

IN THE CHINESE MEDICINE REGISTRATION BOARD OF VICTORIA

IN THE MATTER of the *Chinese Medicine Registration Act 2000*

– and –

IN THE MATTER of a formal hearing pursuant to Part 3 of the said Act into the professional conduct of Jirong ZHANG, a registered Chinese medicine practitioner.

Catchwords:

unprofessional conduct of a serious nature; false, misleading and deceptive conduct; use of testimonials; use of assistants; conflicts of interest.

Panel:

Carmel Morfuni [*Chair, Lawyer Member*]
Zhen Zheng [*Chinese Medicine Practitioner*]
Pauline McCabe [*Community Member*]

The Practitioner:

No appearance and no representation.

Counsel Assisting the Panel:

Dr I Freckelton instructed by DLA Phillips Fox

Date of Hearing:

29-30 October 2007

Date of Decision:

9 January 2008

FORMAL FINDINGS OF THE PANEL

The Panel finds:

(i) that Jirong Zhang, a registered Chinese medicine practitioner in the State of Victoria under the *Chinese Medicine Registration Act 2000* (the Act), has engaged in unprofessional conduct being conduct which is of a lesser standard than that which the public might reasonably expect of a registered Chinese medicine practitioner, and being conduct which is of a lesser standard than that which might reasonably be expected of a

registered practitioner by his or her peers pursuant to Sections 3 (a) and (b) and has engaged in professional misconduct, pursuant to Section 3 (c) of the Act; and

(ii) that Jirong Zhang has engaged in *unprofessional conduct of a serious nature* pursuant to Section 48(1)(a) of the Act.

FORMAL DETERMINATION OF THE PANEL

The Panel imposes the following penalties on Jirong Zhang (a registered Chinese medicine practitioner in the State of Victoria) pursuant to Section 48(2), of the *Chinese Medicine Registration Act 2000*:

1. The Panel suspends the registration of the practitioner, Jirong Zhang pursuant to Section 48 (2)(g) of the *Chinese Medicine Registration Act 2000* from 1 February 2008 until 31 May 2008 inclusive.
2. Pursuant to Section 48(2)(d) the Panel orders that the practitioner Jirong Zhang undertake a course of further education in professional ethics and in the side-effects of Chinese herbs, such courses to be approved by the Board and to be completed within a timeframe approved by the Board and to the satisfaction of the Board.
3. It is ordered pursuant to Section 48(2)(e) that the following condition be imposed on the registration of the practitioner Jirong Zhang:

that Jirong Zhang complete a course of education in professional ethics and in the side-effects of Chinese herbs, approved by the Chinese Medicine Registration Board of Victoria, within a timeframe approved by the Board and to the satisfaction of the Board.

4. Pursuant to Section 48(2)(c) of the Act, the Panel reprimands the practitioner Jirong Zhang in relation to the following:
 - a. in relation to the practitioner's false, misleading and deceptive representations in relation to his qualifications, as alleged and particularised in number 1 of the statement of allegations in support of the notice of hearing;
 - b. in relation to the practitioner creating in the complainants B and G an unreasonable expectation of beneficial treatment, as alleged and particularised in number 3 of the statement of allegations in support of the notice of hearing; and
 - c. in relation to the practitioner's conflicts of interest in relation to his financial interest in companies, which was not disclosed to the complainants B and G, as alleged and particularised in number 6 of the statement of allegations in support of the notice of hearing.
5. Pursuant to Section 48(2)(f) of the Act, the Panel fines the practitioner, Jirong Zhang as follows, and all fines are to be paid within 30 days of the date of the determination:

- a. the sum of \$5000 in relation to the practitioner's repeated use of testimonials in advertising, in breach of Section 63 of the Act, as alleged and particularised in number 2 of the statement of allegations in support of the notice of hearing;
- b. the sum of \$6000 regarding the practitioner's use of unqualified staff in the treatment of patients, as alleged and particularised in number 4 of the statement of allegations in support of the notice of hearing;
- c. the sum of \$3000 regarding the practitioner's poor management of adverse reactions in complainants B and G, as alleged and particularised in number 5 of the statement of allegations in support of the notice of hearing; and
- d. the sum of \$1000 in relation to the practitioner's poor prescribing practices, as alleged and particularised in number 7 of the statement of allegations in support of the notice of hearing.

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STATEMENT OF REASONS AND DETERMINATION

Overview

1. This matter relates to the professional conduct of Jirong Zhang (the practitioner), a registered practitioner under the *Chinese Medicine Registration Act 2000* (the Act). In essence, it is alleged that the practitioner engaged in unprofessional conduct of a serious nature including professional misconduct in a number of areas of his professional practice. These include the provision of deceptive, false and misleading information in relation to his professional qualifications and advertising in breach of the Act including the use of testimonials, creating unreasonable expectations in patients of beneficial treatment, permitting unqualified staff to provide treatment to patients without proper supervision and without the patients' consent, mismanaging patients' adverse reactions to treatment, poor prescribing practices, and not disclosing conflicts of interests to the complainants. It is alleged that these matters placed patients at risk and brought the profession of Chinese medicine into disrepute.
2. The present hearing was instituted by the Board pursuant to its legislative powers under Section 25 of the Act.

Cases cited

Briginshaw v Briginshaw (1938) 60 CLR 336
Murphy v Farmer (1988) 165 CLR 19
Sternberg v The Queen (1953) 88 CLR 646
Given v CV Holland (Holdings) Pty Ltd (1977) 29 FLR 212
Basser v Medical Board of Victoria (1981) VR 953
Gee v General Medical Council (1987) 1 WLR 564
Pillai v Messiter (No. 2) (1989) 16 NSWLR 197
Re: Parr and Nurses Board of Victoria (1998) 16 VAR 118
Law Society of NSW v Foreman (1994) 34 NSWLR 408
George Varnavides v The Dental Board of Victoria (unreported Mandie J),
Supreme Court of Victoria, 1 May 1998

Mullany v Psychologists Registration Board (unreported Gillard J), Supreme Court of Victoria, December 1997 (BC 9707652)
Ha v Pharmacy Board of Victoria (2002) VSC 322
Varnavides v Dental Practice Board of Victoria (2004) VCAT 1335 (5 July 2004)
Campbell v. the Dental Board of Victoria (Mandie J, (1999) VSC 113
Vissenga v Medical Practitioners Board of Victoria (2004) VCAT 1044
Exler v The Dental Practice Board of Victoria (Occupational and Business) (2005) VCAT 2595 (8 December 2005)

Legislation

Chinese Medicine Registration Act 2000 (Victoria)

PRELIMINARY

3. This matter came to the attention of the Chinese Medicine Registration Board of Victoria (the Board) as the result of the following complaints in relation to Jirong Zhang, a registered practitioner:
 - verbal then written complaints from complainant B (a patient), dated 9 January 2006 and 29 January 2007;
 - written complaints from complainant S (not a patient), dated 12 April 2006 and 20 January 2007 in support of B's complaint; and
 - a verbal complaint from complainant G (a patient), on 2 May 2007 and a written complaint from her dated 1 June 2007.

Note that the complainants in this decision, and in the Appendix, are referred to by an initial only.

4. Further, the Registrar of the Board (the Registrar) investigated the practitioner's website and concluded that he may have breached the Act and the Board's advertising guidelines, and that he may have made unwarranted claims in relation to his qualifications and the treatment which he provided to patients. She brought these matters to the attention of the Board.
5. The Registrar was delegated by the Board to undertake a preliminary investigation pursuant to Section 24 of the Act.
6. The practitioner communicated with the Registrar by telephone and in writing on a number of occasions and provided information in relation to the complaints between 2006 and 2007.
7. At the Registrar's instigation, two representatives of the Board interviewed complainant B in Queensland and provided a report dated 13 November 2006.
8. The Panel is satisfied that there has been compliance with the statutory requirements of Sections 24(3)(b), 25(2), 44, 45 and 46 of the Act.

9. The statement of allegations in support of the notice of hearing appear at Appendix A.
10. A Directions hearing was held on 15 October 2007 at which the practitioner was represented by Mr Roderick Smith, Solicitor. Dr Ian Freckelton as he then was, of Counsel, appeared as Counsel Assisting the Board. At this hearing various directions were made.
11. A formal hearing into this matter was conducted on 29 and 30 October 2007. The practitioner was not represented at, and did not attend, the hearing. Dr Ian Freckelton of Counsel appeared as Counsel Assisting the Panel.

ISSUES

12. The issues before the Panel are:
 - whether the practitioner has engaged in “unprofessional conduct” including professional misconduct within the terms of Section 3 of the Act; and
 - whether the practitioner has engaged in *unprofessional conduct* of a serious nature or not of a serious nature (Section 48(1)); and
 - the appropriate determination to be made (Section 48 (2)).

THE APPLICABLE LEGISLATION

13. Section 3 defines “unprofessional conduct” as follows:

“unprofessional conduct” means all or any of the following—

(a) professional conduct which is of a lesser standard than that which the public might reasonably expect of a registered practitioner; or

(b) professional conduct which is of a lesser standard than that which might reasonably be expected of a registered practitioner by his or her peers; or

(c) professional misconduct; or

*(d-(i) ******

14. This case is concerned with Section 3 (a), (b) and (c)

APPLICABLE CODE AND GUIDELINES

15. The Board's *Advertising Guidelines*, issued December 2004, and the *Guidelines for Registered Practitioners for the Practice of Chinese Herbal Medicine*.

THE EVIDENCE

16. The book of evidence which had been supplied to the practitioner was tendered at the hearing. It contained the formal notice of hearing dated 2 October 2007, copies of the practitioner’s registration documents, various witness statements, the written letters of complaint from complainants B, S and G, correspondence,

various advertisements and testimonials, correspondence between the practitioner and the Registrar of the Board, various interview reports and file notes. Further evidence tendered at the hearing comprised several bottles of medication prescribed by the practitioner and written expert witness statements referred to in paragraph 21 below.

17. Oral evidence at the hearing was presented on behalf of the Board by complainants B and G (who gave evidence by telephone as she was unable to attend the hearing because of illness). Further oral evidence was given by complainant S.
18. Written expert evidence was given by Dr Simon Barraclough, Dr CED Lim and Acting Professor CG Li.
19. The practitioner did not give oral evidence nor were any witnesses called on his behalf.
20. In an affidavit dated 23 October 2007 the practitioner denied a number of the allegations (a sworn copy of the affidavit was forwarded after the formal hearing had concluded, but prior to the Panel's determination, and was accepted by the Panel). At the directions hearing, the practitioner's legal practitioner Mr Smith, had indicated that the practitioner, who practices in Queensland, did not wish to appear or be represented at the formal hearing for reasons of cost and distance.
21. At the formal hearing a number of documents were tendered on behalf of the Board. Those documents had been forwarded to the practitioner in keeping with the directions given at the Directions hearing. They were: an expert opinion as to the practitioner's professional qualifications and standing by Dr Simon Barraclough, an academic of over 20 years in the area of public health and post graduate coordinator of the School of Public Health at La Trobe University, dated 24 October 2007; an expert opinion as to the practitioner's qualifications, use of testimonials, creating an unreasonable expectation of beneficial treatment through advertising, use of unqualified staff to provide treatment, poor management of adverse reactions, and conflict of interest by Dr CED Lim, a conjoint associate lecturer in the Faculty of Medicine at the University of New South Wales, with formal qualifications in complementary medicine including acupuncture, dated 18 October 2007; and a statement by Dr CG Li, Acting Professor and Director of RMIT Chinese Medicine Research Group, qualified pharmacologist, who provided specific comments listing a large number of Chinese herbs and their potential side-effects, including some which had been provided by the practitioner to complainants B and G.

Registration

22. The practitioner was first registered in Victoria as a Chinese medicine practitioner on 1 July 2004 and is currently registered until 20 June 2008.

THE COMPLAINTS

23. The essence of complainant B's complaint is that the practitioner did not provide appropriate treatment for the symptoms with which B presented, left acupuncture needles in her legs for too long or in the wrong meridian places, left her unattended, permitted an unqualified person/assistant to treat her by removing the acupuncture needles, did not obtain her consent to treatment by an assistant, took inadequate notes, engaged in misleading advertising such as claiming that the medication he used did not have side-effects, imposed medication on her without discussion and charged her too much.
24. She further stated that subsequent to the consultation and the treatment she developed severe side-effects including bloating and stomach pains, and felt weak and faint, and she felt pain when the needles were removed from her leg by the assistant. She stated that when she stood up she was not assisted. She was dizzy, and fell heavily against the wall and the assistant. She left the clinic with her friend, complainant S, to withdraw money to pay and when she returned to pay for the medication, she told the person on reception that she felt unwell.
25. B subsequently discovered that the practitioner had given her detoxification treatment of which she said, he did not advise her and which treatment she said she would have refused had he done so. She further stated, that had she known that he had a financial interest in the company which manufactured or distributed the medication, she would not have purchased it. She also stated that the practitioner's advertised qualifications and awards made him look more credible and qualified than other practitioners and induced her to attend him. She said that prior to the consultation she had been reassured by the advertising that the practitioner's medication had no side-effects.
26. The essence of complainant G is that the practitioner misled her by telling her that she was *close to death*, exaggerated his qualifications, did not adequately explain the treatment which she was given, left her unattended and did not check on her after he inserted acupuncture needles in her legs. She stated that she was attended to by an unqualified person/assistant who removed the acupuncture needles and that she had not given her consent to treatment by an assistant. She stated that she suffered side-effects including, subsequent to the consultation, feeling very ill and complained that medication was imposed on her without discussion and that the practitioner charged too much. Some days later she returned some of the prescribed products to the clinic for which she received a refund. She stated that at that stage she picked up a pamphlet titled *What To Expect During And After Your Treatment* from the waiting room desk but had not been given it prior to her treatment.
27. Both complainants B and G stated that the practitioner left the room after he had inserted acupuncture needles into them and did not return. Complainant S, who had been waiting for B during B's treatment, stated that whilst B was still in the treatment room, the practitioner, whom he met in the elevator, told him that he was leaving the building to give a lecture.

Advertising - Applicable Legislation and Guidelines

28. Section 63 of the Act prohibits misleading advertising and the use of or quoting from testimonials in advertising. It states:

(1) A person must not advertise a Chinese medicine practice, Chinese medicine services or Chinese herbal dispensing services in a manner which—

(a) is or is intended to be false, misleading or deceptive; or

(b) offers a discount, gift or other inducement to attract patients to a Chinese medicine practitioner, a Chinese medicine practice or a Chinese herbal dispensing service unless the advertisement also sets out the terms and conditions of that offer; or

(c) refers to, uses or quotes from testimonials or purported testimonials; or

(d) creates an unreasonable expectation of beneficial treatment.

Penalty: 50 penalty units for a natural person or 100 penalty units for a body corporate.

*(2)-(4) ******

(5) A person who advertises a Chinese medicine practitioner's practice, a Chinese medicine practitioner's services or Chinese herbal dispensing services in a manner otherwise than in compliance with this section is guilty of a continuing offence and may be convicted in respect of each day on which the offence continues.

29. The Board's advertising guidelines for registered Chinese medicine practitioners were published and disseminated to registered practitioners in December 2004. They are available on the Board's website and were detailed in the December 2006 and September 2007 newsletters that were forwarded to all registered practitioners, including the practitioner. They clearly state that practitioners must not mislead with advertising.

30. The Registrar spoke to, and wrote to, the practitioner on a number of occasions, including as early as 22 October 2003 prior to his initial registration, specifically drawing his attention to the relevant provisions of the Act including Section 63. The evidence indicates that the practitioner continued to use testimonials as late as 2007 despite repeated warnings over the years by the Registrar.

Standard of Proof

31. The standard of proof required in this matter is on the balance of probabilities, that is, the civil standard of proof with the qualification that the evidence must produce a reasonable state of satisfaction in the Panel's mind (*Basser v Medical Board of Victoria* (1981) VR 953 at 969). The Panel must not act upon mere suspicion or guess work but in a civil case may make a finding by *fair inference* upon the basis of the *preponderance of probability* (*Briginshaw v Briginshaw* (1938) 60 CLR 336).

32. Where the Panel has reached a *reasonable satisfaction* in relation to the allegation before it, the Panel must have applied the principles set out in *Briginshaw v Briginshaw* before making its determination (Dixon J, p 361). That is, in summary, the more serious the allegation and surrounding circumstances, the higher the level of a reasonable state of satisfaction is required. These principles apply regardless of whether a party has appeared at the hearing.

Summary of the Evidence

Qualifications

- Section 63 of the Act refers to *false, misleading or deceptive conduct* in advertising and may be so categorised when it induces or is capable of inducing error, or in a non-trivial respect, misleads or deceives or is purposely untrue or contrary to fact (*Murphy v Farmer* (1988) 165 CLR 19; *Sternberg v The Queen* (1953) 88 CLR 646; *Given v CV Holland (Holdings) Pty Ltd* (1977) 29 FLR 212 at 217).
- The practitioner stated that he has a Bachelor and a Diploma of Medicine from the International University Medica Alternativa 1990, a Doctorate of Philosophy from the Medicia Alternativa Institute affiliated to the Open International University of Complementary Medicines (OIUCM) 1994, a 5-year Professorship from the OIUCM 1995 and a certificate of excellence from the Ancient Assyrian Order of Merit 1996. His advertising claims are that he is an award winner of the Ancient Royal Assyrian Order of Medicine. He advised the Registrar that he is a Master of Kung Fu, Feng Shui and advertises as a Senior Master of Qigong and is therefore promoting himself as a highly credentialled person. The expert reports of Dr Li and Dr Barraclough indicate that the qualifications which the practitioner claims are questionable in their rigour compared to Australian qualifications eg, the practitioner's professorship from the Open International University appeared to be part of a “degree mill” based on correspondence and payment. His use of all of the titles, was in Dr Lim’s view, designed to mislead as it is normal practice once one has attained a professorship for example, one would not then normally use the title “Dr”. Dr Barraclough stated that it was most unusual to obtain a Bachelor degree followed in short succession by a PhD then a Professorship. In addition, no PhD thesis was produced despite a request to do so.
- Dr Barraclough states:

Based upon my investigations, I have concluded that OIUCM is little more than a “degree mill” offering qualifications for payment and not requiring serious academic work in order to earn a degree. Given this conclusion, any appointment as a professor to such an institution would have little worth.

For the reasons outlined above, I believe that a prospective patient who was unfamiliar with the reputation of the OIUCM might be deceived as to the substance and legitimacy of this institution. I have checked with the List of Institutions in Sri Lanka recognised by Australian Education International, an agency of the Australian Government. The OIUCM does not feature on this list

As a postgraduate coordinator, I would not recommend admission to candidature to an applicant from an institution not recognised by the Australian Government or that of the country in which the institution is located. I would have little confidence in the integrity of Mr Zhang's doctoral qualification, given its origin. The testamur for Mr Zhang's doctorate is also strange since it has a footnote advising that the "candidate" is permitted to use the suffix PhD after his or her name. This does not conform with normal university practice, since the holder of such an award is no longer a "candidate" and it is generally understood that the holders of a degree are entitled to indicate this by adding the abbreviated title of that degree to their names.

Furthermore, I would not be satisfied that he had completed a bona fide undergraduate degree since his BMed is reportedly based upon correspondence learning and short courses and did not include actual anatomy sessions and clinical placements.

In summary, my opinion is that Mr Zhang's claimed doctoral qualification and standing as a professor at the Open International University for Complementary Medicines lack legitimacy.

- The general tenor of the expert reports was that the practitioner uses these titles in order to enhance patient perceptions of his qualifications and expertise and afford himself grandiose titles. The complainants' (B and G) oral evidence at the hearing indicated that they would not have attended the practitioner's practice without the influence of his advertised qualifications.
- The practitioner admitted in his affidavit to describing himself *as specified in paragraphs 1.1 to 1.8 of the notice* (Appendix A). He stated that his use of the qualifications and associated titles had been used in good faith and that he believed he was entitled to do so. The documentation which was submitted in support of his qualifications, indicates that the practitioner's professorship in any event ceased in 2005 and he continued to refer to himself by the title *Professor* in his advertising beyond that date.

False misleading and deceptive conduct

The use of testimonials

- The practitioner used a website, numerous magazines, brochures and the Yellow Pages telephone directory to advertise his services and referred to the above qualifications in so doing. He also used testimonials in advertising his services. It was alleged that his behaviour amounted to false, misleading and deceptive conduct, on his part, pursuant to Section 63(1).
- The use of testimonials in advertising is prohibited under the Act and was not denied. The evidence indicates that the practitioner used such testimonials in disregard of the requirements in the Act, in disregard of the Board's Advertising Guidelines issued and disseminated to all registered practitioners in December 2004, and in disregard of repeated warnings by the Registrar. The upshot of the guidelines is that the use of testimonials, or purported testimonials, is prohibited

because of their propensity to mislead and create unrealistic expectations about the effectiveness of Chinese medicine services to be provided. The guidelines set out in some detail the undesirable ramifications of the use of testimonials. We have already referred to the fact that the complainants were, in part, induced into attending the practitioner, by virtue of the advertising and in relation to his qualifications and the testimonials. The practitioner was repeatedly warned by the Registrar, between 2003 and 2007, as to the use of testimonials and advertising and ongoing breaches of Section 63 of the Act. He had not ceased their use at the date of the formal hearing. He further used testimonials to justify his position as annexures to his affidavit submitted to the Board for this hearing.

- In his affidavit, the practitioner acknowledged the use of *patient stories* and stated that this was on the advice of a marketing consultant and that he believed that he was not in breach of the Act or other professional requirements. He stated that he did not believe that the patient stories constituted *testimonials* under the Act.

Unreasonable expectation of beneficial treatment

- Dr Lim stated that in his advertising, the practitioner made objectively unsubstantiated claims in relation to the effectiveness of his treatments. He also stated that it is highly unlikely that the practitioner's treatment would have *no side-effects at all* given that different people have different medical histories and physiological backgrounds. He highlighted research that used randomised trials, which indicated that acupuncture and related therapies do not appear to help smokers who are trying to quit (references cited by Dr Lim). The practitioner did not support his claims with such evidence. Dr Lim concluded that the claims may be *false and misleading* to a patient and that the practitioner's behaviour in his view was a severe departure from the standards which are reasonably expected by the practitioner's peers. He further indicated that Chinese medicine involves a collaborative approach, with patients being actively involved in deciding what is to be done to them on the basis of having received information, from the practitioner, and discussing the appropriate benefits and risks in relation to treatment options. He indicated the consent must be voluntary and free from pressure.
- The practitioner stated in his undated letter to the Registrar, received by her on 30 March 2006, that the diet which he gave patients is clearly printed in the directions to the patients and that he had advised the complainants that the diet may have a detoxifying effect. This was contrary to their evidence.

Use of unqualified staff

- B complained that she was in pain when the needles were removed from her leg and that when she stood up she was dizzy, not assisted and fell heavily against the wall and the assistant. We have also previously referred to the evidence which indicates that the practitioner left the complainants B and G unattended after he had inserted the acupuncture needles. Sometime later, assistants Ms Wang and Ms Dunn removed the needles without supervision, respectively from B and from G.

- The practitioner admitted in his affidavit (paragraphs 15 and 23) that Ms Wang and Ms Dunn did not have qualifications in acupuncture but contended that in his view *the staff who attended to complainants B and G were adequately instructed and appropriately supervised*. He stated in his affidavit that he regularly uses assistants in his practice as part of their training and in a conversation with the Registrar, that he *only uses qualified practitioners now*. He was, however, unable to tell the Registrar whether one of his staff members had completed an acupuncture course in Australia indicating simply that she had studied for eight years. The conversations between the Registrar and the practitioner indicate to us the use of unqualified staff to treat patients and we conclude that that occurred in relation to complainants B and G. In our view, the evidence indicates that the members of staff referred to were receptionists, students or otherwise people who had not attained formal qualifications in acupuncture or Chinese medicine. The practitioner did not dispute that he left the treatment room as alleged but said that the assistants were supervised and could have contacted him. This is in contrast to the evidence of S, to which we have previously referred, who stated that the practitioner had told him that he (the practitioner), was leaving the building.
- Dr Lim indicates that unqualified staff who are not registered Chinese medicine practitioners would not be able to ensure correct diagnosis nor proper syndrome differentiation leading to the risk of incorrect diagnoses or syndrome differentiation for a patient. He specifically refers to acupuncture needle withdrawal requiring practical training and referred to the Victorian Department of Human Services' standards of practice for acupuncture health to which practitioners registered in Victoria are required to adhere. He concludes that adherence to the standards set out therein would be problematic for a person who is not so registered, and protection for the general public cannot be assured when a practitioner delegates his or her responsibilities to untrained staff. It was his expert opinion that such behaviour was a severe departure from the standard that is reasonably expected by the practitioner's peers.
- The practitioner acknowledged the treatment of the complainants as set out in the notice (practitioner's affidavit para. 15) and indicated that he had allowed trainees in Chinese medicine to remove acupuncture needles from patients as part of their training. He stated that at all times they were appropriately supervised. He acknowledged leaving the treatment room in the cases of B and G whilst the needles were in place but denied that he left the building during the treatment of complainant B. He denied speaking to complainant S or stating that he was leaving to give a lecture. He acknowledged that he did not obtain the complainants' consent to the removal of needles by his employee assistants, but that he understood that the employees sought such consent. No evidence to support that contention was submitted and it is contrary to the evidence of the complainants.
- Dr Lim sets out the requirements of the Board's guidelines for registered practitioners for the practice of Chinese herbal medicine, published in August 2006, which details the type of information with which patients should be provided including an explanation of possible adverse effects. Included in the discussion with a patient, he stated that the practitioner should explain the risks and benefits of alternative

treatment and of non-treatment so that the patient can make a rational decision. He further indicated that sometimes acupuncture is totally inappropriate if the patient has had previous sensitive reactions and allergies which were unrelated to acupuncture, in which case the patient should be referred to a medical practitioner.

Conflicts of interest

- The practitioner stated in his affidavit (paragraph 36) that he was a director and shareholder in the company which operates the business *United Health Services*, which packaged and distributed certain products, and that this enabled him to provide them at a cheaper rate to his patients.
- The complainants indicated that this financial interest was not communicated to them. The complainants said in evidence that had they known of the practitioner's pecuniary interest in the medications which the practitioner dispensed, that may have affected their willingness to purchase them.
- Dr Lim states that in his view the practitioner should have informed the complainants that the products which he was prescribing were manufactured by, or distributed through, companies associated with him in order for patients to freely consent to purchasing such medication. He considered the practitioner's behaviour to be of a lesser standard than that which would be expected by his peers.

Treatment of patient adverse reactions

- Dr Lim indicated that the practitioner's failure to follow up the adverse reactions of the complainants was a severe departure from the standards reasonably expected by his peers, dangerous, and a breach of his duty to the complainants. He stated that he considered such behaviour irresponsible as it may also delay the appropriate treatment needed for a patient.
- The practitioner denied that complainant B's reaction was as a result of his treatment, and stated that she refused to return to the practice when offered a free consultation and he was therefore unable to provide follow-up treatment. He denied that complainant G reported adverse reactions and had she done so he would have responded. He acknowledged that he did not mention to her the side-effects of nutritional supplements as he did not consider there to be any realistic side-effects, and that she received a refund for almost all of the prescribed products.

Prescription/medication information

- Dr Lim indicated that the prescriptions of the practitioner did not adequately set out the dosage and active ingredients of the products and that these are important – particularly if the patient suffers from an allergic reaction and requires immediate medical treatment as the information can provide assistance to medical practitioners who are called upon to treat the patient. In addition, there is a duty to make sure that the patient is aware of the risks of treatment and any alternatives

available. He stated that the responsibility for informing patients about the prescribed medicines or products rested with the prescribing practitioner. He stated that the practitioner should discuss the products adequately and appropriately with the patients in a manner that is comprehensible to them. In his view the practitioner acted below the standard reasonably expected by his peers.

- The evidence included the tendering of a bottle of herbal pills, which the practitioner prescribed, and which had no ingredients whatsoever listed on the label.
- The practitioner accepted that there were shortcomings in the information which he provided regarding his prescriptions but asserted that the products were Therapeutic Goods Administration (TGA) approved. He stated in his affidavit that he was not aware of any further obligations according to law, however, that if he was required to provide further information he would rectify the situation.
- Dr Freckelton submitted that the relevant issue is whether or not the practitioner had an obligation to communicate relevant information on his medication, sufficient to inform a patient to make an informed choice whether or not to purchase. It should also inform a patient sufficiently to enable that patient to evaluate properly any risks in taking the medication.

FINDINGS

33. The Panel must determine the issues previously referred to in paragraph 12.
34. Pursuant to Section 1 of the Act the first listed purpose of the Act is to protect the public by providing for “...*investigations into the professional conduct and fitness to practise of registered practitioners of Chinese medicine and dispensers of Chinese herbs*”.
35. The Panel did not have the benefit of hearing any evidence from the practitioner or of observing him but had the practitioner’s letters, the record of his discussions with the preliminary investigator and the Registrar, and the practitioner’s affidavit dated 23 October 2007. We have the complainants’ comments to the independent investigator, correspondence, their oral evidence and the findings of the preliminary investigator some of which have been denied by the practitioner.
36. We find that where the evidence of the complainants and expert witnesses contradicts or is inconsistent with the written evidence of the practitioner, we prefer the written and sworn oral evidence of the complainants which, as we have stated, stands uncontradicted, and the written evidence of the expert witnesses. We were able to assess the complainants in person or on the telephone and found them to be truthful witnesses.
37. At all relevant times the practitioner, on his own admission, was aware of the Board's requirements as to advertising and the use of testimonials and his

probable breach of Section 63 of the Act. Over a number of years he had received correspondence forwarded by the Registrar and had had discussions with her. The Board's Advertising Guidelines were available at all relevant times on the Board's website and had been forwarded to the practitioner. He persistently ignored the warnings which he was given. This was repetitious behaviour. We consider it disingenuous in these circumstances that he continues to assert that he did not believe that the *patient stories* constituted *testimonials* (affidavit para. 9), and we attach little weight to his statement that he has ceased their use especially as they still appear in his advertising and he has annexed several to his affidavit in support of his case at this hearing.

38. In addition, we conclude that the complainants relied on these testimonials in part and therefore attended the practitioner for treatment.
39. Both complainants stated that they did not know the assistants who worked on them, that they were not advised that assistants would be removing the acupuncture needles, that their consent was not sought, that they would not have consented to the removal of needles by an assistant had they been asked, and that the practitioner left them unattended other than with the assistant when the acupuncture needles were removed.
40. We accept that there is now more frequent use of assistants, or para-health professionals in many health professions, than there was in the past in the treatment of patients. Where professional guidelines do exist for the use of assistants, they commonly include but are not limited to some basic prerequisites. These indicate that the assistant must be properly identified as an assistant; appropriately trained; that the use of an assistant, and the work or treatment it is proposed that the assistant undertake with the patient, must be communicated to the patient prior to the work or treatment being undertaken; that patient's consent to the specific work or treatment to be undertaken by the assistant must be sought by the primary or supervising practitioner in the first instance, prior to the assistant working on a patient; and that the assistant must be properly supervised (for examples, see *Australian Podiatry Council Policy on the use of Podiatry Assistants*, *Podiatrists Board of Queensland Guidelines on Footcare Assistants* and *The Australian Physiotherapy Council Guidelines relating to Physiotherapy Assistants*). At all times any delegated tasks to assistants remain the responsibility of the primary/supervising practitioner. In addition, there are other matters which need to be considered, however, the issues of training, explanation, consent and supervision are those pertinent to and raised in the present case and we have therefore confined our comments to those matters.
41. The Panel has concluded that the practitioner left the complainants B and G unattended, used unqualified staff to remove acupuncture needles from them, and that he did not obtain their consent to be treated by those staff. We consider this a most serious issue which potentially put patients at risk, breached their trust and displayed a cavalier disregard for their wellbeing. We also consider it a serious matter that the complainants' consent was not sought to them being treated by someone other than the practitioner. We do not accept that in relation to the

current complaints, it was sufficient supervision to leave the patient unattended and then to have acupuncture needles removed by an assistant without their consent.

42. The Panel concludes that the practitioner held himself out as a highly credentialed and qualified person. In terms of his academic qualifications, we accept the expert opinions of Dr Lim and Dr Barraclough that a number of them are of questionable quality or standing. In addition, we accept that the practitioner's professorship term expired in 2005 and he continues to refer to himself as such. We accept that the complainants relied in part on these qualifications and considered that these qualifications gave the practitioner standing which was not warranted. We consider that the complainants were misled within the terms of Section 63(1)(a) of the Act.
43. The evidence indicates to us that the complainants were not fully informed that they were being placed on a detoxification programme. This was denied by the practitioner. On the basis of the evidence, we do not consider that the complainants were fully informed of the side-effects which they could have expected as a result of the program. We further consider that the claims in relation to the medications having no side-effects is false and misleading on the basis of the evidence.
44. The practitioner admitted that he did not disclose to his patients his financial interest in the companies that produced the medicines which he prescribed and sold to them. The Complainants B and G stated that they may not have purchased the medication or some of it if such disclosures had been made.
45. In relation to prescription information, the practitioner did not communicate that information adequately to enable them, or a subsequent practitioner, to be properly informed in relation to them. We do not consider the issues raised by him in relation to TGA approval to be relevant in relation to, or to absolve him from, his professional obligation to label his medication in such a way that its use may be evaluated properly by a patient or another practitioner. We consider that this put his patients at risk.
46. In summary, in reaching our findings in this case, we have attached significant weight to the following factors which we consider particularly relevant:

Putting the public at risk

- a. the habitual use of unqualified staff to treat patients;
- b. failing to obtain patients' consent to treatment by unqualified staff; and
- c. the lack of information in relation to medications.

False, deceptive and misleading conduct

- d. not disclosing financial interests which might lead to conflicts of interest;
- e. the repeated behaviour of the practitioner in relation to advertising and the use of testimonials over a number of years despite repeated warnings;

- f. making claims that the treatment had no side-effects;
- g. misleading claims as to the practitioner’s qualifications; and
- h. making claims that the treatments could cure certain conditions, such as smoking, with no scientifically based evidence.

Bringing the profession of Chinese medicine into disrepute

- i. All of the above factors.

47. In the Panel's view, the proper test to be applied in each case is *not whether the practitioner believed* that the behaviour was appropriate, but *whether it reflected the standards and conduct which would reasonably be expected of the practitioner*. The Panel concludes that the practitioner's conduct falls within the parameters set by the Court in *Re: Parr* in that he departed in a substantial manner from the standards which might reasonably be expected from members of his profession, and that his conduct was not merely “trivial or of momentary effect”. In addition, the Panel considers that the practitioner's conduct has brought the profession into disrepute.

Unprofessional Conduct

The Public and Peer Tests (Sections 3 (a) and (b))

- 48. The “unprofessional conduct” as alleged requires reference to reasonable standards of the community and of professional peers of good repute and competence (*Vissenga v Medical Practitioners Board of Victoria* (2004) VCAT 1044).
- 49. The Panel finds that the practitioner’s conduct falls short of the standards reasonably expected by the public and by the practitioner’s professional peers. The Panel finds that the practitioner engaged in unprofessional conduct within the terms of Sections 3(a) and 3(b) of the Act.

Professional Misconduct (Section 3(c))

- 50. The Act does not define *professional misconduct*.
- 51. The cases variously describe *professional misconduct* or misconduct in a “professional context” as:
 - a. *Include[ing] a deliberate departure from accepted standards...to portray indifference and abuse of the privileges which accompany registration...
...it includes professional acts even though such acts are not inherently wrongful. Whether a particular course of conduct will be regarded as misconduct is to be determined from the nature of the conduct and not from its consequences.*
(*Pillai v Messiter* (No. 2) (1989) 16 NSWLR 197)
 - b. *...before a professional person could be found guilty of misconduct it must be shown that he or she has been personally implicated in conduct which would reasonably be regarded as disgraceful or dishonourable by members of that profession of good repute and competency.*

(Mullany v Psychologists Registration Board - BC 9707652 (Supreme Court of Victoria 1997) Gillard J, quoting Deane J in Re a Solicitor (1960) VR 617)

c. The test to be applied is whether the conduct violates or falls short of, to a substantial degree, the standard of professional conduct observed or approved by members of the profession of good repute and competency.

(Campbell v. the Dental Board of Victoria (Mandie J, (1999) VSC 113)

52. For the reasons provided, and on the basis of the evidence and the submissions before us, the Panel finds that the practitioner has engaged in unprofessional conduct amounting to professional misconduct within the terms of Section 3(c) of the Act in relation to allegations numbered 2, 3, 4, 5 and 7 in support of the notice of hearing.

Unprofessional conduct of a serious or not of a serious nature (Section 48)

53. Having found the conduct in question amounts to *unprofessional conduct* as outlined in the previous paragraphs, it is necessary for the purposes of Section 48 of the Act to characterise that conduct as conduct either of a “serious nature” or “not of a serious nature”. The Act provides no definition of either. We therefore turn to the established case law for guidance.

54. *In relation to unprofessional conduct of a serious nature*, the Panel refers to the case of *Re: Parr and Nurses Board of Victoria* (1998) 16 VAR 118. In that case, the court said:

...clearly such conduct would not be serious if it was trivial, or of momentary effect only at the time of the commission or omission by which the conduct was so defined. It must be departure, in a substantial manner, from the standards which might be reasonably expected of a registered nurse. The departure from such standards must be blameworthy and deserving of more than passing censure.

55. Persistence in unprofessional conduct is a factor to be taken into account in determining whether professional conduct should be designated as serious. *Professional misconduct on a single occasion... might not amount to serious professional misconduct.* However, persistent professional misconduct may amount to serious professional misconduct (*Gee v General Medical Council* (1987) 1 WLR 564). We find that this conduct occurred specifically in relation to the use of unqualified staff and in relation to the breach of Section 63 (1)(a) of the Act to which we have previously referred.
56. The practitioner also brought the profession of Chinese medicine into disrepute.
57. We find that the practitioner has engaged in unprofessional conduct of a serious nature within the terms of Section 48(2) of the Act.

Determination

58. Based upon a finding of unprofessional conduct of a serious nature, the determinations pursuant to Section 48 (2)(a)-(h), which may be made by the Panel, are as follows:

- a. *require the practitioner to undergo counselling;*
- b. *caution the practitioner;*
- c. *reprimand the practitioner;*
- d. *require the practitioner to undertake further education of the kind stated in the determination and to complete it within the period specified in the determination;*
- e. *impose conditions, limitations or restrictions on the registration or endorsement of the registration of the practitioner;*
- f. *impose a fine on the practitioner of not more than \$10,000;*
- g. *suspend the registration of the practitioner for the period specified in the determination; or*
- h. *cancel the registration or an endorsement of the registration of the practitioner.*

Penalty

59. In making its determination, the Panel takes into account that the first statutory purpose of the Act is to protect the public.

60. For the purposes of this hearing, it is clear that the complainants are members of the public.

61. The basic principles and purpose in imposing a penalty in relation to health practitioner regulatory bodies, is:

- not to punish;
- to protect the public, including specific and general deterrence;
- to maintain the professional standards of the profession in the eyes of the public; and
- not to bring the profession into disrepute.

(Mullany v Psychologists Registration Board (Supreme Court of Victoria 1997 (Gillard J unreported); Ha v Pharmacy Board of Victoria (2002) VSC 322 (14 August 2002); Law Society of NSW v Foreman (1994) 34 NSWLR 408; Mandie J in George Varnavides v The Dental Board of Victoria (unreported), Supreme Court of Victoria, 1 May 1998, at p.17

62. In relation to deterrence, in *Varnavides v Dental Practice Board of Victoria (2004) VCAT 1335 (5 July 2004)*, quoting from Giles AJA in *Law Society of NSW v Foreman* at p 471, which dealt with a legal practitioner but applying the principles to a dentist, Her Honour Deputy President Davis said:

...The object of protection of the public also included deterring the legal practitioner in question from repeating the misconduct, and deterring others who

might be tempted to fall short of the high standards required of them. The public and professional colleagues who practise in the public interest, must be able to repose confidence in legal practitioners, so an element in deterrence is an assurance to the public that serious lapses in the conduct of legal practitioners will not be passed over or lightly put aside but will be appropriately dealt with.

63. The likelihood of repetition of the behaviour in relation to protecting the public is a relevant factor in the imposition of a determination (*Mullany's case*, op.cit.)
64. We have considered the patient testimonials in support, which the practitioner submitted as attachments to his affidavit, however, we do not consider that they assisted us in coming to our conclusions.
65. In coming to what we consider an appropriate determination in this case we have attached significant weight to the need to protect members of the public and the need for specific and general deterrence.
66. The material submitted by the practitioner does not, in our view, display that he has proper insight into his conduct and the ramifications of his conduct in putting the public at risk. As we previously indicated, we did not have the benefit of testing the practitioner's attitudes in the light of his conduct. We do not attach significant weight to statements to the contrary in his affidavit, and are therefore unable to ascertain from him whether the conduct may not be repeated. There is no assurance that similar conduct will not be repeated.
67. In *Exler v The Dental Practice Board of Victoria* (Occupational and Business) (2005) VCAT 2595 (8 December 2005), His Honour Judge Dove said:

...as well as fines totalling \$34,000 and a period of suspension...the panel was mindful of its duty to consider the protection of the public, and general deterrence; however, in this case, specific deterrence was considered by the panel to be a strong requirement of any penalty...

The Panel has carefully considered the principle of totality in having [sic arriving] at each of the individual penalties, as well as the Act's serious penalties for continuing breaches of Section 64 . Dr Exler, the Panel considers that the penalties here determined are a final attempt to convince you of the need for you to comply conscientiously with the laws, regulations and codes of practice which regulate the practice of dentistry in Victoria. You should be in no doubt that any further breaches of the laws, regulations or codes or practice by you may have grave consequences for the status of your registration as a dentist.

68. In imposing penalty we proceed on the basis that the penalty should reflect the seriousness with which we view the practitioner's conduct taking into account all of the matters to which we have referred. We note that Section 63(1) of the Act is in similar terms to Section 64 (1) of the *Dental Practice Act* 1999 referred to above in *Exler's case*.
69. The Panel was unanimous in its decision relating to penalty.

70. The practitioner has engaged in unprofessional conduct of a serious nature and has brought the profession into disrepute. The practitioner's registration will be suspended for a period of 4 months. In the light of the end of year break, and in order to advise the practitioner, such suspension is to commence on 1 February 2008. It will also be ordered that he undertakes education courses relating to professional ethics and the effects of Chinese herbs, such courses to be approved by and completed within a timeframe approved by the Board. We propose to make it a condition of his registration that the education be completed to the satisfaction of the Board.

FORMAL FINDINGS OF THE PANEL

The Panel finds:

- (i) that Jirong Zhang, a registered Chinese medicine practitioner in the State of Victoria under the *Chinese Medicine Registration Act 2000* (the Act), has engaged in unprofessional conduct being conduct which is of a lesser standard than that which the public might reasonably expect of a registered Chinese medicine practitioner, and being conduct which is of a lesser standard than that which might reasonably be expected of a registered practitioner by his or her peers pursuant to Sections 3 (a) and (b) and has engaged in professional misconduct, pursuant to Section 3 (c) of the Act; and
- (ii) that Jirong Zhang has engaged in *unprofessional conduct of a serious nature* pursuant to Section 48(1)(a) of the Act.

FORMAL DETERMINATION OF THE PANEL

The Panel imposes the following penalties on Jirong Zhang (a registered Chinese medicine practitioner in the State of Victoria) pursuant to Section 48(2), of the *Chinese Medicine Registration Act 2000*:

1. The Panel suspends the registration of the practitioner, Jirong Zhang pursuant to Section 48 (2)(g) of the *Chinese Medicine Registration Act 2000* from 1 February 2008 until 31 May 2008 inclusive.
2. Pursuant to Section 48(2)(d) the Panel orders that the practitioner Jirong Zhang undertake a course of further education in professional ethics and in the side-effects of Chinese herbs, such courses to be approved by the Board and to be completed within a timeframe approved by the Board and to the satisfaction of the Board.
3. It is ordered pursuant to Section 48(2)(e) that the following condition be imposed on the registration of the practitioner Jirong Zhang:

that Jirong Zhang complete a course of education in professional ethics and in the side-effects of Chinese herbs, approved by the Chinese Medicine Registration Board of Victoria, within a timeframe approved by the Board and to the satisfaction of the Board.

4. Pursuant to Section 48(2)(c) of the Act, the Panel reprimands the practitioner, Jirong Zhang in relation to the following:
 - a. in relation to the practitioner's false, misleading and deceptive representations in relation to his qualifications, as alleged and particularised in number 1 of the statement of allegations in support of the notice of hearing;
 - b. in relation to the practitioner creating in the complainants B and G an unreasonable expectation of beneficial treatment, as alleged and particularised in number 3 of the statement of allegations in support of the notice of hearing; and
 - c. in relation to the practitioner's conflicts of interest in relation to his financial interest in companies, which was not disclosed to the complainants B and G, as alleged and particularised in number 6 of the statement of allegations in support of the notice of hearing.

5. Pursuant to Section 48(2)(f) of the Act, the Panel fines the practitioner, Jirong Zhang as follows, and all fines are to be paid within 30 days of the date of the determination:
 - a. the sum of \$5000 in relation to the practitioner's repeated use of testimonials in advertising, in breach of Section 63 of the Act, as alleged and particularised in number 2 of the statement of allegations in support of the notice of hearing;
 - b. the sum of \$6000 regarding the practitioner's use of unqualified staff in the treatment of patients, as alleged and particularised in number 4 of the statement of allegations in support of the notice of hearing;
 - c. the sum of \$3000 regarding the practitioner's poor management of adverse reactions in complainants B and G, as alleged and particularised in number 5 of the statement of allegations in support of the notice of hearing; and
 - d. the sum of \$1000 in relation to the practitioner's poor prescribing practices, as alleged and particularised in number 7 of the statement of allegations in support of the notice of hearing.

Carmel Morfuni
Zhen Zheng
Pauline McCabe

[*Chair, Lawyer Member*]
[*Chinese Medicine Practitioner*]
[*Community Member*]

Date: 9 January 2008

Appendix A

STATEMENT OF ALLEGATIONS IN SUPPORT OF NOTICE OF FORMAL HEARING UNDER SECTION 26 OF THE *CHINESE MEDICINE REGISTRATION ACT 2000*

Registration & Qualifications

- A. In July 2003 you filled out and signed an application form to become registered with the Board in the Divisions of Acupuncture and Chinese Herbal Medicine. You claimed to have:
- (a) A Certificate of Graduation from Guangzhou Traditional Chinese Medicine College (1986);
 - (b) A Bachelor of Medicine from the International University Medical Alternativa (1990);
 - (c) A Masters Degree in Regional Science from the University of Queensland;
 - (d) A Certificate of Excellence - the Ancient Royal Assyrian Order of Merit (1996).
- B. On 1 July 2004 you became registered with the Board in the Divisions of Acupuncture and Chinese herbal Medicine. You renewed your registration in these Divisions in 2005, 2006 and 2007.
- C. You are currently registered with the Board until June 2008.
- D. You were at all material times a Director of the company trading as '3 Treasure'.

1. Claims as to qualifications

You have made the following representations about your qualifications to your patients and prospective patients:

- 1.1 You referred to yourself as 'Prof. Master. Dr Jirong Zhang'
- 1.2 You claimed to be a 'Professor of Chinese Medicine'.
- 1.3 You claimed you 'won the Ancient Royal Assyrian Order of Medicine'.

Particulars

From at least 29 December 2006 onwards you published the above representations (1.1 -1.3) on your web-site 'www.3treasure.com.au'.

- 1.4 You referred to yourself as 'Chief Practitioner Dr J. Zhang', 'Professor of Chinese Medicine' and 'Senior Master of Qigong'.

Particulars

You published this on a Brochure entitled 'Acupuncture Qigong/Massage Herbal Medicine' which you provided to your patients.

- 1.5 You referred to yourself as 'Jirong Zhang, Prof of Traditional Chinese Medicine/Acupuncturist'.

Particulars

You published this on the Payment Tax Invoices you rendered to patients.

1.6 You referred to yourself as 'Prof. Dr. Master Jirong Zhang PhD'.

Particulars

You published this on a brochure titled 'Medical Qigong' which you distributed to your patients'.

1.7 You referred to yourself as 'Chief practitioner: Dr J Zhang PhD, Professor of Chinese Medicine, Award winner of ARA Order of Medicine'.

Particulars

You published this on the Yellow Pages online directory on at least 25 December 2006.

1.8 You referred to yourself as 'Chief practitioner: Dr J Zhang PhD. Professor of Chinese Medicine, Award winner of ARA Order of Medicine'.

Particulars

You published this in the Brisbane News magazine on 16-22 August 2006.

These representations are false, misleading or deceptive because:

1.9 You do not hold an active professorial role;

1.10 The various descriptions you use in relation to your qualifications are incorrect and confusing;

1.11 You did not win the Ancient Royal Assyrian Order of Medicine;

1.12 You do not have a PhD in Chinese medicine or a field of practice relevant to Chinese medicine;

1.13 Your advertising when viewed as a whole conveys to patients and prospective patients that you are more qualified than you are.

Each of the representations you make as to your qualifications:

1.14 Constitutes unprofessional conduct within the meaning of s.3 of the Act

1.15 Constitutes unprofessional conduct that is of a serious nature.

2. Use of testimonials

2.1 You maintained a 'patient stories' link on your web-site www.3treasure.com.au ('your web-page').

2.2 The 'patient stories' took viewers to a 'patient stories' page within your web-page. The page contained a list of twenty four medical conditions and illnesses a reader could click on to view patient testimonies.

2.3 You published twenty six testimonials on your web-page from patients or purported patients.

Particulars

From at least 1 November 2006 until 13 February 2007, you published testimonials for:

- Hunter, aged 31;
- Colin, aged 61;
- Susan, aged 52;

- Kevin, aged 52;
- Jill, aged 42;
- Barbara, aged 81;
- Steve, aged 15;
- Mary, aged 41;
- Nicole, aged 28;
- Sharyn, aged 33;
- Margaret, aged 65;
- Debbie, aged 21;
- Julie, aged 43;
- Victor, aged 51;
- Michael Johns, aged 41;
- Ivan, aged 29;
- Terry, aged 47;
- Ava;
- Jade, aged 47;
- Bronwyn, aged 65;
- Tim, aged 16;
- Tom, aged 47;
- Matthew, aged 27;
- Simon, aged 45;
- Adam, aged 29;
- Craig, aged 37;
- Frank, aged 37.

- 2.4 You repeatedly published a testimonial from a purported patient (R Duggan) told to 'Michael Beatty' stating 'I lost one kilo a day for 15 days. I feel trim and terrific...!'

Particulars

On at least 22-28 February 2006, 22-28 March 2006 and 19-25 April 2006 you published this testimonial in the Brisbane News magazine.

- 2.5 You published nine testimonials of patients or purported patients on the brochure you distribute to patients titled 'Acupuncture Qigong Herbal Medicine'.

Particulars

From at least 2006 onwards, you published testimonials for:

- Barry Keefe;
- Peter Walsh;
- Marilyn Barton;
- Madonna Dechphant;
- Marie & Tony;
- Maria Drescher;
- A Vela;
- Stephanie Ross;
- Ray Anderson.

You have breached the *Chinese Medicine Registration Act 2000* ('the Act') as:

- 2.6 Section 63(1) of the Act prohibits a person from advertising a Chinese medicine practice, Chinese medicine services or Chinese herbal dispensing services in a manner which refers to, uses or quotes from testimonials or purported testimonials.
- 2.7 You continued to use testimonials on your web-site despite the Board specifically advising you in a letter dated 22 October 2003 that publication of testimonials was illegal and prohibited under the Act and that you should remove them.

In publishing testimonials on your web-page, magazines and in brochures and/or failing to follow direction from the Registrar of the Board to remove the testimonial material:

2.8 You have engaged in unprofessional conduct within the meaning of s.3 of the Act.

2.9 You have engaged in unprofessional conduct of a serious nature.

3. Creating an unreasonable expectation of beneficial treatment

You made the following representations to patients and prospective patients:

3.1 You stated that the Chinese medicine treatment you offer is '100% natural' with 'no side effects' and with a 'quick recovery' in the brochure you distribute to patients titled 'Acupuncture Qigong Herbal Medicine'.

3.2 You published on your web-site an article about your practice which quoted you saying that you had an '80 percent success rate using a combination of acupuncture and Chinese medicine' to stop people smoking.

Particulars

The article was published in the North-West News on 31 January 2007 and you maintained a copy of the article on your web-site from at least 15 March 2007 - 19 April 2007.

In doing any or both of the above (3.1-3.2), you have created an unreasonable expectation of beneficial treatment as:

3.3 Any reasonable practitioner would have recognised that there was a risk of side-effects from the treatment that you provided;

3.4 Patients of yours have experienced adverse reactions;

3.5 You have been asked to provide data in support of your asserted success rate in respect of cessation of smoking and have failed to do so.

By making the above representations that you have:

3.6 Engaged in unprofessional conduct within the meaning of s.3 of the Act.

3.7 Engaged in unprofessional conduct of a serious nature.

4. Use of unqualified staff to provide treatment

You have permitted staff who are unqualified in acupuncture or traditional Chinese medicine to provide treatment to your patients:

4.1 On 25 November 2005 B attended an acupuncture consultation with you.

4.1.1 You inserted acupuncture needles in her;

4.1.2 You left B unattended on the massage table;

4.1.3 You left your business premises to give a lecture while B had acupuncture needles in situ;

4.1.4 You instructed Ms Yuan Wang (also known as 'Lilyanne Wang' and 'Yuan Wang Cruz') to take over the consultation with B;

4.1.5 Ms Wang did not have qualifications in acupuncture;

4.1.6 Ms Wang removed the acupuncture needles;

- 4.1.7 You did not inform or obtain consent from B that a person other than yourself would continue her treatment;
- 4.1.8 The clinical records do not identify that an unqualified person provided treatment to B.
- 4.2 On 29 April 2007 G attended an acupuncture consultation with you:
 - 4.2.1 You inserted acupuncture needles in her;
 - 4.2.2 You left her unattended on the massage table;
 - 4.2.3 You instructed Ms Christine Dunn to take over the consultation with G;
 - 4.2.4 Ms Dunn did not have qualifications in acupuncture;
 - 4.2.5 You did not inform or obtain consent from G that a person other than yourself would continue her treatment;
 - 4.2.6 The clinical records do not identify that an unqualified person provided treatment to G;
 - 4.2.7 Ms Dunn removed the acupuncture needles.

In permitting unqualified staff to treat your patients, your conduct is inappropriate and falls short of the standard accepted of a Chinese medicine practitioner as:

- 4.3 You have failed to properly monitor patients under your care;
- 4.4 You left your patients unattended by a qualified practitioner;
- 4.5 You have failed to obtain informed consent from your patients for a person other than yourself to treat them;
- 4.6 You caused your patients distress and anxiety;
- 4.7 You have exposed your patients improperly to the foreseeable risk of adverse consequences by permitting unqualified persons to give them treatment;
- 4.8 The patient records for which you are responsible do not properly reflect who provided treatment to your patients.

By permitting unqualified staff to treat your patients you have:

- 4.9 Engaged in unprofessional conduct within the meaning of s.3 of the Act.
- 4.10 Engaged in unprofessional conduct of a serious nature.

5. Poor management of adverse reactions

- 5.1 On 25 November 2005 B attended an acupuncture consultation with you.
 - 5.1.1 B instructed you she did not want any acupuncture needles in situ for longer than 3 minutes;
 - 5.1.2 You inserted acupuncture needles into her;
 - 5.1.3 B immediately felt weak and lost all her energy and reported this to you;
 - 5.1.4 You did not respond to her concerns;
 - 5.1.5 You left B unattended and did not return to check on her;
 - 5.1.6 You failed to explain to B what diet you were putting her on, what medicines you had prescribed to her and any possible side-effects of the medications and the diet;

- 5.1.7 B suffered an adverse reaction to the medication you prescribed her;
- 5.1.8 B reported the adverse reaction to your Practice Manager, Mandy Chen, on 1 December 2005.
- 5.1.9 You never followed-up on B in relation to the reported adverse reaction or made a note in her patient record that she had reported suffering an adverse reaction.
- 5.2 On 29 April 2007 G attended an acupuncture consultation with you:
 - 5.2.1 You inserted acupuncture needles into her;
 - 5.2.2 G immediately felt severe pain and shock and reported this to you;
 - 5.2.3 You laughed at her, put on soothing music, told her to relax and told her to smile;
 - 5.2.4 G experienced an adverse reaction to the acupuncture you provided to her;
 - 5.2.5 You failed to diagnose G adverse reaction;
 - 5.2.6 You never returned to check on G;
 - 5.2.7 You had prescribed G goji juice, shark cartilage, squalene, wheat grass and herbal pills to take home with her. You did not advise her of any possible side-effects of this prescription;
 - 5.2.8 G took some of the goji juice, shark cartilage, squalene, and wheat grass that afternoon. Three hours later G became extremely nauseated and went into shock suffering physical effects to her body;
 - 5.2.9 G returned to your clinic to report the adverse reaction and she spoke to your colleague (Mr Rob Seletto);
 - 5.2.10 You never followed up on G in relation to the reported adverse reaction or made a note in her patient record that she had suffered an adverse reaction;

In failing to properly manage your patients' adverse reactions, your conduct is inappropriate and falls short of the standard reasonably to be expected of a Chinese medicine practitioner as:

- 5.3 You have failed to properly treat patients under your care;
- 5.4 You caused distress, anxiety and harm to your patients;
- 5.5 Failed to stop treatment once the adverse reactions were known to you;
- 5.6 You failed in your duty of care to your patients;
- 5.7 You failed to generate adequate patient records.

By failing to properly manage adverse reactions you have:

- 5.8 Engaged in unprofessional conduct within the meaning of s.3 of the Act.
- 5.9 Engaged in unprofessional conduct of a serious nature.

6. Conflict of interest

- 6.1 You were the treating practitioner for B on 25 November 2005. You prescribed her with wheatgrass, squalene, shark's fin and Chinese herbs.
- 6.2 You were the treating practitioner for G on 29 April 2007. You prescribed her goji juice, shark cartilage, squalene, wheat grass and herbal pills and provided her with DVDs about the treatment.

6.3 After both B and G had been treated, you and/or your staff pressured them to purchase the above products that were packaged and distributed by one of your own companies, United Health Supplies.

6.4 The cost of the prescriptions was substantial.

You failed to disclose to either of your patients that you had a financial interest in the products you were selling. Further, you failed to disclose your conflict of interest when it was your professional responsibility to do so.

By engaging in a conflict of interest you have:

6.5 Engaged in unprofessional conduct within the meaning of s.3 of the Act.

6.6 Engaged in unprofessional conduct of a serious nature.

7. Poor prescribing practices

The herbal medicine you prescribed to patients had a label that detailed:

7.1 3 Treasure logo;

7.2 The first name of the patient;

7.3 The date;

7.4 Instructions on how many pills to take per day;

7.5 Advice that the medication was not to be used by any other person;

7.6 The address of 3 Treasure.

Your prescribing practices were inappropriate and fall short of the standard accepted of a Chinese medicine practitioner as:

7.7 The medication contained no information on:

7.1.1 The active ingredients of the prescription;

7.1.2 Dosage units;

7.1.3 Expiry date;

7.1.4 Treating practitioner;

7.1.5 Storage instructions;

7.1.6 Possible adverse reactions;

7.1.7 Information on what to do in the event of overdose/adverse reaction;

7.8 Your prescribing methods were deficient and placed patients at foreseeable risk.

7.9 You have not followed the basic principles applicable to prescription of herbal medications.

Your prescription of herbal medicines to your patients constitutes:

7.10 Unprofessional conduct within the meaning of s.3 of the Act.

7.11 Unprofessional conduct of a serious nature

.....
Debra Gillick
Registrar
Chinese Medicine Registration Board