, the name and address of a person through whom the witness can be contacted.

12.4 A party who does not include a witness in the witness list or provide a summary of the evidence a witness is expected to give in accordance with these rules may not call that person as a witness without leave of the Panel, which may be on any conditions as the Panel considers just.

12.5 A witness may not testify to material matters that were not previously disclosed without leave of the Panel, which may be on any conditions that the Panel considers just.

13.1 A party who intends to call an expert to give expert opinion evidence at a hearing shall:

- (a) inform the other parties of the intent to call the expert;
- (b) identify the expert and the issue(s) on which the expert's opinion will be tendered;
- (c) serve the other parties with a copy of the expert's written report or, if there is no written report, an affidavit in accordance with rule RULE 27, or a witness summary in accordance with sub-rule 12.3; and
- (d) file an "Acknowledgement Form – Expert's Duty" signed by the expert, in the form appended to these rules;

at least 10 days before the commencement of the hearing.

13.2 A party who fails to comply with sub-rule 13.1 may not call the expert as a witness or file the expert's report or affidavit without leave of the Panel, which may be on any conditions that the Panel considers just.

YOU ARE ENTITLED, as a member whose conduct is being investigated in proceedings before a Panel, to disclosure of evidence under ss. 42(1) of the Code. You or your representative may contact counsel for the College in this matter for this purpose:

Jaan Lilles
Lenczner Slaght LLP
130 Adelaide Street West, Suite 2600
Toronto, Ontario, M5H 3P5

(416) 865-3552

DATED at Toronto this 14th day of May, 2024.

A handwritten signature in cursive script, appearing to read "Sean Cassman".

ACTING REGISTRAR
THE COLLEGE OF TRADITIONAL
CHINESE MEDICINE PRACTITIONERS AND
ACUPUNCTURISTS OF ONTARIO

SCHEDULE “A”

STATEMENT OF SPECIFIED ALLEGATIONS

1. Ms. Nathalie Xian Yi Yan (the “Member”) is a registered Traditional Chinese Medicine Practitioner (“R. TCMP”) and registered acupuncturist (“R. Ac”) with the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).

Failing to Comply with an Order of the Inquiries, Complaints, and Reports Committee

2. On February 24, 2020, the Inquiries, Complaints, and Reports Committee of the College (“ICRC”) considered a report that alleges that the Member had engaged in acts of professional misconduct.
3. In its decision and reasons issued June 5, 2020, the ICRC ordered the following:
 - (a) An oral caution would be issued within six months of the date of the decision and reasons of the ICRC;
 - (b) A Specified Continuing Education and Remediation Program (“SCERP”) to be completed as set out below:
 - (i) The Member is required to meet with a Regulatory Review Mentor who is pre-approved by the Registrar;
 - (ii) The Regulatory Review Mentor shall be a member of the College with a general certificate;
 - (iii) The Registrar will provide a copy of the ICRC’s decision and reasons to the Regulatory Review Mentor;
 - (iv) The Member is required to review the College’s Jurisprudence Handbook. The Member is directed to review in particular Chapter 3: Law, particularly with respect to the Professional Misconduct Regulation addressing issues of Conduct towards Colleagues and Conduct towards the College;
 - (v) The Member is required to write a reflection essay on the insights and learning gained from reviewing the above sections of Chapter 3 and how they relate to the concerns identified by the ICRC above;
 - (vi) The Member is required to meet with the Regulatory Review Mentor to review and discuss the Member’s reflection essay. The Member must meet with the Regulatory Review Mentor for at least 6 meetings in total. Each meeting shall be 90 minutes;
 - (vii) The Regulatory Review Mentor shall submit an interim report to the Registrar after each visit with the Member;

- (viii) The Member is responsible for the costs associated with this SCERP, including the meeting(s) with the Mentor (which shall not exceed \$600 per session); and
 - (ix) The Member will complete the above terms within six months of the date of the Decision and Reasons.
4. On January 21, 2021, the Member was provided with an extension to July 21, 2021 regarding the completion of the SCERP requirements, the selection of the Regulatory Review Mentor, and was provided with an extension until March 2021 to attend for the oral caution in light of the COVID-19 pandemic.
 5. The oral caution was scheduled for March 31, 2021 via Webex. The Member failed to attend.
 6. The College scheduled the Member's first Regulatory Review session on March 31, 2021, and asked the Member by letters dated March 3 and March 8, 2021 to confirm her attendance by March 17, 2021.
 7. The Member failed to respond by March 17, 2021, and the College rescheduled her first Regulatory Review session to April 23, 2021. The Member was asked to confirm her attendance by April 2, 2021.
 8. The Member failed to respond by April 2, 2021, and so the first Regulatory Review session was cancelled.
 9. The College wrote to the Member on April 14, 2021, advising of the cancellation and confirming the Member had failed to attend the March 31, 2021 caution. The Member was asked to respond immediately to ensure her compliance with the terms of the SCERP before the July 21, 2021 deadline. The Member did not respond.
 10. The Member failed to attend for the caution on March 31, 2021, or at all.
 11. The Member failed to complete any of the requirements of the SCERP by July 21, 2021, or at all.
 12. It is alleged that this conduct constitutes professional misconduct pursuant to s. 51(1)(c) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (the "Code") in that, the Member:
 - (a) Failed to comply with an order of a panel of a Committee of the College contrary to section 1(44) of O. Reg. 318/12;
 - (b) Failed to appear before a panel of the Inquiries, Complaints and Reports Committee to be cautioned contrary to section 1(45) of O. Reg. 318/12;
 - (c) Failed to reply appropriately and within a reasonable time to a written inquiry or request from the College contrary to section 1(47) of O. Reg. 318/12;

- (d) Engaged in conduct 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, contrary to section 1(48) of O. Reg. 318/12;
- (e) Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to section 1(49) of O. Reg. 318/12.

Unprofessional Communications

- 13. Between December 8, 2020 and November 25, 2023, the Member sent multiple emails to Council members, Committee Members, the College Registrar and staff, and others, and made other statements, that contained allegations, untrue statements, and/or unprofessional language about or towards the College or individuals hired by, appointed by, or associated with the College.
- 14. It is alleged that this conduct constitutes professional misconduct pursuant to s. 51(1)(c) of the *Code* in that, the Member:
 - (a) Contravened, by act or omission, a standard of practice of the profession or failed to maintain the standard of practice of the profession contrary to section 1(1) of O. Reg. 318/12;
 - (b) Engaged in conduct 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, contrary to section 1(48) of O. Reg. 318/12;
 - (c) Engaged in conduct that would reasonably be regarded by the profession as conduct unbecoming a practitioner of traditional Chinese medicine or acupuncture, contrary to section 1(49) of O. Reg. 318/12.

Failing to Cooperate with an Investigation

- 15. An Appointment of Investigator was issued on June 29, 2023 for an investigator to inquire into and examine the conduct or actions of the Member.
- 16. On July 12, 2023, the investigator contacted the Member by email and requested to schedule a time to meet regarding the investigation.
- 17. In response, the Member copied various individuals associated with the College and made various accusations regarding College investigators.
- 18. The Member never provided her availability and never met with the College investigator or provided any documents.

19. In a letter dated November 23, 2023 enclosing the Registrar's Report, the Member was asked to provide a response by January 2, 2024.
20. The Member never provided a response.
21. It is alleged that this conduct constitutes professional misconduct pursuant to s. 51(1)(c) of the *Code* in that, the Member:
 - (a) Failed to reply appropriately and within a reasonable time to a written inquiry or request from the College contrary to section 1(47) of O. Reg. 318/12;
 - (b) Failed to cooperate with an investigator contrary to section 76(3.1) of the *Code*, which is an act of professional misconduct under section 1(39) of O. Reg. 318/12;
 - (c) Engaged in conduct 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, contrary to section 1(48) of O. Reg. 318/12.