

**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>PANEL:</b>	Henry Maeots	Chairperson, Public Member
	Terry Hui	Member
	Yuqi Yang	Member

**BETWEEN:**

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

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( Jaan Lilles for the College  
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**-and-**

( Jessica Rea, self-represented  
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**JESSICA REA**

( Aaron Dantowitz,  
( Independent Legal Counsel  
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Dates of Hearing: May 9, 2017

**AMENDED DECISION AND REASONS FOR DECISION  
ON PENALTY AND COSTS**

In a previous decision dated February 17, 2017, the panel found that Ms. Rea had committed acts of professional misconduct. As a result of these findings, a further hearing was held on the issues of penalty and costs on May 9, 2017.

Ms. Rea had previously been represented by counsel, but was not represented at this hearing. Ms. Rea confirmed at the outset of this hearing that she was content to proceed without counsel. Prior

to this hearing, the panel received written submissions on penalty and costs from the College, and from Ms. Rea's previous counsel, who filed written submissions on penalty and costs on her behalf.

After hearing from the parties, the panel deliberated, and was able to arrive at a decision. The panel communicated its decision on penalty and costs to the parties at the hearing, with reasons to follow. These are the panel's reasons for its decision.

## **PENALTY**

### **Evidence and submissions of the parties on penalty**

The College sought the following penalty for professional misconduct committed by the Member:

- (a) A suspension of Ms. Rea's Certificate of Registration for a period of 12 consecutive months, to be commenced immediately, which shall be remitted by 3 months to 9 months upon Ms. Rea complying with the conditions contained in clauses (b)-(d) below;
- (b) An Order imposing terms, conditions and limitations on Ms. Rea's certificate of registration as follows:
  - (i) Ms. Rea shall within 9 months register and complete the PROBE: Ethics & Boundaries Program at her own expense, and provide satisfactory proof of completion to the College;
  - (ii) Ms. Rea shall within 9 months prepare a report of no less than 500 words reflecting on the findings of professional misconduct against her and how she intends to alter her practice going forward;
  - (iii) A limitation on Ms. Rea's Certificate of Registration for reassessment of her practice following her return post-suspension;
- (c) A public and recorded reprimand;
- (d) \$7,500.00 on account of costs of the investigation and prosecution, within 30 days of the Discipline Committee decision; and
- (e) the decision of the Discipline Committee shall be published in the ordinary course.

### **College's Argument in Support of the College's Penalty Submission**

College Counsel pointed out that Ms. Rea has admitted to the practice of using leeches for medicinal purposes (hirudotherapy). Ms. Rea imported and sold medicinal leeches obtained from an unauthorized supplier. She also stored and disposed of them in a manner contrary to the *Food and Drugs Act*, R.S.C. 1995, c. F-27 ("FDA") and its regulations.

Hirudotherapy involves performing a procedure on tissue below the dermis for a purpose that is not acupuncture. It is a prohibited act for members of the College. In performing hirudotherapy Ms. Rea also violated FDA legislation intended to protect the public.

Ms. Rea used terms, titles and designations not authorized by the College, such as “Advanced TCM Practitioner” and “Dr.” Broadcasting such qualifications to others may be misleading about her qualifications as a medical practitioner. Further, Ms. Rea used prohibited testimonials on her websites.

College Counsel reminded the Panel that Ms. Rea had been found to display a persistent and serious disregard for her professional obligations, and that members of the profession would reasonably view her conduct as unprofessional. He outlined the following factors to support the College’s submissions on penalty.

***Protection of the Public***

Ms. Rea has presented a risk to the public. Her persistent and serious disregard for her professional obligations demonstrate either a disdain for, or a lack of understanding of, the standards of her profession. In order to adequately protect the public at large and to safeguard the public trust in the profession, a significant penalty must be imposed.

***Deterrence***

The College must send a strong message to both Ms. Rea and the entire profession that her behaviour is unacceptable and will not be tolerated. A 12-month suspension, with the option for 3-months to be remitted, will provide the necessary specific and general deterrence. Also, a public reprimand will serve as a formal statement that the College is committed to upholding its standards.

***Remediation and Rehabilitation***

In order to achieve the appropriate goal of remediation and rehabilitation the College seeks an order that Ms. Rea complete the PROBE: Ethics and Boundaries Program, which will help Ms. Rea gain insight into her behavior, and facilitate recommitment to professional standards. In addition, the paper proposed by the College will provide Ms. Rea with an opportunity for further reflection on her misconduct, and assist with her rehabilitation into the profession.

***Public Interest***

Ms. Rea’s conduct directly undermines public confidence in the profession. The proposed penalty serves the public interest by ensuring Ms. Rea understands the importance of maintaining the standards of the profession, and restoring confidence in the trustworthiness and professionalism of Traditional Chinese Medicine Practitioners.

***Seriousness of the Conduct***

Ms. Rea’s disregard for the safety of her patients is evident in her failure to comply with Health Canada’s Special Access Program for medicinal leeches which requires case-specific approval by Health Canada. She also did not obtain medicinal leeches from Health Canada’s approved supplier. Accordingly, her flagrant breaches should attract a significant sanction.

### ***Proportionality***

The Panel should consider orders made in similar cases. It is argued that, having regard to past decisions by disciplinary panels in this College and in others, this case is on the more serious end of the scale. The case of the *CTCMPAO v. Alan Canon*, 2015 was cited. In that case, the Member pleaded guilty to performing an unauthorized controlled act by performing a thread lift procedure which involved inserting needles under the surface of the skin, but did not constitute acupuncture. The Panel imposed a penalty that included a 14-month suspension.

Also cited by the College Counsel was the case of *College of Nurses of Ontario v. Ann Marie Desrosiers* CanLII 87161 (ON CNO), 2014, wherein a Nurse Practitioner was suspended for 9-months without opportunity for remittance because she prescribed controlled substances not within her scope of practice. Other cited cases contained penalties of 3, 4 and 6-month suspensions for performing unauthorized acts and where the member's conduct was deemed to be beyond an error in judgement.

### ***Aggravating and Mitigating Factors***

The College acknowledged in its submission that Ms. Rea fully co-operated with the College in the investigation process and has now agreed to cease performing leech therapy. Ms. Rea has also admitted several of the allegations of professional misconduct. However, Ms. Rea failed to remove her website advertising "leech therapy" and the testimonials on her Facebook page even following the Pre-Hearing Conference in this matter. Ms Rea also continued to use her academic titles in her practice, in contravention of the College's policy of the use of terms, titles, or designations. These, the College contends, are aggravating factors to be considered by the Panel as it shows a defiant disregard for professional standards which clearly rises above the level of an innocent mistake or a careless oversight.

## **Member's Argument in Support of the Her Penalty Submission**

### **Written submissions**

The Member's former Counsel, in a written submission, argued that an appropriate penalty is an order requiring Ms. Rea to appear before the Panel of the Discipline Committee of the College to be reprimanded. He asked the Panel to consider eleven factors, outlined in *Camgoz v. College of Physicians and Surgeons (Sask.)*, 1993 CanLII 8952 (SK QB), ("*Camgoz*") to be taken into consideration. The factors set out in *Camgoz* include the following:

- (1) The nature and gravity of the proven allegations;
- (2) The age of the offending physician;
- (3) The age of the offended patient;
- (4) Evidence of the frequency of the commission of the particular acts of misconduct within particularly, and without generally, the Province;
- (5) The presence or absence of mitigating circumstances;
- (6) Specific deterrence;
- (7) General deterrence;

- (8) Previous record, if any, for the same, or similar misconduct;
- (9) Ensuring that the penalty imposed will protect the public and ensure the safe and proper practice of medicine;
- (10) The need to maintain the public's confidence in the integrity of the respondent's (College's) ability to properly supervise the professional conduct of its members; and
- (11) Ensuring that the penalty imposed is not disparate with penalties previously imposed in this jurisdiction, particularly, and in other jurisdictions in general, for the same or similar acts of misconduct.

Ms. Rea's Counsel wrote, in part, as follows:

***Factor 1: The Nature and Gravity of the Proven Allegations***

Ms. Rea submits that her actions were not dishonest or deceitful; she was simply not familiar with the rules, regulations and legislation that she breached by her actions.

Ms. Rea was trained and certified as a hirudotherapist from the Academy of Hirudotherapy.

Ms. Rea submits that the testimonials that she posted on her website related only to her practice as a hirudotherapist and not as a member of the College or otherwise in respect of her practice of Traditional Chinese Medicine.

Ms. Rea formerly used her designated academic achievements on her business card. An individual in a position of authority within the Traditional Chinese Medicine community and operator of a school of Traditional Chinese Medicine, had confirmed to her in writing that "D. Ac (Diploma of Acupuncture Program and D. ATCM (Diploma of Advanced TCM Program) used on her business cards are designated academic achievements.

***Factor 2: The Age of the Offending Physician***

Ms. Rea is only thirty-two (32) years of age and in the early years of her career.

***Factor 3: The Age of the Offended Patient***

No patient has complained about Ms. Rea's treatment or otherwise complained about being adversely affected by Ms. Rea's hirudotherapy.

***Factor 4: Evidence of the Frequency of the Commission of the particular Acts of Misconduct***

Ms. Rea ceased her hirudotherapy practice immediately upon receiving advice from her solicitors that it was effectively prohibited in Canada.

***Factor 5: The Presence or Absence of Mitigating Circumstances***

Ms. Rea supports her husband and three young children as the only income earner in the family. Her income from her practice is modest. She has been practicing Traditional Chinese Medicine and Acupuncture for over ten years and is passionate about her practice and career. She has undergone significant stress and anxiety during the course of these proceedings. She has immediately corrected her behavior and poses no danger of re-offending.

***Factor 6: Specific Deterrence***

Ms. Rea has already rectified the acts that supported her professional misconduct. These proceedings have deterred her from engaging in similar conduct in the future. She has completely discontinued her practice of hirudotherapy and has removed all testimonials posted on her websites relating to her former practice of hirudotherapy. Likewise, she has ceased all marketing of her academic abbreviations and now uses the following designations: R. Ac (Registered Acupuncturist) and R. TCMP (Registered Traditional Chinese Medicine Practitioner).

***Factor 7: General Deterrence***

Ms. Rea submits that these proceedings and the ensuing public report will serve to deter the profession as a whole from engaging in similar conduct.

***Factor 8: Previous Record, if any, for the same, or similar misconduct***

Ms. Rea does not have a previous record of professional misconduct.

***Factor 9: Ensuring that the Penalty will protect the Public and Ensure the Safe and Proper Practice of Medicine***

Ms. Rea's Counsel cited *The Law Society of Upper Canada v. Fenik*, 2005 ONLSHP 25 (CanLII) ("*Fenik*") to assist the Panel in determining whether a member is ungovernable. The factors therein include the following:

- (1) The nature, duration and repetitive character of the misconduct;
- (2) Any prior discipline history;
- (3) Any character evidence;
- (4) The existence or lack of remorse (remorse includes a recognition and understanding of the seriousness of the misconduct);
- (5) The degree of willingness to be governed by the [governing professional body];
- (6) Medical or other evidence that explains (though does not excuse) the misconduct;
- (7) The likelihood of future misconduct, having regard to any treatment being undertaken, or other remedial efforts; and
- (8) The members' ongoing co-operation with the [governing professional body] in addressing the outstanding matters that are the subject of the misconduct.

Ms. Rea has ceased the practice of hirudotherapy, removed all testimonials from her websites and has printed new business cards containing only the title abbreviations authorized by the College. She has no prior disciplinary history with the College and demonstrates sincere remorse for her conduct that formed the basis of these proceedings.

***Factor 10: The Need to Maintain the Public's Confidence in the Integrity of the Respondents Ability to Properly Supervise the Professional Conduct of its Members`***

Ms. Rea ceased all actions of misconduct that form the basis of these disciplinary proceedings brought against her by the College upon receiving a letter from the College Registrar setting out the allegations against her. She submits that the fact of these proceedings enhances the public's confidence in the integrity of the College to properly supervise the professional conduct of its members.

***Factor 11: Ensuring that the penalty imposed is not disparate with penalties previously imposed by this jurisdiction, particularly, and in other jurisdictions in general, for the same, or similar acts of misconduct***

In *Nanson v. Saskatchewan College of Psychologists*, 2013 SKQB 191 (CanLII) (“Nanson”) Justice Danyiuk stated, “a sentence is to be proportionate to the gravity of the acts and the degree of responsibility of the offender”. Ms. Rea understands that the practice of hirudotherapy is restricted in Canada and cannot be continued. No patient complained to the College and there is no evidence to suggest that anyone was negatively impacted by her practice of hirudotherapy. The remaining offending behavior relates to the use of academic (and unapproved) abbreviations on her business cards. This is a technical default causing no damage to patients and causing no damage to the reputation of the College or its other members. Ms. Rea has accepted responsibility for her actions, expressed remorse and ceased the conduct that formed the basis of these proceedings.

Ms. Rea submits that she has been “over-charged” by the College in that six charges were laid in respect of three circumstances of wrong-doing. Notwithstanding the fact that these circumstances supported conviction under each of the six charges, the Panel is urged to recognize that although the College chose to proceed with a multiplicity of charges, the determination of sentence should be based on the three circumstances that underpin the College’s charges; the penalty chosen by the Panel should not be inflated by the College’s decision to proceed with multiple charges.

Ms. Rea submits that an appropriate sentence is an Order requiring Ms. Rea to appear before the Panel of the Discipline Committee of the College to be reprimanded.

**Oral submissions**

Ms. Rea, in her oral submission, asserted that she has respect for the College and its role in maintaining faith of the public. She is aware of her mistakes and is remorseful. She claimed she is compliant and governable. She reminded the Panel that she co-operated with the College’s investigation and never denied her practice of hirudotherapy. She has harmed no-one and no-one has complained about her practice. While she had mistakenly used academic titles and designations on her business cards, she had never used the term “Dr.” or otherwise inferred such qualification. She also had not been aware that the allowing of comments on her inter-active web site constituted prohibited testimonials. Finally, she stated that her financial burden in this matter had already been crippling.

She asked for leniency from the Panel.

**Decision on penalty**

Having considered the findings of professional misconduct, the relevant evidence and the submissions of the parties, the Panel orders as follows.

- (a) A suspension of Ms. Rea's Certificate of Registration for a period of 9 consecutive months, to be commenced immediately, which shall be remitted by 3 months to 6 months upon Ms. Rea complying with the conditions contained in clauses (b) —~~(d)~~ (i) and (ii) below;
- (b) An Order imposing terms, conditions and limitations on Ms. Rea's certificate of registration as follows:
  - (i) Ms. Rea shall within 6 months register and complete an Ethics & Boundaries Program, acceptable to the College, at her own expense, and provide satisfactory proof of completion to the College;
  - (ii) Ms. Rea shall within 6 months prepare a report of no less than 500 words reflecting on the findings of professional misconduct against her and how she intends to alter her practice going forward;
  - (iii) A limitation on Ms. Rea's Certificate of Registration for reassessment of her practice following her return post-suspension; and
- (c) A public and recorded reprimand.

The Panel did not incorporate into its order a requirement that the Discipline Committee's decision be published. Publication is mandated by the legislative regime governing this College, and will occur as a matter of course regardless of the Panel's order.

### **Reasons for Decision on penalty**

The Panel recognized that the penalty should maintain high professional standards, preserve public confidence in the ability of the College to regulate its members, and, above all, protect the public. This is achieved through a penalty that considers the principles of general deterrence, specific deterrence and, where appropriate, rehabilitation and remediation of the Member's practice. In addition, the Panel considered the Member's circumstances.

While there was no evidence of harm to or complaints from any of her patients, nevertheless Ms. Rea's unauthorized use of hirudotherapy did present a risk to the public. A significant suspension, with the option for 3-months to be remitted, will provide the necessary specific and general deterrence. The Panel believes that the remorse Ms. Rea has shown for her unwise dependency on a certificate obtained abroad to practice hirudotherapy in Ontario and her failure to research and confirm the necessary approvals and standards required, are not knowing and willful defiance of applicable regulations. Further, the College acknowledged in its submission that Ms. Rea fully cooperated with the College in the investigative process and admitted several of the allegations of professional misconduct. The Panel also considered that Ms. Rea may have misunderstood and unwisely relied on her understanding of the use of her academic credentials, in communications with a respected practitioner and teacher of TCM. Hence, in the opinion of the Panel, her actions

do not merit a suspension of the length requested by the College. Rather, a shorter 9-month suspension with a possible remittance of 3-months is sufficient as both a specific deterrent to Ms. Rea and a general deterrent to the members of the College. Also, a public reprimand will further serve to demonstrate to the public that the College is committed to upholding its standards.

The requirement to complete an ethics and boundaries program acceptable to the College allows some flexibility as to timing and cost. It will assist in Ms. Rea's remediation and understanding of her professional obligations and standards as will her report offering insight into the causes of her past errors and generate guidance to her future behavior as a health professional. Both also offer comfort to the public that she has learned from her past mistakes.

The public will also be further protected by the limitation on her Certificate of Registration for reassessment of her practice by the College following her return post-suspension.

The Panel concludes that the penalty it has set out is reasonable and in the public interest. Further, it believes that the penalty satisfies the principles of specific and general deterrence, rehabilitation and remediation, and public protection.

We find that the profession as a whole will likewise view the suspension, reprimand and publication as deterrents to engaging in similar behavior.

The public's confidence in the ability of the College to regulate its members and to protect the public is enhanced by the remedial provisions of the penalty as outlined in paragraph (b) (i) and (ii) of the above order and the safeguards implemented in paragraph (b) (iii).

### **Evidence and submissions of the parties on costs**

The College seeks an Order of Costs in the amount of \$7,500 to be paid within 30 days of the Discipline Committee decision. College Counsel submitted that this amount may fall short of the total costs of the College's costs of the investigation and prosecution. He also suggested the Panel call on its experience of such matters to help determine the reasonableness of the proposed amount. He also referred the Panel to the case of *Reid v. College of Chiropractors of Ontario*, 2016 ONCA 779. There, Justice Epstein ruled that the application for leave to appeal the Cost decision of \$166,194.50 by the College's Discipline Committee was without merit. Justice Epstein also cited Section 53.1 of the Code which gives the Discipline Committee jurisdiction to order costs. She wrote that the courts have recognized this jurisdiction and have described it as being broad and discretionary. She also wrote that the courts have identified the College's right and responsibility to protect its members from the weight of the expense of protracted disciplinary hearings. She further wrote that relevant factors for consideration when assessing the reasonableness of a Cost Decision include the parameters of s. 53.1 of the Code, the College's costs, the findings of liability and the College's relative success. She ruled the College was entitled to its costs regarding the one day hearing of the motion at hand before her, in the amount of \$5,000, all in.

Member's former Counsel, in his written submission, claims that this is not an appropriate case for an Order of Costs. He cited *Freedman v. College of Dental Surgeons*, 2001 O.J. No 1726 (Div. Ct) and *Venneri v. College of Chiropractors of Ontario*, 2010 ONSC 473 (CanLII), where the courts have recognized that the power to award costs is discretionary in nature. He also referred the Panel to Section 53.1 of the RHPA which states the following:

In an appropriate case, a panel may make an order requiring a member who the panel finds has committed an act of professional misconduct or finds to be incompetent to pay all or part of the following costs and expenses:

1. The College's legal costs and expenses.
2. The college's costs and expenses incurred in investigating the matter.
3. The College's costs and expenses incurred in conducting the hearing.

Ms. Rea's former Counsel submitted that her income is modest, relative to other health professionals, and any cost award of any magnitude would cause her to suffer financial hardship. He, in his written submission, cited *Reid v. College of Chiropractors of Ontario*, 2016 ONSC 1041 (CanLII) ("Reid") wherein Justice Wilson stated: "in assessing the costs, all of the circumstances must be taken into consideration, not just the result, including the seriousness of the allegations, the complexity of the proceedings as well as the result." Also in *Reid*, the costs sought by the College would result in financial hardship for the member. Justice Wilson was of the opinion that the Panel erred in failing to consider impecuniosity as a relevant factor in assessing costs.

### Oral submissions

Ms. Rea implored the Panel not to take away her livelihood. She claimed that the \$7,500 cost order requested by the College, in combination with her legal fees, would be devastating to her family. She had earlier submitted her prior year's tax return which showed an income from her profession of approximately \$29,000.

### **Decision on costs**

The Panel finds that it is appropriate to make a cost order in this case, in the amount of \$5,000, to be paid in 6 equal monthly payments, commencing one month after Ms. Rea's return to practice following the completion of her suspension.

### **Reasons for Decision on costs**

The costs of the investigation and prosecution result from the professional misconduct that Ms. Rea has been found guilty of. Failure to mitigate its costs would leave the members of the College to absorb 100% of the above costs through their membership fees. This College is a relatively new one and has not yet demonstrated a record of lengthy financial stability.

While the College did not present evidence of the specifics of its costs, it did cite a case of some similar allegations and hearing duration (*CTCMPAO v. Alan Canon*, 2015) wherein the Panel

issued a cost order of \$5,000.

Being cognizant of Ms. Rea's financial circumstances and her responsibilities as the sole income earner in her family, the Panel is directing the payment of the Cost ordered over a period of 6-months, to commence 1-month following her return to practice upon the expiration of her suspension.

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

Date: May 23, 2017  
(amended July 26, 2017)

Signed: 

Henry Maeots, Chair  
Terry Hui  
Yuqi Yang