

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2867
Facsimile: (213) 897-9395
7 E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

FILED

MAY 6 2013

ACUPUNCTURE BOARD

8
9 **BEFORE THE**
ACUPUNCTURE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1A-2011-45

12 **DOO TAEK LIM, L.Ac.**

ACCUSATION

13
14 1234 South Western Avenue
Los Angeles, California 90006

15 Acupuncture License number AC2189,

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Acupuncture Board.

22 2. On or about December 29, 1983, the Acupuncture Board issued Acupuncture license
23 number AC 2189 to Doo Taek Lim (Respondent). That license was in full force and effect at all
24 times relevant to the charges brought herein and will expire on May 31, 2014, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Acupuncture Board (Board), under the
27 authority of the following laws. All section references are to the Business and Professions Code
28 unless otherwise indicated.

1 4. Section 4955 of the Code states:

2 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
3 license of any acupuncturist if he or she is guilty of unprofessional conduct.

4 "Unprofessional conduct shall include, but not be limited to, the following:

5 " . . .

6 "(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly,
7 the violation of the terms of this chapter or any regulation adopted by the board
8 pursuant to this chapter.

9 "(i) Any action or conduct that would have warranted the denial of the
10 acupuncture license.

11 ". . . ."

12 5. Section 4935 of the Code states:

13 ". . . .

14 "(c) A person holds himself or herself out as engaging in the practice of acupuncture by the
15 use of any title or description of services incorporating the words "acupuncture," "acupuncturist,"
16 "certified acupuncturist," "licensed acupuncturist," "oriental medicine," or any combination of
17 those words, phrases, or abbreviations of those words or phrases, or by representing that he or she
18 is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese
19 medicine.

20 ". . . ."

21 6. Section 4937 of the Code states:

22 "An acupuncturist's license authorizes the holder thereof:

23 ". . . .

24 "(b) To perform or prescribe the use of oriental massage, acupressure,
25 breathing techniques, exercises, or nutrition, including the incorporation of drugless
26 substances and herbs as dietary supplements to promote health. . . ."

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

7. Section 4955.2 of the Code states:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing any one of the following:

- "(a) Gross negligence.
- "(b) Repeated negligent acts.
- ". . . "

8. Section 4955.1 (e) of the Code states:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

- " . . .
- (e) Failing to maintain adequate and accurate records relating to the provision of services to their patients."

9. California Code of Regulations, title 19, section 1399.453, states:

"An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments"

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FACTS

11. On or about and beginning in January, 2011 patient RY¹ began to suffer from itchy skin. This later turned into an itchy skin rash throughout his body. Sometime during January,

¹ The name of the patient has been abbreviated to protect privacy and will be provided to Respondent upon written request for discovery.

1 2011, patient RY listened to a radio show which featured Respondent as the guest speaker, who
2 was speaking to callers about skin rashes. Patient RY called the radio show and discussed his
3 itchy rash.

4 Later that same day RY called Respondent's office to confer with Respondent about his
5 itchy rash. After speaking with RY on the telephone, but without seeing the patient, Respondent
6 diagnosed patient RY as having a severe, stress related skin rash. Respondent prescribed herbal
7 medication for patient RY's rash. RY asked Respondent if the herbal medication would cure him
8 and Respondent assured him that it would.

9 Patient RY ordered and paid for ten (10) days worth of herbal medication from Respondent.
10 The patient received the herbal medication and took it as directed for the prescribed ten (10) days,
11 but his itchy rash did not improve. Patient RY called Respondent and told him the itchy rash had
12 not improved, and Respondent prescribed another ten (10) day course of herbal medication for the
13 patient. The patient ordered the prescribed herbal medication from Respondent, received and
14 used it for the prescribed ten (10) days. At the end of the second ten (10) day course of treatment
15 the patient's itchy rash was even worse than when he first began treatment with Respondent.

16 Patient RY called Respondent and reported his worsening symptoms to Respondent.
17 Respondent told his patient to purchase an additional 30 day supply of the herbal medication he
18 prescribed. Patient RY did not comply with Respondent's instruction to purchase and use a 30
19 day supply of herbal medication. Instead, he obtained medical treatment from a physician which
20 successfully treated the itchy rash.

21 The patient also made a complaint to the Acupuncture Board (Board) about the two (2) plus
22 months of unnecessary suffering he endured as a result of Respondent's treatment. Respondent
23 retained an attorney to respond to the Board.

24 Respondent's attorney sent the Board a letter which included copies of patient RY's
25 medical records from Respondent's office. Those records included a patient information page,
26 and an herbal prescription page. The handwritten prescription page shows the patient's chief
27
28

1 complaint as pruritus², and the name of a formula, *Return of Spring Cool the Diaphragm Powder*,
2 commonly utilized to treat inflammatory conditions such as those about which the patient
3 complained. In addition to the handwritten formula, the bottom of the page depicts a table in
4 printed form containing the dosages and names of different herbs, which, when combined,
5 constitute a different formula. The herbs in the printed table did not match the herbs utilized in
6 the handwritten formula, and it is not certain which set of herbs were in fact prescribed for RY.

7 The patient information page contained a paragraph at the bottom of the page for a patient
8 to date and sign to authorize the Respondent to provide services. This portion of the page did not
9 contain either a date or RY's signature, presumably because RY never presented to Respondent's
10 office in person for treatment.

11 FIRST CAUSE FOR DISCIPLINE

12 (Repeated Negligent Acts)

13 12. Respondent is subject to disciplinary action under Business and Professions Code
14 (Code) section 4955.2(b) based on the foregoing facts set forth in paragraph 11 when examined
15 through the rubric of the appropriate standard of care within the acupuncture community.

16 13. The standard of care within the acupuncture community with regard to providing care
17 to the general public requires adequate patient examination, making a proper diagnosis, and then
18 providing competent treatment while following Asian medicine principles, concepts and
19 traditions.

20 This standard of care encompasses the ability to provide basic medical assessment and care;
21 e.g. performing basic physical examinations, taking vital signs, identifying signs and symptoms
22 of possible side effects of treatments provided, and managing cases where referral to another
23 medical professional is necessary.

24
25 ² Pruritus (itching) is an unpleasant sensation that elicits the desire to scratch. It is a
26 distressing symptom that can cause discomfort and threaten the effectiveness of the skin as a
27 major protective barrier. The skin accounts for 15% of the body's total weight and is the largest
28 organ of the body. Its function as a protective mechanism is the skin's most important role.
Pruritus can be a symptom of a distinct dermatologic condition or of a hidden underlying
systemic disease.

1 14. An acupuncturist generally examines a patient by asking the patient pertinent
2 questions about the patient's symptoms, inspecting the tongue characteristics, and pulse quality,
3 and observing other significant clinical manifestations.

4 Using the information gathered from the examination, the acupuncturist then can arrive at
5 one or more diagnoses and implement a treatment protocol that includes the use of acupuncture,
6 and, at the discretion of the practitioner, is supplemented by any number of other modalities
7 including herbs, nutritional support, moxibustion³, heat, cold, magnets, Asian
8 massage/acupressure, breathing techniques, and exercise.

9 Most of the examination and treatment protocols in acupuncture/Asian medicine are
10 focused on identifying patterns of disharmony in the body. The role of the acupuncturist is to
11 help bring back balance in the patient, using acupuncture and other modalities as outlined above.
12 Differentiation patterns (patterns of disharmony) can be diagnosed in essential elements of the body
13 or the meridians,⁴ invasion of pathogenic factors, as well as a number of other fundamental
14 concepts and theories of Asian medicine.

15 Differentiation patterns that can be diagnosed for urticariaskin⁵ include the following: Wind
16 Heat/Wind Cold, Dampness in the skin, accumulation of Heat in the stomach or the intestines
17 accompanied by Wind invasion, intestinal parasitosis, or disharmony of the Spleen and Stomach
18 with accumulation of Damp Heat in the skin and muscles caused by intake of certain foods.

19
20
21 ³ Moxibustion is a traditional Chinese medicine technique that involves the burning of
22 mugwort, a small, spongy herb, to facilitate healing. Moxibustion has been used throughout Asia
23 for thousands of years. The purpose of moxibustion, as with most forms of traditional Chinese
24 medicine, is to strengthen the blood, stimulate the flow of *qi* (The circulating life force whose
25 existence and properties are the basis of much Chinese philosophy and medicine), and maintain
26 general health.

27 ⁴ The meridian is a path through which the life-energy known as qi flows, in traditional
28 Chinese medicine. There are about 400 acupuncture points and 20 meridians connecting most of
the points. These 20 meridians include the "twelve regular channels" or "twelve regular
meridians," with each meridian corresponding to each organ; nourishing it and extending to an
extremity. There are also "Eight Extraordinary Channels" or meridians, two of which have their
own sets of points, and the remaining ones connecting points on other channels.

⁵ Urticariaskin is defined as a rash that causes itchiness of the skin.

1 In terms of Western medicine, common causes of pruritus include, but are not limited to the
2 following: a number of different types of infections and allergic conditions, inflammatory
3 conditions such as atopic dermatitis, infestation or insect bites, and pruritus due to dry skin.

4 As there are a number of differentiation patterns and diagnoses that can be made for
5 itchiness of the skin, it may be a difficult to properly diagnose a skin condition, even after a
6 careful evaluation. Therefore, diagnosing the condition without actually examining a patient in
7 person is even more difficult.

8 However, an adequate evaluation/examination, diagnosis based on the principles and
9 theories of Asian medicine, and a proper treatment protocol based on the evaluation and the
10 diagnosis are the main requirements in the standard of care.

11 15. Respondent's diagnosis of RY's condition through telephone conversations as a stress
12 related skin disorder without an adequate physical examination of RY as described above in
13 paragraph 12 constitutes a negligent act.

14 Respondent's failure to perform an actual examination of RY prior to prescribing herbal
15 therapy constitutes a negligent act because Respondent failed to appropriately evaluate his
16 patient's presenting condition. There are many possible causes for RY's symptoms. Respondent
17 was required to examine RY in person to determine if his symptoms showed that his condition
18 was, for example, Yang/Yin in nature, or heat/cold, or excess/deficient, or exterior/interior, or
19 displayed any associated imbalances in essential elements of the body and disharmony of the
20 body's organs. An actual physical examination of patient RY would provide important
21 information with regard to each of these areas, all of which would lead to a differentiation pattern
22 for patient RY. It is essential to establish the cause of the condition to enable the practitioner to
23 determine the appropriate herbal treatment to be provided.

24 Patient RY's failure to visit Respondents office and undergo a physical examination does
25 not relieve the Respondent's duty as a primary health provider to perform an adequate evaluation
26 of his patient prior to providing a diagnosis and herbal treatment.

1 16. Prescribing herbal therapy without a proper differentiation pattern, or diagnosis,
2 based solely on one symptom constitutes a negligent act because of the possibility of causing
3 unwanted side effects or worsening of the symptom as demonstrated by what in fact occurred to
4 RY as alleged in paragraph 12. "Pruritus of the skin", as noted in by Respondent in RY's records,
5 is merely a symptom and cannot be considered to be a proper diagnosis or differentiation pattern
6 according to Asian medicine.

7 Respondent had repeated opportunities to fully assess his patient's condition and prescribe
8 an herbal regimen or other appropriate treatment by requiring RY to come to Respondent's office
9 after his initial phone consultation. Certainly Respondent could have done so when RY called
10 and reported no improvement in his condition after undergoing the first ten (10) days of herbal
11 therapy. Respondent had a yet another opportunity when RY called him to report that his
12 symptoms had become worse after taking the second 10-days worth of herbs. At that juncture,
13 instead of insisting that RY to come to his office for a physical examination and evaluation,
14 Respondent instead inexplicably prescribed the same herbal therapy which had worsened RY's
15 condition and tripled the amount of time it was to be taken.

16 17. In the patient's medical records supplied to the Board by Respondent's attorney, there
17 were no notes or references to the contents of the telephone conversations with patient RY which
18 led Respondent to his "diagnosis" that RY was suffering from a skin condition caused by stress.
19 Nor were there any notations or references to any information which allowed Respondent to rule
20 out other possible causes of RY's itchy skin and rash.

21 RY may have described additional aspects of his condition and Respondent may have asked
22 questions about the onset of the symptom, the exact areas of itchiness, any presence of skin
23 eruptions, any previous allergies, infections or medications, etc. However, only a single
24 symptom, described as "pruritus of the skin" and two possible herbal prescriptions were found in
25 Respondent's records for this patient.

26 Respondent's failure to keep adequate and accurate patient records-including any
27 descriptions of the symptoms by his patient that led him to diagnose a stress-related skin disorder
28

1 and prescribe herbal therapy, as well as the uncertainty as to which set of herbs had been
2 prescribed to the Patient, constitute negligence on the part of Mr. Lim.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Inadequate Record Keeping)**

5 18. Respondent is subject to disciplinary action for inadequate record keeping under
6 Code section 4955.1 (e) and California Code of Regulations, title 19, section 1399.453. The
7 circumstances are as follows:

8 19. Complainant alleges the facts and circumstances in paragraphs 11 through 17 as
9 incorporated by reference as if set forth in full herein.

10 20. The standard of care within the acupuncture community with regard to recordkeeping
11 requires an acupuncturist to maintain adequate and accurate records relating to the provision of
12 services to their patients. Adequate and accurate patient records may, for example, include chief
13 complaints, findings from the examination of the patient, assessment of the patient's condition,
14 and treatments provided.

15 21. Many of the details about the interactions between the patient RY Respondent that
16 were included in the Attorney's response letter and the reasons for prescribing the herbs were not
17 found in the patient records.

18 In addition, as described above, there is uncertainty as to which set of herbs had been
19 prescribed to the Patient. Although Respondent may have asked many detailed questions during
20 the telephone conversations to satisfy the need for an adequate evaluation of the Patient's
21 condition, such information is simply not found in the patient records.

22 **DISCIPLINE CONSIDERATIONS**

23 22. To determine the degree of discipline, if any, to be imposed on Respondent,
24 Complainant alleges the facts and circumstances in paragraphs 12 through 21 as incorporated by
25 reference as if set forth in full herein.

26 23. On or about January 7, 1993, in Case No. D-4443, Respondent was placed on
27 probation for five (5) years after a hearing in which he was found to have committed gross
28 negligence, and incompetence in his treatment of two patients.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

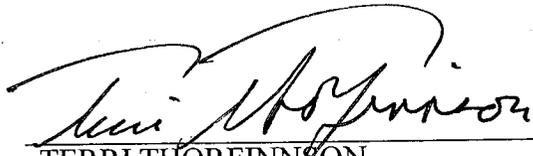
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking or suspending Acupuncture License number AC 2189, issued to Doo Taek Lim.; and
2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and
3. If placed on probation, ordering him to pay to the Acupuncture the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/3/13



TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California

Complainant

LA2011504108
60982380.docx