

**EXECUTIVE SUMMARY – XUANLIN YE, RMT
DISCIPLINARY HEARING CONDUCTED
JULY 28, 2011**

The Member, Xuanlin Ye, RMT (“Ms. Ye”), was charged with four counts of professional misconduct:

1. Falsifying records relating to the Member’s practice;
2. Signing or issuing, in the Member’s professional capacity, a document that he knew contained false or misleading statements;
3. Submitting an account or charge for services that he knew was false or misleading; and
4. Engaging in disgraceful, dishonourable or unprofessional conduct. Allegation 3 was withdrawn by the College at the commencement of the Hearing

THE FACTS

Evidence was presented by way of an Agreed Statement of Facts, establishing the following:

1. Ms. Ye is a Registered Massage Therapist. At the relevant time, she provided massage therapy services at the Hai Tian Health Centre (the “Health Centre”) in Scarborough, Ontario.
2. The Executive Committee directed that specified allegations of professional misconduct be referred to the Discipline Committee as set out in the Amended Notice of Hearing. The allegations referred to the Discipline Committee arose following the College’s receipt of an email alleging that various spas and clinics, including the Health Centre, were “doing illegal things” including asking “health practitioners to sign receipts” despite not actually performing treatment on the patient.
3. In the subsequent investigation commenced by the College, it was confirmed that Ms. Ye kept inadequate and incomplete appointment books and client files, falsified records related to her practice, and signed and issued, in her professional capacity, documents that she knew contained false and misleading statements.
4. In respect of the client files, Ms. Ye kept all entries in annual appointment books. Ms. Ye made all entries in pencil and omitted client names and appointment times. In an interview with a College Investigator, Ms. Ye admitted that she personally felt that the recording of appointment entries was unnecessary and meaningless.
5. In respect of the falsified records and the issuance of false and misleading client documents, College Investigators were able to obtain three receipts identifying Ms. Ye as the service provider in circumstances where she was not.
6. Ms. Ye acknowledged a plea that she had engaged in professional misconduct as follows:
 - a. She falsified records relating to her practice contrary to paragraph 27 of section 26 of O. Reg. 544/94 as amended;

- b. She signed or issued, in her professional capacity, a document that she knew contained a false or misleading statement contrary to paragraph 29 of section 26 of O. Reg. 544/94 as amended;
- c. She submitted an account or charge for services that she knew was false or misleading contrary to paragraph 30 of section 26 of O. Reg. 544/94 as amended; and
- d. She engaged in conduct or performed an act in relation to practicing the profession that, having regard to all circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional contrary to paragraph 44 of section 26 of O. Reg. 544/94 as amended.

THE PLEA

The Member entered a guilty plea in relation to Allegations 1, 2 and 4.

FINDING OF GUILT

On the basis of the Member's guilty plea and its review of the Agreed Statement of Facts, the panel of the Discipline Committee found the Member guilty of the allegations of professional misconduct set out in the Notice of Hearing, with the exception of Allegation 3, withdrawn by the College.

THE SENTENCING HEARING

The parties made joint submissions with respect to penalty, but did not agree on the length of suspension. The College proposed the following:

1. Ms. Ye shall waive her right of appeal and attend in person before the panel of the Discipline Committee to receive a recorded reprimand immediately following the conclusion of the Hearing;
2. The panel shall direct the Registrar to suspend Ms. Ye's Certificate of Registration for a period of 6 months, however, such suspension shall be remitted for 2 months if the Member complies with the terms, conditions, and limitations imposed on her Certificate of Registration as provided below.
3. The following terms, conditions and limitations shall be imposed on Ms. Ye's Certificate of Registration:
 - a. Within 6 months of the date of the Hearing, Ms. Ye shall enrol in and successfully complete, at her own expense, the College's Online Record-Keeping Course or a Registrar-approved
 - b. Within 6 months of the date of the Hearing, Ms. Ye shall enrol in and successfully complete, at her own expense, the College's Professionalism Workshop (or shall have done so within the past 6 months) and shall provide satisfactory evidence of the same.
 - c. The College is entitled to contact the facilitators of the above-listed courses, and request a report to the Registrar outlining the Member's participation in the courses which, if unsatisfactory, will constitute a breach of paragraphs (a) and (b) above.

4. Ms. Ye shall submit to two inspections of her practice, at her own expense, within approximately 6 months and 1 year of completing Terms (a) and (b) above. The costs of each inspection shall not exceed \$500.
5. Ms. Ye shall pay costs in the amount of \$2000, which shall be paid within 30 days of the date of the Hearing.
6. Publication in the usual course.

Ms. Ye sought a shorter suspension, without setting out the particular amount of time sought, and requested that her suspension be postponed for 1 year. She supported this position by stating that her income was being used to support orphans in China during the coming year.

THE PENALTY

The Panel ultimately imposed the following terms:

1. Ms. Ye's Certificate of Registration will be suspended for a period of 6 months with the ability to remit for 3 months of that suspension if the Member complies with terms, conditions and limitations imposed on her Certificate of Registration, as indicated in term (2) below. The Member's suspension of her Certificate of Registration is to commence as of July 29, 2011.
2. The Panel directs that the following terms, conditions and limitations shall be imposed on Ms. Ye's Certificate of Registration;
 - a. Within 6 months of the date of the Penalty Order, Ms. Ye shall enrol in and successfully complete, at her own expense, the College's Online Record-Keeping Course or a Registrar-approved record-keeping course (or shall have done so within the past 6 months) and shall provide satisfactory evidence of the same.
 - b. Within 6 months of the date of the Hearing, Ms. Ye shall enrol in and successfully complete, at her own expense, the College's Professionalism Workshop (or shall have done so within the past 6 months) and shall provide satisfactory evidence of the same.
 - c. The College is entitled to contact the facilitators of the above-listed courses, and request a report to the Registrar outlining the Member's participation in the courses which, if unsatisfactory, will constitute a breach of paragraphs (a) and (b) above.
3. Ms. Ye shall pay costs in the amount of \$2000 to be paid over 1 year, in monthly instalments of \$222.22 to begin November 1, 2011.
4. Ms. Ye shall submit to two inspections of her practice, at her own expense, within approximately 6 months and 1 year of completing Terms (a) and (b) above. The costs of each inspection shall not exceed \$500.
5. The Member is to receive a public and Recorded Reprimand.
6. The results of these proceedings will be included in the Public Register.

In its reasons for imposing the Penalty, the Panel found that a suspension of 6 months with the ability to remit 3 months was fair and accorded with the case law. The Panel felt that a suspension is meant to be a deterrent and must take place immediately, with the possibility of up to a two week allowance for a member to settle their business matters. However, the Member's proposal for a 1 year postponement of her suspension did not accord with the principle of deterrence.

The Panel also noted that falsifying records and providing signed receipts for treatments not performed by the Member are serious charges, and a finding of guilt warrants suspension. The length of the suspension was deemed to provide an adequate deterrence both to the Member and to other Members of the profession, while also protecting the public.

Immediately following the hearing, the Member waived her right of appeal and the panel administered a public reprimand at that time.

EDITORIAL NOTE

The decision of the Panel of the Discipline Committee underscores the severity of the offences of falsifying records and signing receipts for treatments not performed by the member. The Panel also paid particular attention to the role of deterrence in sentencing, both in terms of the Member and the profession as a whole. The Panel agreed with the College's submissions that specific and general deterrence is vital in cases involving offences of this nature, to ensure that the particular Member, and members of the profession generally, uphold the requirements of the legislation and the College and take care that their actions do not put any members of the public at risk of harm.