

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

**IN THE MATTER OF**

*the Regulated Health Professions Act, 1991, S.O. 1991, c.  
18, and the Traditional Chinese Medicine Act, S.O. 2006,  
c.27*

**Decision Date:**                      **October 1, 2018**

**Indexed as:**                      **Ontario (College of Traditional Chinese Medicine  
Practitioners & Acupuncturists of Ontario) v NATHALIE  
YAN, 2018 ONCTCMPAO 28**

<b>Panel:</b>	Maureen Hopman	Chairperson, Public Member
	Jin Qi (Jackie) Zeng	Professional Member
	Barrie Haywood	Public Member

**BETWEEN:**

<b>THE COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND ACUPUNCTURISTS OF ONTARIO</b>	(	
	(	Robin McKechny for the College
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	(	
<b>-and-</b>	(	
	(	
	(	John Tao (paralegal) for the Member
<b>NATHALIE XIAN YI YAN</b>	(	
<b>Reg. No. 610</b>	(	
	(	
	(	Edward Marrocco
	(	Independent Legal Counsel
	(	
	(	Dates of Hearing: February 12-16 and
	(	May 1, 2018

## **DECISION AND REASONS FOR DECISION**

- [1] This matter came on for hearing before a panel of the Discipline Committee (the “Panel”) over the course of six days from February 12-16 and May 1, 2018 at the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the “College”).
- [2] Nathalie Xian Yi Yan (the “Member”) was present and represented by a paralegal at all times.

### **The Allegations**

- [3] Allegations of professional misconduct against 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”). The allegations were set out in a Notice of Hearing, dated July 24, 2017 (the “Notice of Hearing”). A copy of the Notice of Hearing in its entirety is attached as Appendix “A”.
- [4] The statement of allegations contained in the Notice of Hearing is as follows:

#### **The Member**

1. At all material times Nathalie Xian Xi Yan was a member of the College (the “Member”).
2. Between approximately August 2013 and February 2015, the Member was an elected member of the Council of the College.
3. The Member is not a member of the following:
  - a. College of Physicians and Surgeons of Ontario
  - b. College of Chiropractors of Ontario
  - c. Royal College of Dental Surgeons of Ontario
  - d. College of Optometrists of Ontario
  - e. College of Psychologists of Ontario
  - f. College of Naturopaths of Ontario

#### **Charging a Patient Fee and Failing to Provide Treatment**

4. In February 2016 the Member incorrectly advised the mother of infant Patient #1 that the Member was obligated to charge a \$240 patient fee (the “Patient Fee”).
5. The Member incorrectly advised the mother of infant Patient #1 that the Patient Fee was required by law.
6. Infant Patient #1 was suffering from severe diaper rash and painful bowel movements. The Member recommended TCM herbs to infant Patient #1. The Member refused to sell the mother of Patient #1 the recommended TCM herbs unless the mother paid the Patient Fee.
7. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), 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.

**Failing to provide information to Patient #2 and charging a fee based on racial descent**

- 8. On or about July 20, 2016, an undercover College investigator visited the Member posing as Patient #2. Patient #2 is of Chinese descent.
- 9. The Member provided Patient #2 with a vial of pills/TCM herbs. The label on the vial did not indicate the name or ingredients of the pills/TCM herbs.
- 10. The Member told Patient #2 that there was a government mandated fee of \$240 to become her patient and that the government retained the \$240 fee.
- 11. The Member told Patient #2 that because she was Chinese the Member would waive the fee and only charge Patient #2 for the pills/TCM herbs.
- 12. Patient #2 asked the Member what was in the pills/TCM herbs. The Member told Patient #2 that she would have to pay the \$240 fee first and become her patient if she wanted to know the ingredients of the pills/TCM herbs.
- 13. The Member told Patient #2 that she would not tell her what was in the pills/TCM herbs until Patient #2 paid the \$240 fee.
- 14. Patient #2 asked the Member for a receipt. The Member provided a receipt but said she does not have time to provide her patients with receipts after each appointment.
- 15. The receipt states "Chinese Medicine (pills tablets) \$20.00."
- 16. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:
  - a. Paragraph 1: Contravening a Standard of the Profession or failing to maintain the standard of practice of the profession;
  - b. Paragraph 4: Failing to reply appropriately to a reasonable request by a patient or a patient's authorized representative for information respecting a service or product provided or recommended by the member;
  - c. Paragraph 25: Failing to keep records in accordance with the standards of the profession and/or
  - 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.

**Using the Doctor Title**

- 17. In or about July 20, 2016, the Member:
  - a. Introduced herself to Patient #2 as Dr. Yan;
  - b. Provided forms to Patient #2 which identified the Member as Dr. Yan;
  - c. Provided a vial of pills/TCM herbs with a label identifying the Member as Dr. Yan and an email address of [doctoryan@doctoryantcm.com](mailto:doctoryan@doctoryantcm.com) to Patient #2; and/or
  - d. Provided a bag printed with "Dr. Nathalie Xian Yi Yan Dr TCM, Dr, Ac." to Patient #2.
- 18. Section 33 of the RHPA provides that:

*33. (1) Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health*

*care to individuals. 1991, c. 18, s.33 (1).*

*(1.1) Subsection (1) does not apply to a person who is a member of the College of Naturopaths of Ontario. 2007, c. 10, Sched. P, s. 20 (1).*

*(1.2) A member referred to in subsection (1.1) shall not use the title "doctor" in written format without using the phrase, "naturopathic doctor", immediately following his or her name. 2007, c. 10 Sched. P, s.20 (1).*

*Subsection (1) does not apply to a person who is a member of,*

- (a) the College of Chiropractors of Ontario;*
- (b) the College of Optometrists of Ontario;*
- (c) the College of Physicians and Surgeons of Ontario;*
- (d) the College of Psychologists of Ontario; or*
- (e) the Royal College of Dental Surgeons of Ontario. 1991, c. 18, s. 33 (2).*

*(2.1) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title "doctor". 2006, c. 27, s. 18(1).*

*(3) In this section, "abbreviation" includes an abbreviation of a variation. 1991, c. 18 s. 33 (3).*

19. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:
- a. Paragraph 39: Contravening, by act or omission, a provision of the Act, the RHPA or the regulations under either of those Acts (paragraph 39); 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.

#### **Breach of confidentiality with Patient #2**

20. On or about July 20, 2016, the Member took the Pulse and examined the tongue of Patient #2 while Patient #2 was in the entry way of the Member's Clinic.
21. For this reason it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:
- a. Paragraph 1: Contravening a Standard 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.

#### **Failing to keep records in accordance with the standards of the profession**

22. The Member failed to provide the following patients with receipts and/or provided receipts that were illegible, following each appointment:
- a. AA
  - b. BB
  - c. CC
  - d. DD
  - e. EE
  - f. FF

23. The Member failed to record the ingredients of a prescription in the patient record and/or maintain a record of itemized charges to the patient and/or ensure that entries were made in English, in the following patient records:
  - a. AA
  - b. BB
  - c. CC
  - d. DD
  - e. EE
  - f. FF
24. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:
  - a. Paragraph 22: Failing to itemize an account for professional products or services while practising the profession;
  - b. Paragraph 25: Failing to keep records in accordance with the standards of the profession and/or
  - 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.

#### **Conduct during the investigation**

25. On or about August 3, 2016 the College investigator attended at the Member's clinic. The Member would not permit the College investigator to enter the parts of her clinic where herbs were stored.
26. The Member obstructed the College's investigator contrary to subsection 76(3) of the *Code*, and failed to cooperate fully with the College contrary to subsection 76(3.1) of the *Code*.
27. The Member told the College investigator that
  - a. it was against the law for the College investigator to enter her clinic within the first 30 days after receiving a complaint.
  - b. the College wanted her formulas so that "white people" can be trained to use them.
28. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), 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 29: Contravening, by act or omission, a provision of the Act, the RHPA, or the regulations under either of those Acts; and/or
  - 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.

#### **Member's Position**

- [5] The Member indicated at the outset of the hearing that she denies all of the allegations of professional misconduct contained in the Notice of Hearing.

#### **Procedural Background**

- [6] The Member, Ms. Yan, is a Traditional Chinese Medicine ("TCM") Practitioner and Acupuncturist. She has been registered with the College since 2013. She was an elected

Member of Council of the College as of August 2013 and served until February 2015. She also served on the Advisory Council establishing the College. Ms. Yan obtained a PhD in TCM in 2013 from Liaoning University of Traditional Chinese Medicine in China. At the time of the alleged events, Ms. Yan practiced out of the Hamilton Traditional Chinese Medical Health Center in Hamilton, Ontario (referred to hereafter as the “clinic” or the “Member’s clinic”). The allegations in the Notice of Hearing all relate to the Member’s practice at the clinic.

- [7] In May of 2016, an investigation into the Member was requested by the College Registrar, pursuant to section 75(1)(a) of the Code. On May 11, 2016, the Inquiries, Complaints and Reports Committee (“ICRC”) approved the Registrar’s request and an investigation was authorized into whether the Member was: (1) misleading patients to believe that a registration fee was required by law, in order to become [the Member’s] patient; and (2) prescribing and dispensing herbs that were labelled in Mandarin only and therefore contravening the standards of practice in relation to the inventory of herbs. A copy of correspondence from the College to the Member setting out the above issues and attaching the related Appointment in Investigators in respect of this authorization was made an exhibit at this hearing by the Member’s representative.<sup>1</sup>
- [8] On or about May 15, 2016, the College received a complaint about the Member from Ms. Hanan Abdelhadi. Ms. Abdelhadi’s infant daughter had been treated by the Member earlier that same year, in February.
- [9] On or about July 20, 2016, an undercover investigator for the College named Shanna Yee attended at the Member’s clinic posing as a patient.
- [10] Subsequent to that attendance, on July 28, 2016, two further investigations into the Member’s conduct were authorized by the ICRC. The related correspondence to the Member was exhibited in the course of the Hearing by the Member’s representative.<sup>2</sup>
- [11] Also, on July 28, 2016, a letter was sent to the Member advising of and enclosing a copy of Ms. Abdelhadi’s complaint. The letter requests a response to the complaint from the Member. This letter was made an exhibit in the course of the hearing by the Member’s representative.<sup>3</sup>
- [12] As above, the Notice of Hearing was subsequently issued on July 24, 2017.

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<sup>1</sup> Exhibit 12, Letter to the Member from Michele Pieragostini, dated May 11, 2016.

<sup>2</sup> Exhibit 15, Correspondence to the Member from Michele Pieragostini, dated July 28, 2016 and Exhibit 13, Correspondence to the Member from Michele Pieragostini, dated July 28, 2016.

<sup>3</sup> Exhibit 14, Correspondence to the Member from Michele Pieragostini, dated July 28, 2016.

## Overview of Evidence

- [13] Both the College and the Member called witnesses at the hearing. A brief introduction of each witness is set out below. More specific details of their respective evidence - as it relates to issues contained in the Notice of Hearing - will be reproduced as each allegation is subsequently canvassed.

### Shanna Yee

- [14] The College's first witness was Shanna Yee. Ms. Yee is a private investigator with the firm of Barker Hutchinson & Associates Limited ("Barker Hutchinson"). She has been a private investigator for approximately two years. Ms. Yee participated in this matter as an undercover investigator for the College. She attended at the Member's clinic on July 20, 2016 posing as a patient under the name "Natalie Wong". At that time, she claimed she was suffering from stomach aches. Ms. Yee testified about her interactions with the Member in the course of her investigation and also provided exhibits including documents and other items for the Panel's consideration.<sup>4</sup>

### Hanan Abdelhadi

- [15] Hanan Abdelhadi was the second witness for the College. She testified via video link without objection. Ms. Abdelhadi is 31 years old and a stay-at-home mother of three children aged 4 years, 2.5 years and 18 months.
- [16] As set out above, it was Ms. Abdelhadi's infant daughter who was seen by the Member in February 2016 (referred to in the Notice of Hearing as "infant Patient #1"). The Panel has opted not to reproduce the infant's name in this decision despite that it was provided in evidence. Identity of infant Patient #1 is not in dispute.

### Greg Hutchinson

- [17] Greg Hutchinson was the third witness for the College. He is the president of Barker Hutchinson. Mr. Hutchinson's firm is named in all of the Appointments of Investigator relevant to the within matter.
- [18] Mr. Hutchinson obtained his private investigator's licence in 2008 and has been president of Barker Hutchinson since 2012. Mr. Hutchinson conducts regulatory investigations for health colleges and insurance companies. He testified that his practice is made up of mostly regulatory health investigations and that he has conducted approximately 300-500 investigations in the course of his career.
- [19] Mr. Hutchinson testified about the appointments of investigator he received from the College in respect of the Member. He also testified about his interactions with the Member

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<sup>4</sup> See Exhibit 3, Brief of Documents exhibited through the testimony of Shanna Yee.

in the course of conducting his investigations into her conduct. He provided oral, documentary and photographic evidence in the course of his testimony.<sup>5</sup>

Allison Kucan Hahn

- [20] The College's fourth and final witness was Allison Kucan Hahn. Ms. Kucan Hahn was qualified as an expert to provide opinion evidence on the standards of practice of the profession of TCM and acupuncture. Ms. Kucan Hahn authored two reports (an initial report and an amended report) which were both entered as exhibits.<sup>6</sup> Ms. Kucan Hahn is a registered member of the College. She has been in practice since 2002 and currently practices in Hanover, Ontario.

Nathalie Xian Yi Yan (the Member)

- [21] The Member testified first in the defence case. As set out above, the Member is a registered practitioner of TCM and acupuncture. She has been in practice in Canada since 2000 and has been a member of the College since 2013. Prior to immigrating to Canada, the Member was a bio-chemist in a state owned company in China. The Member provided oral, documentary and photographic evidence relevant to many of the allegations in this matter including details about her practice, the layout of the clinic and her experience as a TCM practitioner. She estimates that she has approximately 2000 client interactions each year.

Anita Issac

- [22] The second witness for the defence was Anita Issac. Ms. Issac testified by video link without objection. Ms. Issac lives in Ancaster, Ontario. She is a retired professional nurse and a client of the Member. Ms. Issac testified about her positive experiences as one of the Member's patients. She also testified about the fees she paid the Member for treatment and about the Member's active work in the community.

Leslie Stone

- [23] The third and final witness for the defence was Leslie Stone. Mr. Stone testified by video link without objection. Mr. Stone is a retired picture framer. He has known the Member for over 10 years and became a patient in the last three years. Mr. Stone testified about his positive experiences as a patient of the Member and about the fees that he paid to her for treatment.

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<sup>5</sup> See Exhibit 11, Brief of Documents exhibited through the testimony of Greg Hutchinson.

<sup>6</sup> See Exhibit 20, Tab 4 [Amended Report] and Exhibit 21 [Initial Report].



## **Decision**

- [24] The College bears the onus of proving any allegations in respect of which it seeks a finding on a balance of probabilities based upon clear, cogent and convincing evidence.
- [25] Having considered the evidence as well as the onus and standard of proof, the Panel finds that the Member committed professional misconduct as alleged in the following paragraphs of the Notice of Hearing:
- a. Charging a Patient Fee as set out in paragraphs 4-7;
  - b. Failing to Provide Information to Patient #2 and Charging a Fee Based on Racial Descent as set out in paragraphs 8-16;
  - c. Using the Dr. Title as set out in paragraphs 17-19;
  - d. Breach of Confidentiality with Patient #2 as set out in paragraphs 20-21
  - e. Failing to Keep Records in accordance with the Standards of the Profession as set out in paragraphs 22-24; and
  - f. Conduct during the Investigation as set out in paragraphs 25-28.
- [26] The Panel finds that, in respect of the foregoing, the Member engaged in conduct relevant to the profession of TCM and acupuncture that, having regard to all the circumstances, would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.
- [27] The Panel finds that the Member is not guilty of professional misconduct as alleged in paragraphs 4-7 of the Notice of Hearing with respect to the allegation of failing to treat infant Patient #1.

## **Reasons for Decision**

### ***i. Credibility of Witnesses***

- [28] The Panel will begin with brief summaries of its findings with respect to witness credibility. The relevant substantive evidence of the various witnesses will be reproduced as the allegations are individually canvassed below.
- [29] **Nathalie Xian Yi Yan.** The Panel found the Member's responses under oath to be wavering and inconsistent. The Member blamed others including subordinates at her clinic and often attempted to clarify her wavering explanations in ways that only created further inconsistency. However, the Panel also notes that the Member did eventually make some admissions and admitted to some mistakes.

- [30] **Greg Hutchinson.** The Panel found Mr. Hutchinson's evidence to be credible, direct and forthright. Mr. Hutchinson's testimony was based on his own personal observations and his evidence was consistent with the information submitted in his reports.
- [31] **Shanna Yee.** The Panel found Ms. Yee to be credible and consistent in her testimony. Her evidence was clear and cogent.
- [32] **Allison Kucan Hahn.** Ms. Kucan Hahn was accepted as an expert at the hearing. She was qualified to provide opinion evidence regarding the standards of practice of TCM and acupuncture. She produced one report dated April 25, 2017, however it was subsequently amended. As a result of this, she produced a second, amended report dated May 30, 2017 which showed all amended content in redlines.
- [33] **Hanan Abdelhadi.** The Panel found Ms. Abdelhadi to be credible. Her evidence was clear, cogent and consistent with email messages she exchanged contemporaneously with the Member. Her evidence was based on her direct interactions with the Member and featured no issues impacting its reliability.
- [34] **Anita Issac.** The Panel found the testimony of Anita Issac to be credible but not highly probative. The Panel also had concerns about the reliability of portions of Ms. Issac's evidence given that - when she was asked about registration fees - she indicated a lack of recollection. In particular, she expressed that she thought a registration fee had potentially been part of her initial assessment with the Member but she was not sure. She did go on to say that the Member was helpful in explaining her assessment findings and that the Member was always conscientious, courteous and active in the community.
- [35] **Leslie Stone.** The Panel found Leslie Stone's testimony largely irrelevant on the key issues. He could not recall anything about registration fees. He testified that the Member had made his life better, that he avoided surgery to deal with his health issues and is suffering less as a result of seeing the Member.

ii. ***Allegation of Charging a Patient a Fee and Failing to Provide Treatment***

- [36] The Notice of Hearing alleges, at paragraphs 4-7, that the Member committed professional misconduct by failing to provide treatment to Ms. Abdelhadi's daughter on February 6, 2016 and by misrepresenting to Ms. Abdelhadi that there was an obligatory "Patient Fee" that the Member was required by law to charge. The Notice of Hearing alleges that this conduct, if proven, would constitute a contravention of a standard of practice of the profession and/or be conduct relevant to the practice of the profession that would be regarded by the profession as disgraceful, dishonourable or unprofessional.
- [37] The Panel heard evidence from both Ms. Abdelhadi and the Member in relation to the events of February 6, 2016.
- [38] The parties appear to agree that, on February 6, 2016, Ms. Abdelhadi brought her infant daughter, infant Patient #1 as per the Notice of Hearing, to the Member because of a severe diaper rash wound that would not heal. Ms. Abdelhadi reported that the rash was causing the infant to have significant discomfort including painful bowel movements. There does

not appear to be any dispute that Ms. Abdelhadi found the Member by searching the internet. Ms. Abdelhadi testified that she called the Member before the attendance and was told there would be no fee to take a look at the child. Both parties agreed that the matter was urgent. Both the Member and Ms. Abdelhadi testified the infant was crying and in pain. Ms. Abdelhadi testified that she told the Member that she had visited their family doctor and also brought infant Patient #1 to McMaster emergency. Ms. Abdelhadi testified that she was at the “end of her rope” as nothing was helping.

- [39] Ms. Abdelhadi brought the infant to the Member’s clinic along with her mother (*i.e.* the grandmother of infant Patient #1). According to Ms. Abdelhadi, the Member visually assessed the diaper rash and identified a TCM product that the Member felt would assist.
- [40] Ms. Abdelhadi testified that the Member told her, during the appointment, that she was required by law to pay a registration fee of \$240 in order to become a patient before the Member could provide any TCM remedies. Ms. Abdelhadi testified that the Member refused to sell TCM herbs to ease her daughter’s diaper rash unless and until the fee was paid. The parties disagree about whether the Member told Ms. Abdelhadi that she could not provide any medicine unless Ms. Abdelhadi paid the registration fee. The Member denies that she advised that the fee was required by law. The Member states that the fee arose pursuant to her “internal governance” and a “by-law” of the clinic. The Member testified that the concept of a government mandated fee is being confused with the “internal governance” of her practice.
- [41] The Member testified that her consultation time alone would have cost \$300 and that the total cost, including the registration fee, would have been approximately \$560. The Member contended at one point that she had in fact waived the registration fee for Ms. Abdelhadi.
- [42] The Panel found that the Member testified about varying amounts and forms of fees which the Panel found difficult to follow. They were not even consistent with the fee schedule from the Member’s clinic that was put into evidence.
- [43] The Panel found the Member’s explanation that the fee goes to her “internal governance” and was therefore easily confused with the word “government” or “by-law” to be similarly puzzling. When cross-examined on the issue of fees, the Member reacted by stating that lawyers are allowed to charge fees which signaled to the Panel that the Member does understand the concept of fees.
- [44] There appears to be no dispute that Ms. Abdelhadi’s mother paid the Member before the conclusion of the February 6 appointment, paying a \$240 fee plus \$10 for the medication that the Member had recommended for the diaper rash.
- [45] Ms. Abdelhadi testified that, after her visit to the Member’s clinic, she contacted the College to find out if there was in fact a fee required by law. She testified that she was told there was no such fee.

- [46] A series of emails subsequently exchanged between the Member and Ms. Abdelhadi were entered as evidence in the course of Ms. Abdelhadi's testimony.<sup>7</sup> The parties do not dispute that these emails were exchanged or that they authored them.
- [47] In an email from Ms. Abdelhadi to the Member, dated February 10, 2016,<sup>8</sup> Ms. Abdelhadi indicates she has spoken with the College and that it is her understanding that the Member is entitled to charge only for consultation time and for the medicine provided but that she would like a refund of the \$240 dollar fee that she had been charged.
- [48] The Member's e-mail in response, also dated February 10, 2016, was filed in evidence.<sup>9</sup> In her response to Ms. Abdelhadi, the Member does not appear to agree that the \$240 fee was improper or should be refunded. In support of her position, the Member uses terms including "Law", "Bill 50", and "TCM Act" and performing a "Controlled Act". The Member also advised Ms. Abdelhadi there was a \$200 fee listed on the wall of her clinic on the day of their appointment. In that same e-mail, the Member states that if Ms. Abdelhadi chose to accept the medicine, its provision to her is a "Controlled Act" and that the fee is indicative of Ms. Abdelhadi's consent to receive that treatment:
- "but if you choose to have medicine, that is one time fee charge of \$240. We do not refund of that charge since this is my side to say how I conducted Controlled Act with your consent".<sup>10</sup>
- [49] Ms. Abdelhadi testified that she saw no fee schedule. It appears undisputed that the Member eventually reimbursed \$240 to Ms. Abdelhadi months later.
- [50] Mr. Hutchinson testified that when he visited the Member at her clinic on August 3, 2016 in the course investigating for the College, she told him every patient completes an intake and consent form and pays a \$240 registration fee to become a patient. The Member's representative elected to file two written reports from Barker Hutchinson as exhibits in the course of Mr. Hutchinson's cross-examination. In one of two investigative reports to the College, Mr. Hutchinson states:
- [the member] "She said she refuses to treat patients until they have paid the \$240 registration fee except for some elderly or disabled patients for whom the fee is waived"<sup>11</sup>
- [51] Mr. Hutchinson also reported that the Member told him she charges \$200 for registration and an additional \$40 for emergency appointments scheduled with less than 24-hours notice.<sup>12</sup> With respect to Ms. Abdelhadi's daughter, the Panel notes that evidence filed at

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<sup>7</sup> See Exhibit 10, Tabs 4 and 5.

<sup>8</sup> Exhibit 10, Tab 5, page 13.

<sup>9</sup> Exhibit 10, Tab 5, pp. 12-13.

<sup>10</sup> Exhibit 10, Tab 5, pp. 12-13.

<sup>11</sup> Exhibit 17, dated September 29, 2016 at p. 2.

<sup>12</sup> Exhibit 17, p. 5.

the hearing in the form of a receipt in the name of the grandmother of infant Patient #1, dated August 20, 2016, states “registration fee \$240” and “Chinese medicine \$10”.<sup>13</sup>

- [52] Mr. Hutchinson met with the Member a second time on August 30, 2016. He reported that, at that time, the Member told him she provides new patients with a 5-10 minute verbal assessment, explains the fee to become her patient is \$200 inclusive of the first and second appointment and that, if the patient pays the registration fee and verbally acknowledges he or she would like to become a patient, the Member then completes intake and consent forms and completes the treatments.<sup>14</sup>
- [53] According to Mr. Hutchinson, the Member said she would still provide treatment if a patient refused to pay the registration fee but she advises patients they must pay the registration fee at a later date. Mr. Hutchinson reported that the Member told him the fee goes to an “internal governance” system. His report states that the Member told him she established the \$40 registration fee in 2001 but increased it to \$200 shortly after the College’s proclamation as a result of additional time required with patients and additional recordkeeping requirements.<sup>15</sup> The Panel understands that the Member represented to Mr. Hutchinson that she will sometimes waive the registration fee for the elderly and for disabled patients. Mr. Hutchinson’s report states “Ms. Yan said she tells patients that signing a consent form enables her to perform a controlled act based on the government’s code of conduct and that the registration fee goes towards her internal governance system. She said she has never told patients that the registration fee is imposed by the government, that the fee goes directly to the government, or that it is required by law”.<sup>16</sup>
- [54] Shanna Yee also had evidence to provide with respect to the Member charging a \$240 fee. Ms. Yee testified that when she attended on July 20, 2016, the Member told her there was a \$240 government fee and that “they don’t make it easy to practice anymore”. Ms. Yee testified that she was given a vial of yellow pills to ease her stomach aches. Ms. Yee testified the Member told her that if the pills did not work, the Member would then have to make Ms. Yee a patient and Ms. Yee would need to pay the \$240 mandated fee. According to Ms. Yee, the Member claimed that she could not tell Ms. Yee what the pills contained because Ms. Yee was not a patient. Again, according to Ms. Yee, the Member made reference to carrying out “a controlled act”.
- [55] The fee schedule from the Member’s clinic was submitted into evidence.<sup>17</sup> It contains an entry detailing a one time registration fee of \$200. The fee schedule also lists fees for consultations including 15, 30 and 60 minutes for \$50, \$100 and \$200 respectively. No entry on the schedule submitted into evidence shows \$240 for registration or a \$40 emergency fee.

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<sup>13</sup> Exhibit 20, Tab 9

<sup>14</sup> Exhibit 17, p. 5.

<sup>15</sup> Exhibit 17, p. 5.

<sup>16</sup> Exhibit 17, p. 5.

<sup>17</sup> Exhibit 10, Tab 2.

- [56] Anita Issac testified that she was not aware of a registration fee. She confirmed however that Ms. Yan explained her fees to her.
- [57] Leslie Stone also testified that he did not know about any registration fee. He testified that he paid the Member per appointment and was happy with her treatments.
- [58] The Member alleged that Ms. Abdelhati took advantage of language barriers and ought to know the word “governance”. The Panel rejects this contention. There is no evidence that any of what transpired between the Member and Ms. Abdelhati was the result of a language barrier.
- [59] The College’s expert witness, Allison Kucan Hahn, testified that the College does not set fees and that there is often an additional fee associated with an initial visit. She explained that a registration fee is, in itself, not a contravention of the standard of practice. However, it must be administered in an open and honest way, clearly outlined ahead of time and applied equally to everyone. In support of her opinion, Ms. Kucan Hahn referred to the Jurisprudence Course Handbook published by the College which speaks to open and honest billing practices.<sup>18</sup>
- [60] Ms. Kucan Hahn opined that the Member’s billing practice does not meet the necessary requirements. In support of this opinion, she relied on assumptions made in her report with respect to the evidence of Mr. Hutchinson and Ms. Yee. In particular Ms. Kucan Hahn adverted to the different representations that Mr. Hutchinson reported receiving from the Member in the course of his August 3 and August 30, 2016 interviews with the Member. Ms. Kucan Hahn also adverted to email correspondence between the Member and Mr. Hutchinson wherein the Member told him a third version of events which featured charges for 60 minutes of consultation time in respect of infant Patient #1. The evidence underlying the assumptions that Ms. Kucan Hahn relied upon was presented to the Panel in the form of testimony from Mr. Hutchinson and Ms. Yee and documentary evidence tendered as exhibits.
- [61] Ms. Kucan Hahn also opined that it is a contravention of the standard of practice to advise patients that a ‘registration fee’ is required by law. This, in her opinion, is misleading and inaccurate. She also stated in her written report that making a registration fee a condition for treatment and not universally applying it raises two major concerns more broadly. The first is that potential patients are forced to pay to receive care and may feel they have no choice but to pay. Patients can be in vulnerable circumstances and may pay a fee despite that it may not be reasonable, customary or outlined ahead of time. The second concern is the requirement of a pre-payment before medicine is provided. Ms. Kucan Hahn stated that it can be in poor taste to ask for payment before a treatment is rendered. She did however note that pre-payment may be necessary when, for example, dealing with a special order of a product.
- [62] With respect to the allegation that the Member failed to provide treatment to infant Patient #1, Ms. Kucan Hahn opined that, based on the assumptions she was asked to make, the

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<sup>18</sup> Exhibit 20, Tab 6.

Member did not fail to provide treatment and did not contravene any standard of practice in that respect.

[63] The Panel notes there was a reasonable degree of skill and care in the diagnosis of infant Patient #1. The Panel also notes that the Member did conduct an investigation and made a diagnosis. The Panel agrees that a treatment was provided. The Panel finds no evidence that the Member failed to provide treatment to infant Patient #1.

[64] However, the Panel was not satisfied that fees for registration, consultation, medication, ingredients or other fees for services were being charged consistently. The Member's evidence and explanations on these points was inconsistent at times and difficult to understand. The Panel finds that the Member's fee practices are not consistent or transparent. These kinds of practices can confuse the public.

[65] The Panel finds that the Member committed professional misconduct as set out in paragraphs 4-7 of the Notice of Hearing for the manner in which she attempted to charge a fee to Ms. Abdelhati. The allegation at paragraphs 4-7 of the Notice of Hearing pertaining to the Member failing to treat infant Patient #1 has not been established.

*iii. Allegation of Failing to provide information to Patient #2 and charging a fee based on racial descent*

[66] The Notice of Hearing alleges, at paragraphs 8-16, that the Member committed professional misconduct by providing a vial of pills to Ms. Yee on July 20, 2016. The issue with the vial is that it was alleged to have not listed the name of the medication it contained or detailed any of the ingredients of that medication. The Notice of Hearing also alleges that the Member elected not to charge the patient fee/registration fee to Ms. Yee because Ms. Yee was Chinese and, thereby, the Member charged (or opted not to charge) a fee to a patient based on racial descent. The Notice of Hearing alleges that this conduct, if proven, would constitute professional misconduct as a contravention of the standards of practice of the profession and/or be conduct relevant to the practice of the profession that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional and/or represents a failure to reply appropriately to a request from a patient and/or represents a failure to keep patient records in accordance with the standards of the profession.

[67] The Member had varying responses to these allegations in her testimony. She, at one point, said it was Ms. Yee who asked about the registration fee and that she didn't want to charge her. The Member said she wanted to give Ms. Yee medicine to use for three days and then have her come back in the event that it didn't work.

[68] The Member did not agree that any waiver of fees was due to race or background. She contended that Ms. Yee thought it was because Ms. Yee was Chinese but that Ms. Yee was mistaken. The Member explained that, because Ms. Yee had represented to her that her mother was one of the Member's patients, it was on that basis that the Member was prepared to waive her registration fee. The Member went on to explain to the Panel that it would be culturally appropriate not to charge to register the family member of a current

patient. However, when cross-examined on the issue, the Member said “I never charge Chinese people”. The Member then clarified this by saying she doesn’t charge underprivileged people. The Member indicated that she sometimes elects to waive fees for Chinese patients where she is concerned about their ability to pay. She noted in particular that elderly Chinese patients may get a waiver but she would not ever waive fees for international Chinese students because they “come from money”. In cross-examination, the Member was confronted with the proposition that she was waiving fees based on racial descent and she did not agree. She testified that she waives fees for disabled patients of all ethnicities and to non-Chinese patients who can demonstrate they earn less than \$20,000 annually. She also stated that she waives fees for employees of certain companies.

- [69] With respect to the allegation of failing to list ingredients, the Member testified that she gave Ms. Yee a bottle of pills without the name of the medicine nor the ingredients listed on it. The Member testified that she distinguishes between commercially available medicine and her family recipes. When it comes to her family recipes, the Member stated that her proprietary rights are important and she does not give out the ingredients without compensation. When asked if she discloses ingredients from her family recipes, her response was it depends on who was asking and the circumstances.
- [70] The Member testified that she takes pills that are commercially available from a bigger bottle and doses them out for patients into a smaller bottle. The Member testified that Ms. Yee was given Shu Kan Wan which is a commercially available Chinese herb.
- [71] When asked on cross-examination if she told Mr. Hutchinson that patients can use Google to ascertain ingredients, the Member denied telling him this.
- [72] When asked about charging patients in order to reveal ingredients, she stated with respect to her family recipes she charges \$50 for 15 minutes when she writes them down. When asked about generic medicine such as the Shu Kan Wan given to Ms. Yee, the Member admitted it had no label but stated it was rare and that this was a good lesson for her to never let it happen again.
- [73] The Member testified that Ms. Yee had no right to ask for the Shu Kan Wan ingredients because Ms. Yee was not her patient. When asked further about this in the course of her examination, the Member indicated that Ms. Yee would have to pay like anyone else. The Member indicated that if Ms. Yee paid the fee, Ms. Yee would then become a patient. The Member went on to indicate that a registered patient would have received a vial listing the ingredients
- [74] Despite the above, there is no dispute that, on or about July 20, 2016, Ms. Yee in her capacity as an undercover College investigator attended at the Member’s clinic posing as Natalie Wong (referred to in the Notice of hearing as “Patient #2”). As above, Ms. Yee visited the Member complaining of stomach problems. The vial of pills given to Ms. Yee



was entered in evidence by the College counsel.<sup>19</sup> There is no dispute that it does not list any ingredients or the name of the substance it contained.

- [75] According to Ms. Yee's testimony discussed above, the Member told Ms. Yee there was a government mandated fee of \$240 to become her patient and that the government retained the fee. However, Ms. Yee testified that the Member represented to her that - because Ms. Yee was Chinese - the Member would waive the fee and only charge her for the pills. Ms. Yee testified that when she asked to know what the pills contained, she was told by the Member that that would require patient registration and payment of the \$240 fee.
- [76] Ms. Yee testified that when she received the vial of pills, the Member indicated that she does not make this same offer to "white people". Ms. Yee also testified that the Member stated the College wants the Member's family formulas so "white people" can be trained to use them.
- [77] Ms. Yee asked the Member for a receipt on July 20 and received one. This is not disputed. Ms. Yee testified that the Member agreed to produce a receipt but stated to Ms. Yee that she normally did not have time to issue receipts and would only do it this particular time. The receipt given to Ms. Yee was entered as an exhibit<sup>20</sup> and lists "Chinese medicine (pills, tablets)" with "\$20" noted as the amount paid. No ingredients or information regarding the medicine are listed on the receipt.
- [78] Ms. Kucan Hahn stated that the College's Safety Handbook, section 5.3.2 and the Guidelines for Writing a Prescription<sup>21</sup> outline the labelling requirements when dispensing herbal formulas to patients. Ms. Kucan Hahn noted that the required information includes but is not limited to the name of each herb, part of the herb, method of preparation, quantity of each herb and instructions on how to use the medication safely. Ms. Kucan Hahn testified that practitioners are required by law to provide medicine ingredients and this is not an additional service to be billed separately. If a patient does not know what they are taking it is impossible for them to give informed consent. Patients, for example, may have allergies and are entitled to transparency. Ms. Kucan Hahn explained that because different manufacturers produce medication in different ratios or mixtures, "Googling" is not an acceptable way to ascertain ingredients. Ms. Kucan Hahn explained that it is a contravention of the standard of practice to charge a fee to provide a list of ingredients or the names of provided herbs to a patient. Ms. Kucan Hahn opined that, based on the assumptions she was asked to make, the Member's conduct did not meet the standard of practice.
- [79] Ms. Kucan Hahn testified that charging or waiving a fee based on ethnicity or race contravenes the standard of the practice.

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<sup>19</sup> Exhibit 6.

<sup>20</sup> Exhibit 3, Tab 8.

<sup>21</sup> See Exhibit 20, Tab 11.

- [80] The Panel finds that informing patients about medicine they are given and related ingredients is not something extra or an add-on service but is necessary for a patient to provide informed consent. Informing patients of medicine and ingredients is also important so they can advise subsequent practitioners of what they are taking or have taken. Google is not an acceptable solution because it can be inaccurate. Patients have a right to be informed and it is the responsibility of the practitioners to inform them.
- [81] The Panel finds also that the Member charged a fee based on racial descent in the case of Ms. Yee and this is discriminatory.
- [82] The Panel believes Ms. Yan does come from a place of compassion. The Member testified that she tries to help low income people and this is demonstrated by her evidence about charging lower fees to elderly Chinese patients as well as her community outreach program “My Heart Goes on A Mission”. This program serves the local community and suggests that the Member helps low income individuals and veterans. This type of conduct is commendable but cannot be discriminatory.
- [83] On the basis of the above, the Panel is satisfied that the allegations at paragraphs 8-16 of the Notice of Hearing have been proven on a balance of probabilities using clear, convincing and cogent evidence and finds accordingly.

*iv. Allegation of Using the Doctor Title*

- [84] The Notice of Hearing alleges, at paragraphs 17-19, that the Member committed professional misconduct by improperly using the “Dr.” title on numerous instances on July 20, 2016 while dealing with Ms. Yee. The Notice of Hearing alleges that this conduct, if proven, would constitute contravention of section 33 of the RHPA and/or be conduct relevant to the practice of the profession that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.
- [85] The Member testified on cross-examination that when she was investigated in a prior matter in 2013 for improperly using the “Dr.” title, she told Mr. Mak from the College she had a co-op student removing the title from her stationary and supplies using white out. She admitted to knowing that she was not permitted to use the title. When asked about media publications photographed in her clinic during the investigation, the Member blamed others for leaving them around. She did however admit that the intake and consent form given to Ms. Abdelhadi referred to her as “Dr.”
- [86] The Panel heard from Ms. Yee about her observations and interactions with the Member. The Panel also heard evidence on this issue from Ms. Abdelhadi and Mr. Hutchinson. All three individuals testified that the Member, at various times, referred to herself as “Dr. Yan”.
- [87] Despite the oral evidence, various documents were entered as exhibits in the course of the hearing which identify the Member as “Dr. Yan”. These documents include the vial of

pills that Ms. Yee received from the Member<sup>22</sup>, various intake and consent forms that were obtained from the Member's clinic<sup>23</sup>, media publications that were available in the Member's clinic<sup>24</sup>, and even the Member's email address which is visible on certain items in the clinic: [doctoryan@doctoryantcm.com](mailto:doctoryan@doctoryantcm.com).<sup>25</sup>

- [88] Ms. Kucan Hahn testified that College members, without an MD, are not permitted to use the "Dr." title and to do so would constitute a contravention of a current standard of practice of the profession. The Panel also takes notice of section 33 of the RHPA which imposes limitations on the use of the title.
- [89] The Member's representative submitted in argument that the Member is entitled to use the "doctor" title-based *Brenda Berge v. College of Audiologists and Speech-Language pathologists of Ontario and the Attorney General of Ontario* 20161129 ("Berge"). Berge referred to an April 2006 report of the Health Provisions Regulatory Advisory Council ("HPRAC") recommending that "registered professionals with an earned academic doctoral degree be allowed to use the title "Doctor" in the course of providing health care." The Panel does not accept this argument. The report referenced in *Berge* contains only a recommendation and it is not binding authority.
- [90] The "manner" in which the qualification is expressed can be confusing to a vulnerable person when used in conjunction with treatment and diagnosis of the physical human body. The Member's use of the term "Dr." in regards to her PhD was used in conjunction with services offered at her clinic and directly related to her services in TCM and could therefore be misleading to the public.
- [91] The Panel is satisfied that the allegation contained at paragraphs 17-19 of the Notice of Hearing has been proven on a balance of probabilities based on clear, convincing and cogent evidence.

**v. Allegation of Breach of Confidentiality with Patient #2**

- [92] The Notice of Hearing alleges, at paragraphs 20-21, that the Member committed professional misconduct by taking the pulse and examining the tongue of Ms. Yee in the entryway of the Member's clinic and thereby failed to maintain a standard of practice of the profession regarding patient confidentiality. The Notice of Hearing alleges that this conduct, if proven, would constitute a contravention of a standard of practice of the profession and/or be conduct relevant to the practice of the profession that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.
- [93] The Member described her recollection of her dealings with Ms. Yee. She reported that she had three patients waiting, that the outside room was full and she was in a consultation room with a patient dealing with some depression issues when Ms. Yee arrived. The

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<sup>22</sup> Exhibit 6.

<sup>23</sup> See Exhibit 11, Tab 11.

<sup>24</sup> See Exhibit 11, Tab 2.

<sup>25</sup> See items in Exhibits 3 and 11.

Member reported that she usually does not take more than one patient at a time and that she was calming everyone. The Member testified that she accordingly offered for Ms. Yee to stay and wait to see her. Ms. Yee indicated she was on her lunch hour and in a hurry. The Member admitted she thought she would be quick. The Member testified she checked Ms. Yee's pulse and tongue. She stated that she told Ms. Yee that unless she wanted to wait 30 minutes, she could either wait to take her in a room or Ms. Yee could take the pills and go. The Member stated on cross-examination that she examined Ms. Yee in a room blocked by a curtain and door with a reception style desk in the background and the Member submitted a picture.<sup>26</sup> The Member admitted however that this was not a private area.

- [94] There is no dispute that Ms. Yee visited the Member's clinic on July 20 and that the Member checked Ms. Yee's pulse and inspected her tongue in the clinic hallway just inside the reception area. The Member testified that this occurred because all of the treatment rooms were full. Ms. Yee however testified that she saw no one else at the clinic, other than the Member. Photos submitted into evidence as referenced above show a reception desk with an area in front. The photos show doors or a hall with a curtain on one end and a door on the other but no photo showed what was directly behind the reception desk area, which appeared to be open.
- [95] Ms. Kucan Hahn explained<sup>27</sup> that steps must be taken to ensure confidentiality and the integrity of personal information of patients. Ms. Kucan Hahn referred in this regard to the *Personal Health Information Protection Act*. She testified that the hallway of a clinic does not meet a sufficient level of privacy to ensure that a patient's personal health information is protected. Ms. Kucan Hahn further testified that it would be a contravention of the standards of practice of the profession to treat a patient in a hallway and this would include conducting intake, taking a pulse or checking a patient's tongue.
- [96] The Member argued in submissions that Ms. Yee was mischaracterizing the area of the clinic in which she was treated. The Member called it "reception" in testimony then referred to it as an "internal passway" in submissions. The Panel concluded this was a play on semantics as evidentiary photographs showed this to be an open non-private area.
- [97] The Panel accepts that the Member was well-meaning and tried to accommodate Ms. Yee, agreeing to see her during a very busy time. However, a patient disclosing personal information should be assured of confidentiality. The assurance of confidentiality could not be preserved in a non-private area. The evidence submitted regarding the area where Ms. Yee was treated showed that the area behind the reception desk is quite open and that no one is prevented from walking in or hearing them discuss personal matters within the clinic. Treating a patient in a non-private setting is at minimum not a best practice and creates an unnecessary risk to violate the personal and confidential nature in treating persons. While there is no evidence of an actual breach in this case, the Member herself

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<sup>26</sup> See Exhibit 23.

<sup>27</sup> Exhibit 20, pp. 16-19.

stated that the area was not private. The Panel accepts the opinion of Ms. Kucan Hahn and finds that treating a patient in a non-private room is not a practice that can be condoned.

- [98] The Panel is satisfied that the allegation contained at paragraphs 20-21 of the Notice of Hearing has been proven on a balance of probabilities based on clear, convincing and cogent evidence.

*vi. Allegation of failing to keep records in accordance with the Standards of the Profession*

- [99] The Notice of Hearing alleges, at paragraphs 22-24, that based on a review of patient records undertaken by the College in the course of its investigations, the Member committed professional misconduct by failing to provide certain patients with receipts and/or ingredients of prescriptions. It is also alleged that the Member failed to ensure that entries in certain patient charts were made in English. The Notice of Hearing alleges that this conduct, if proven, would constitute contravention of the standards of practice of the profession and/or be a failure to itemize an account for professional products or services and/or be conduct relevant to the practice of the profession that would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.
- [100] Going through sample patient records<sup>28</sup> including the file of the undercover investigator, Ms. Yee, the Member agreed that the receipt given to Ms. Yee would not allow her to know what was in the bottle of pills she received. The Member was taken through other records and shown various receipts for random patients. Some of these receipts had no names of medicine or ingredients listed. The Member herself admitted in the course of her testimony that her treatment records could be improved.
- [101] Referring to the receipt given to the grandmother of infant Patient #1,<sup>29</sup> it did not indicate the name of the medicine given nor the ingredients.
- [102] The College relied on the testimony of Ms. Kucan Hahn in support of its position that the Member failed to properly document and itemize professional services rendered and also failed to keep financial records in accordance with the standards of the profession. In support of this allegation, the College submitted into evidence records of various patients obtained by Mr. Hutchison.<sup>30</sup> According to Mr. Hutchinson, these records were chosen at random.
- [103] With regard to financial records, Mr. Hutchinson testified that he was told by the Member that she does not have the resources to issue receipts after each patient visit and that her practice is to issue any receipts only at the end of the year.
- [104] Ms. Kucan Hahn viewed and referred to a random sample of records taken from the Member's practice upon the investigation. She testified that the practice of the profession

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<sup>28</sup> Exhibit 20, Tab 16.

<sup>29</sup> Exhibit 20, Tab 9.

<sup>30</sup> See Exhibit 11, Tab 10.

is to provide complete and accurate receipts after each visit. The receipts must be legible and contain information regarding health care provided including the patient's name, date of service and an itemized list of services provided. Ms. Kucan Hahn also testified that, upon examination of the documents - which she was advised were the Member's files - the receipts provided would be inadmissible for insurance purposes. Some problems Ms. Kucan Hahn identified in these records included bills that were not itemized and which featured no descriptions of services provided nor of products given.

- [105] Ms. Yee testified that the Member told her she normally only gives receipts once a year before eventually giving a receipt to Ms. Yee.
- [106] The Member maintains that the standard for bookkeeping is unclear and that receipts are the responsibility of the Member's accountant. The Member admitted in testimony that she might omit some information in her record keeping.
- [107] The Panel finds that the standards are not unclear. The College has a recordkeeping policy for members. In reviewing the patient records submitted into evidence, they showed numerous issues. Information regarding treatment and medication was not always listed or was missing entries and incomplete. The patient records also revealed that the Member failed to itemize charges for treatments and some entries were not fully recorded in English. Treatment notes need to be in either English or French but many of the records filed at the hearing were in Mandarin only.
- [108] Ms. Kucan Hahn testified about records that need to be kept with respect to prescriptions. She referred to an excerpt from the College Safety Program Handbook regarding dispensing records and explained why this is important. Patient progress requires knowledge of what was done in the past and one cannot rely on memory as a clinician.
- [109] The Panel finds that there was failure in many records to document ingredients of medicines - in many instances there was no identifying information at all. If a patient file needed to be given to another practitioner, many files did not have the required information and would need to be translated. The Member's financial records showed no indication of what a patient was charged. Totals in many records did not add up or contained no clear indication of how payment was made. The Panel reviewed the records submitted into evidence and found that the Member did not meet the standard of the profession.
- [110] The Panel is satisfied that the allegations contained at paragraphs 22-24 of the Notice of Hearing have been proven on a balance of probabilities based on clear, convincing and cogent evidence.

**vii. *Allegation relating to conduct during the Investigation***

- [111] The Notice of Hearing alleges, at paragraphs 25-28, that the Member committed professional misconduct by failing to cooperate with and obstructing Mr. Hutchinson in the conduct of his investigation on August 3, 2016. The Notice of Hearing alleges that this conduct, if proven, contravenes a standard of practice of the profession and/or contravenes subsections 76(3) and 76(3.1) of the Code which respectively relate to obstruction and

failure to cooperate with an investigation and/or constitutes conduct which would reasonably be regarded by the profession as disgraceful, dishonourable or unprofessional.

- [112] As referenced above, Barker Hutchinson was retained by the College and received multiple appointments of investigator in respect of the allegations in the Notice of Hearing.
- [113] Mr. Hutchinson testified that, on August 3, 2016, he conducted his first interview with the Member. He arrived at the Member's clinic unannounced at approximately 8:45am. Mr. Hutchinson testified that when he attended that day, he presented the Member with an appointment of investigator package which included copies of all three Letters of Appointment along with his business card, the applicable sections of the Code, a copy of a letter from the College from Michelle Pieragostini and a copy of the complaint from Ms. Abdelhadi.
- [114] Mr. Hutchinson testified about the manner in which the Member behaved that day. He testified that the Member took the position that he was not permitted to enter her clinic without 30 days notice. He also testified that the Member refused to permit him access to an area of her clinic where she stored her herbs. Mr. Hutchinson also testified that he took notes contemporaneously during his interview with the Member. There was no evidence to suggest this was untrue.
- [115] In response, the Member testified that she was caught off guard when interviewed on August 3, 2016. She also claimed that Mr. Hutchinson was inappropriate in his conduct during the investigation. The Member stated that Mr. Hutchinson was forceful in gaining access to her clinic and pushed her to accept the investigation letters.
- [116] The Member does not dispute that she initially thought the investigator was required to give 30-days notice before entering her clinic. The Panel notes that some of the correspondence which was hand delivered to the Member that day featured a 30-day turnaround for a response. It is unclear if that is what caused this misapprehension on the Member's part. In any event, it appears undisputed that the Member was given 30 days to respond.
- [117] The Member testified that she did not obstruct Mr. Hutchinson when he tried to enter the storage area of her pharmacy. She contended that the storage area is very small and that two people would not be able to fit. The Member filed a picture<sup>31</sup> to show how narrow the area is.
- [118] In any event, it appears undisputed that Mr. Hutchinson was never permitted access to the storage room despite that he was permitted to collect other items.
- [119] In submissions, the Member claimed that the investigator violated her *Charter* rights. The Member also stated that patient files collected were not random, but specially chosen and that Mr. Hutchinson's conduct failed to meet the standards of his profession. The Panel

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<sup>31</sup> Exhibit 22.

notes that despite being represented at all times, no motion was brought to exclude evidence or allege abuse of process. No motion was made to review the manner of the investigation. No motion was brought before the Panel seeking any remedies.

- [120] On the basis of the evidence heard, the Panel takes issue with only one aspect of the Member's conduct and that is – her refusal to permit Mr. Hutchinson entry to the area of her clinic where she stored her herbs (she referred to this as her “pharmacy”).
- [121] The Panel accepts that it would be jarring for an individual to be confronted by an investigator without notice and the Panel does not fault the Member for her initial reaction. The Member testified that she didn't understand what was happening at first. The Panel does not fault the Member for this either.
- [122] The Panel does however find that when Mr. Hutchinson tried to gain access to the Member's storage room, she did not cooperate and that she did not allow him access. The Member herself stated she is very guarded about her family recipes. The Member's argument that the room was too small for more than one person to stand is not a sufficient explanation.
- [123] The Panel finds that the Member committed professional misconduct by failing to cooperate with Mr. Hutchinson by preventing him access to the storage room at her clinic. The allegations contained in the Notice of Hearing in this regard at paragraphs 25-28 have been proven on a balance of probabilities based on clear, convincing and cogent evidence.

I, Maureen Hopman, sign this Decision as Chairperson of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below:

Date: October 1, 2018

Signed: \_\_\_\_\_



Maureen Hopman, Chair  
Jin Qi (Jackie) Zeng  
Barrie Haywood



## APPENDIX A

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

BETWEEN:

COLLEGE OF TRADITIONAL CHINESE MEDICINE PRACTITIONERS AND  
ACUPUNCTURISTS OF ONTARIO

- and -

NATHALIE XIAN XI YAN

### NOTICE OF HEARING

The Inquiries, Complaints and Reports Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario (the "College") has referred specified allegations against you to the Discipline Committee of the College. The allegations were referred in accordance with section 26 of the *Health Professions Procedural Code* which is Schedule II to the *Regulated Health Professions Act, 1991* (referred to as the "Code"). The statement of allegations is attached to this notice of hearing. A discipline panel will hold a hearing under the authority of sections 38 to 56 of the Code, as amended, for the purposes of deciding whether the allegations are true. A **pre-hearing conference** will be held at a date and location to be set by the Registrar. A discipline panel will convene at the offices of the College at 705 - 55 Commerce Valley Drive West, Thornhill, Ontario at **9:30 a.m. on a date to be set by the Registrar**, or as soon thereafter as the panel can be convened, for the purposes of conducting the **discipline hearing**.

**IF YOU DO NOT ATTEND ON THE DATE FOR THE HEARING IN  
ACCORDANCE WITH THE PRECEDING PARAGRAPH, THE DISCIPLINE PANEL MAY**

**PROCEED IN YOUR ABSENCE AND YOU WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDINGS.**

If the discipline panel finds that you have engaged in professional misconduct, it may make one or more of the following orders:

1. Direct the Registrar to revoke the member's certificate of registration.
2. Direct the Registrar to suspend the member's certificate of registration for a specified period of time.
3. Direct the Registrar to impose specified terms, conditions and limitations on the member's certificate of registration for a specified or indefinite period of time.
4. Require the member to appear before the panel to be reprimanded.
5. Require the member to pay a fine of not more than \$35,000 to the Minister of Finance.
6. If the act of professional misconduct was the sexual abuse of a patient, require the member to reimburse the College for funding provided for that patient under the program required under section 85.7.
7. If the panel makes an order under paragraph 6, require the member to post security acceptable to the College to guarantee the payment of any amounts the member may be required to reimburse under the order under paragraph 6.

The discipline panel may, in an appropriate case, make an order requiring you to pay all or part of the College's costs and expenses pursuant to section 53.1 of the *Code*.

You are entitled to disclosure of the evidence against you in accordance with section 42(1) of the *Code*, as amended.

You must also make disclosure in accordance with section 42.1 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.

Further, you must also 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 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 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, or your representative, may contact the solicitor for the College, **Robin McKechney**, in this matter:


**Steinecke Maciura LeBlanc**

Barristers & Solicitors  
401 Bay Street  
Suite 2308, P.O. Box 23  
Toronto, ON M5H 2Y4

Telephone: (416) 583-2552  
Facsimile: (416) 593-7867

Date:

July 24/2017

  
Allan Mak  
Registrar  
College of Traditional Chinese Medicine  
Practitioners and Acupuncturists of  
Ontario

TO: NATHALIE XIAN XI YAN  
109-132 Parkdale Avenue South  
Hamilton, Ontario  
L8K 3P3

## **STATEMENT OF ALLEGATIONS**

### **The Member**

1. At all material times Nathalie Xian Xi Yan was a member of the College (the "Member").
2. Between approximately August 2013 and February 2015, the Member was an elected member of the Council of the College.
3. The Member is not a member of the following:
  - a. College of Physicians and Surgeons of Ontario
  - b. College of Chiropractors of Ontario
  - c. Royal College of Dental Surgeons of Ontario
  - d. College of Optometrists of Ontario
  - e. College of Psychologists of Ontario
  - f. College of Naturopaths of Ontario

### **Charging a Patient Fee and Failing to Provide Treatment**

4. In February 2016 the Member incorrectly advised the mother of infant Patient #1 that the Member was obligated to charge a \$240 patient fee (the "Patient Fee").
5. The Member incorrectly advised the mother of infant Patient #1 that the Patient Fee was required by law.
6. Infant Patient #1 was suffering from severe diaper rash and painful bowel movements. The Member recommended TCM herbs to infant Patient #1. The Member refused to sell the mother of Patient #1 the recommended TCM herbs unless the mother paid the Patient Fee.

7. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), 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.

**Failing to provide information to Patient #2 and charging a fee based on racial descent**

- 8. On or about July 20, 2016, an undercover College investigator visited the Member posing as Patient #2. Patient #2 is of Chinese descent.
- 9. The Member provided Patient #2 with a vial of pills/TCM herbs. The label on the vial did not indicate the name or ingredients of the pills/TCM herbs.
- 10. The Member told Patient #2 that there was a government mandated fee of \$240 to become her patient and that the government retained the \$240 fee.
- 11. The Member told Patient #2 that because she was Chinese the Member would waive the fee and only charge Patient #2 for the pills/TCM herbs.
- 12. Patient #2 asked the Member what was in the pills/TCM herbs. The Member told Patient #2 that she would have to pay the \$240 fee first and become her patient if she wanted to know the ingredients of the pills/TCM herbs.
- 13. The Member told Patient #2 that she would not tell her what was in the pills/TCM herbs until Patient #2 paid the \$240 fee.

14. Patient #2 asked the Member for a receipt. The Member provided a receipt but said she does not have time to provide her patients with receipts after each appointment.
15. The receipt states "Chinese Medicine (pills tablets) \$20.00."
16. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:
  - a. Paragraph 1: Contravening a Standard of the Profession or failing to maintain the standard of practice of the profession;
  - b. Paragraph 4: Failing to reply appropriately to a reasonable request by a patient or a patient's authorized representative for information respecting a service or product provided or recommended by the member;
  - c. Paragraph 25: Failing to keep records in accordance with the standards of the profession and/or
  - 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.

### **Using the Doctor Title**

17. On or about July 20, 2016, the Member:
  - a. Introduced herself to Patient #2 as Dr. Yan;
  - b. Provided forms to Patient #2 which identified the Member as Dr. Yan;
  - c. Provided a vial of pills/TCM herbs with a label identifying the Member as Dr. Yan and an email address of [doctoryan@doctoryantcm.com](mailto:doctoryan@doctoryantcm.com) to Patient #2; and/or



- d. Provided a bag printed with "Dr. Nathalie Xian Yi Ya Dr TCM, Dr, Ac." to Patient #2.

18. Section 33 of the RHPA provides that:

*33. (1) Except as allowed in the regulations under this Act, no person shall use the title "doctor", a variation or abbreviation or an equivalent in another language in the course of providing or offering to provide, in Ontario, health care to individuals. 1991, c. 18, s. 33 (1).*

*(1.1) Subsection (1) does not apply to a person who is a member of the College of Naturopaths of Ontario. 2007, c. 10, Sched. P, s. 20 (1).*

*(1.2) A member referred to in subsection (1.1) shall not use the title "doctor" in written format without using the phrase, "naturopathic doctor", immediately following his or her name. 2007, c. 10, Sched. P, s. 20 (1).*

*(2) Subsection (1) does not apply to a person who is a member of,*

*(a) the College of Chiropractors of Ontario;*

*(b) the College of Optometrists of Ontario;*

*(c) the College of Physicians and Surgeons of Ontario;*

*(d) the College of Psychologists of Ontario; or*

*(e) the Royal College of Dental Surgeons of Ontario. 1991, c. 18, s. 33 (2).*

*(2.1) Subsection (1) does not apply to a person who is a member of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario and who holds a certificate of registration that entitles the member to use the title "doctor". 2006, c. 27, s. 18 (1).*

*(3) In this section,*



*“abbreviation” includes an abbreviation of a variation. 1991, c. 18, s. 33 (3).*

19. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:

- a. Paragraph 39: Contravening, by act or omission, a provision of the Act, the RHPA or the regulations under either of those Acts (paragraph 39); 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.

#### **Breach of confidentiality with Patient #2**

20. On or about July 20, 2016, the Member took the Pulse and examined the tongue of Patient #2 while Patient #2 was in the entry way of the Member's Clinic.

21. For this reason it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:

- a. Paragraph 1: Contravening a Standard 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.

#### **Failing to keep records in accordance with the standards of the profession**

22. The Member failed to provide the following patients with receipts and/or provided receipts that were illegible, following each appointment:

- a. AA
- b. BB
- c. CC
- d. DD
- e. EE
- f. FF

23. The Member failed to record the ingredients of a prescription in the patient record and/or maintain a record of itemized charges to the patient and/or ensure that entries were made in English, in the following patient records:

- a. AA
- b. BB
- c. CC
- d. DD
- e. EE
- f. FF

24. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), namely:

- a. Paragraph 22: Failing to itemize an account for professional products or services while practising the profession;
- b. Paragraph 25: Failing to keep records in accordance with the standards of the profession and/or
- 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.

### **Conduct during the investigation**

25. On or about August 3, 2016 the College investigator attended at the Member's clinic. The Member would not permit the College investigator to enter the parts of her clinic where herbs were stored.

26. The Member obstructed the College's investigator contrary to subsection 76(3) of the *Code*, and failed to cooperate fully with the College contrary to subsection 76(3.1) of the *Code*.

27. The Member told the College investigator that

- a. it was against the law for the College investigator to enter her clinic within the first 30 days after receiving a complaint.
- b. the College wanted her formulas so that "white people" can be trained to use them.

28. For these reasons it is alleged that the Member engaged in professional misconduct pursuant to subsection 51(1)(c) of the *Code* (Ontario Regulation 318/12, section 1), 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 29: Contravening, by act or omission, a provision of the Act, the RHPA, or the regulations under either of those Acts; and/or
- 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.

### **APPENDIX**

1. The documents to be tendered in evidence at the hearing have been sent with this Notice of Hearing.
2. The *Rules of Procedure of the Discipline Committee of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of Ontario* have been sent with this Notice of Hearing.
3. Take notice that the documents that have been and may later be disclosed to you will be tendered as business documents pursuant to the *Evidence Act* of Ontario.
4. All documents that are disclosed to you in this matter are disclosed on the basis that they are to be used solely for the purpose of this proceeding and for no other purpose.