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Via Email: arwestmacott@lwpubliclaw.ca

Lovett & Westmacott LLP

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Attention: Angela R. Westmacott

Dear Madam:

Re: Jin Zhang Wang

We write in response to your letter of January 8, 2013. I have now had the opportunity to Dr. Wang’s instructions regarding the CTCMA’s proposal that he voluntarily surrender his resignation in the College.

For the reasons that follow, Dr. Wang is not prepared to voluntarily resign from the CTCMA and requests, with respect, that the CTCMA resile from its intention to issue a citation against Dr. Wang and to pursue disciplinary proceedings. Dr. Wang believes that from its inception, the CTCMA’s investigation of Dr. Wang was brought without any foundation and has been prosecuted in a manner that is callous, high-handed and evidences a bias against Dr. Wang. The basis for Dr. Wang’s belief is outlined below.

**The Initial Complaint**

The initial complaint came from a former patient of Dr. Wang’s. The complaint was brought after Dr. Wang had terminated his therapeutic relationship with the patient because the patient was not following his treatment plan, advice and recommendations. There was no allegation in the complaint that Dr. Wang had been negligent or failed to meet any professional standards. In fact, it soon became apparent from the patient’s own conduct that the real motive for bringing the complaint was to receive compensation. The complainant herself, in correspondence with the CTCMA, offered to withdraw the complaint if she was paid. On its face, this complaint should have been dismissed as having no merit.

However, the investigation was continued on the premise that Dr. Wang had improperly terminated the therapeutic relationship. To this day, the CTCMA has never provided an explanation to Dr. Wang about what he is alleged to have done improperly in terminating the relationship or directed Dr. Wang to any bylaws, regulations or practice standards which would apply to the termination of a therapeutic relationship. He has never been told what he is alleged to have done wrong. From Dr. Wang’s perspective there has never been any foundation for the investigation that was commenced against him by the CTCMA.

**Bias**

Dr. Wang believes that there is a bias within the CTCMA against those practitioners, like himself, who received their training in the traditional Chinese way and were grandfathered into the registration requirements of the College. He believes that this bias has led to the aggressive pursuit of an investigation into a complaint that has no merit and has caused the CTCMA to seek to impose penalties and sanctions on Dr. Wang that are completely unrelated to the original complaint. Dr. Wang believes that the CTCMA has not conducted a fair and neutral investigation but has instead pursued an agenda aimed at taking away his right to practice.

**Conduct of the Investigation**

At the initial stage of the investigation the CTCMA requested that Dr. Wang provide the clinical records of the patient who had filed a complaint. Dr. Wang complied with this request and provided the records. The College then demanded that Dr. Wang translate these records from Chinese into English at his own expense. This demand was made despite the fact that the CTCMA does not have any rule, regulation or practice standard that mandates records be kept in any particular form or in any particular language. Dr. Wang’s failure to comply with this unauthorised demand is now being cited as an example of his failure to cooperate with the College during its investigation.

The CTCMA apparently takes the position that there were deficiencies in the patient records provided by Dr. Wang although they have never articulated what these deficiencies are. The College then sent Dr. Wanda Stephens to attend, unannounced, at Dr. Wang’s office to conduct an inspection and demand production of further records. Dr. Wang, who speaks little English, refused Dr. Stephens’s demand to produce further patient records on the spot and sought advice on how to respond to the CTCMA’s demand. Dr. Wang was concerned about maintaining the privacy of his patients’ information and wanted to know what his obligations were before he responded. This was an entirely reasonable response in the circumstances, but, again, the CTCMA now cites this as a further example of his failure to cooperate with the investigation.

Dr. Stephens herself bears some responsibility for how the investigation proceeded. In her dealings with Dr. Wang and his staff she was aggressive, abrasive, and confrontational. She displayed an attitude that was both dismissive and contemptuous. She did not conduct herself in a fair and open-minded manner.

The affidavit filed by Dr. Stevens in support of the CTCMA’s *ex parte* application for an order permitting them access to Dr. Wang’s clinic is evidence of Dr. Stephens’s bias against Dr. Wang. Dr. Stephens’s affidavit was materially misleading and deficient. Any party seeking an *ex parte* order must give a full and fair disclosure of all material facts. Dr. Stephens’s affidavit was one-sided and misrepresented the events and interactions that she had with Dr. Wang and his staff. Had the CTCMA conducted the investigation in a fair and professional way there would have been no need to seek the Court’s assistance.

As the investigation progressed, the focus shifted away from the initial complaint to the allegations of failure to cooperate and inadequate record-keeping. Dealing with the alleged failure to cooperate it must be noted that Dr. Wang has provided to the CTCMA all of the information and records that they have requested. He has, in fact, cooperated with the investigation and his decision to seek advice about his obligations before responding to the College’s demands cannot be characterised as a failure to cooperate. Regarding the allegation of inadequate record-keeping, the CTCMA has never articulated what they allege these deficiencies are, or referred to any rule, regulation or practice standard that mandates how records are to be kept. Dr. Wang has always maintained that he will comply with the record-keeping requirements of the CTCMA in the same manner as every other registrant. However, rather than providing guidance to Dr. Wang on how to improve his record-keeping practice, the CTCMA has instead sought to place punitive and expensive sanctions and supervision requirements on Dr. Wang’s practice with no clear reason why these sanctions are required. It should not escape notice that the CTCMA has contacted a number of Dr. Wang’s patients from the random sampling of records that were provided and these patients confirmed the treatment that they had received and had no complaint about Dr. Wang’s standard of practice.

The investigation has apparently concluded and the results appear to be as follows:

1. the initial complaint related to the termination of a therapeutic relationship and did not contain any allegation of negligence or malpractice. It was brought by a complainant who was plainly motivated to receive personal compensation;
2. Dr. Wang has cooperated with the investigation and provided the College with all of the information that it has requested;
3. the alleged deficiencies in record-keeping have never been identified or articulated and the College has never established record-keeping requirements or best practices;
4. a random sampling of Dr. Wang’s patients has been contacted and no complaint or concern has been raised about Dr. Wang’s treatment or quality of care.

In these circumstances, the CTCMA’s demand that Dr. Wang voluntarily surrender his resignation or face a disciplinary citation is inexplicable.

**License Suspension**

The suspension of Dr. Wang’s registration and the continuing refusal of the CTCMA to lift this suspension is deserving of a separate discussion. Dr. Wang’s registration was suspended by an inquiry committee of the CTCMA acting pursuant to s. 35 of the *Health Professions Act*. This section bears the heading “Extraordinary Action to Protect the Public”. The section gives the inquiry committee the power to impose limits, conditions, or a suspension on the registration of a registrant if it considers “the action necessary to protect the public”. It does not need to be stated that the power to suspend registration, in the absence of a hearing, is a draconian measure that should only be applied in rare cases based on clear and convincing evidence of a danger to the public. In this case the inquiry committee suspended Dr. Wang’s registration solely on the basis of Dr. Stephens’s allegations of a failure to cooperate and her observation of what she stated to be unlicensed manufacturing and distribution of herbal remedies. From the evidence provided to the inquiry committee there was no reasonable basis to conclude that there was any risk to the public and that a suspension of Dr. Wang’s registration would address any perceived risk. There is no rational basis to connect Dr. Wang’s registration with the CTCMA with the allegation of unlicensed manufacturing and distribution of herbal products. The manufacture and distribution of these products is not regulated by the CTCMA.

Now that the investigation has apparently concluded, the failure by the CTCMA to lift the suspension on Dr. Wang’s registration cannot be justified. Section 35(4) of the *Health Professions Act* provides that once an inquiry committee determines that a suspension is no longer necessary to protect the public it must cancel the suspension as soon as possible. Despite Dr. Wang’s requests for reinstatement, the inquiry committee has refused to lift the suspension despite knowing that:

1. there is no allegation of negligence or malpractice by Dr. Wang;
2. the initial complaint did not relate to any matter that could have caused a risk to the public;
3. Dr. Wang has cooperated with the investigation and provided all of the information demanded by the CTCMA; and
4. the allegation of unlicensed manufacturing and distribution has been investigated and dismissed by Health Canada, who is the regulatory body having jurisdiction.

There is no legitimate justification for the CTCMA refusing to lift the suspension on Dr. Wang’s registration where it has known for some considerable time that there is no issue of public safety. The initial suspension of Dr. Wang’s registration and subsequent refusal to lift that suspension has caused Dr. Wang substantial damage for which he intends to seek redress.

In conclusion, the initial complaint was unfounded and should have been dismissed without further action. From its inception, the investigation has been conducted in a manner that suggests an agenda aimed at driving Dr. Wang out of practice. There has never been any genuine attempt by the CTCMA to work constructively with Dr. Wang to address any deficiencies in his record-keeping practices, if such deficiencies exist. The CTCMA has sought to impose onerous conditions and restrictions on Dr. Wang’s practice without any complaint or allegation of negligence or malpractice. In these circumstances the CTCMA’s demand that Dr. Wang voluntarily surrender his registration or face a disciplinary citation seems absurd. If the CTCMA is not prepared to withdraw from its stated intention of issuing a citation for disciplinary proceedings, Dr. Wang will seek redress through all available legal means.

Yours truly,

**Cooper Litigation**

Robert W. Cooper

RWC/jm