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FILED

APR 25 2014

ACUPUNCTURE BOARD

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

10 In the Matter of the Accusation Against:

Case No. 1A-2011-97

11 SUBHASH RAMCHANDRA GHARMALKAR, L.Ac.

12 1530 Baker Street, #G
13 Costa Mesa, California 92626-3572

ACCUSATION

14 Acupuncturist's License No. AC 4473,

15 Respondent.
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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, Department of Consumer Affairs.

22 2. On August 6, 1993, the Acupuncture Board issued Acupuncunturist's License
23 Number AC 4473 to Subhash Ramchandra Gharmalkar L.Ac. (Respondent). That license was in
24 full force and effect at all times relevant to the charges brought herein and will expire on January
25 31, 2016, unless renewed.
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JURISDICTION

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

5 4. Section 4955 of the Code states:

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

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

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

12 "(h) Disciplinary action taken by any public agency for any act substantially
13 related to the qualifications, functions, or duties of an acupuncturist or any
14 professional health care licensee.

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

17 5. Section 4955.1 of the Code states:

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

21 "(a) Securing a license by fraud or deceit.

22 "(b) Committing a fraudulent or dishonest act as an acupuncturist.

23 "(c) Committing any act involving dishonesty or corruption with respect to the
24 qualifications, functions, or duties of an acupuncturist.

25 "(d) Altering or modifying the medical record of any person, with fraudulent
26 intent, or creating any false medical record.

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

1 6. Section 4955.2 of the Code states:

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

4 "(a) Gross negligence.

5 "(b) Repeated negligent acts.

6 "(c) Incompetence."

7 7. Section 4959 of the Code states:

8 "(a) The board may request the administrative law judge, under his or her
9 proposed decision in resolution of a disciplinary proceeding before the board, to
10 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
11 not to exceed actual and reasonable costs of the investigation and prosecution of the
12 case.

13 "(b) The costs to be assessed shall be fixed by the administrative law judge and
14 shall not in any event be increased by the board. When the board does not adopt a
15 proposed decision and remands the case to an administrative law judge, the
16 administrative law judge shall not increase the amount of any costs assessed in the
17 proposed decision.

18 "(c) When the payment directed in the board's order for payment of costs is not
19 made by the licensee, the board may enforce the order for payment in the superior
20 court in the county where the administrative hearing was held. This right of
21 enforcement shall be in addition to any other rights the board may have as to any
22 licensee directed to pay costs.

23 "(d) In any judicial action for the recovery of costs, proof of the board's
24 decision shall be conclusive proof of the validity of the order of payment and the
25 terms for payment.

26 "(e) All costs recovered under this section shall be considered a reimbursement
27 for costs incurred and shall be deposited in the Acupuncture Fund."

28 8. Section 726 of the Code states:

1 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
2 or customer constitutes unprofessional conduct and grounds for disciplinary action for any
3 person licensed under this division, under any initiative act referred to in this division and under
4 Chapter 17 (commencing with Section 9000) of Division 3.

5 "This section shall not apply to sexual contact between a physician and surgeon and his or
6 her spouse or person in an equivalent domestic relationship when that physician and surgeon
7 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
8 in an equivalent domestic relationship."

9 FIRST CAUSE FOR DISCIPLINE

10 (Sexual Misconduct)

11 9. Respondent is subject to disciplinary action under section 726 of the Code in that he
12 committed acts of sexual misconduct with patient H.W. The circumstances are as follows:

13 A. Patient H.W. went to see Respondent for alternative treatments for Hashimoto's
14 Disease¹ and thyroid cysts.

15 B. She consulted with him on November 10, 2010, but no treatment was performed
16 because she told him she was frightened ("petrified") of needles and could not afford the
17 treatment.

18 C. She then started treatment with him subsequent to November, 2010. The first time
19 something inappropriate occurred was on May 18, 2011. She received acupuncture treatment, but
20 after Respondent took out the needles he massaged her back and went below her waist into her
21 shorts. H.W. was in the room alone with Respondent; there was no chaperone.

22 D. The second incident occurred on May 25, 2011, and again, H.W. went alone and there
23 was no chaperone in the exam room. Respondent used a hand to lift up the patient's jeans and
24 then reached into her pants and massaged her buttocks, going underneath her underwear, touching
25 her skin to skin.

26 _____
27 ¹ Hashimoto's Disease is is a condition in which your immune system attacks your thyroid, a small gland at
28 the base of the neck. Over time, thyroid damage can cause hormone levels to be too low and causes functions of the
body to slow down, such as heart rate, brain function, and the rate your body turns food into energy.

1 E. The third inappropriate incident occurred on her next visit. H.W. went alone and
2 there was no chaperone in the exam room. When Respondent pulled her pants down, he did it so
3 hard that her body actually lifted off the table. He put his hand into her pants, groping her
4 buttocks. Respondent's hands reached down as far as her thighs. H.W. told him, "No". Then
5 Respondent cupped her breast and massaged it, and H.W. said, "that doesn't feel right," and "I'm
6 not okay with that." H.W. left the office upset and confused and immediately phoned her mother
7 to tell her what happened.

8 F. H.W. had one more appointment with Respondent. She brought her mother with her.
9 According to H.W., Respondent seemed irritated that the mother was in the room. He asked her to
10 wait outside in the lobby, but H.W. insisted that she stay. Not surprisingly, he did not do any sort
11 of massage. During many of these visits with Respondent cracked her neck. During this
12 particular visit Respondent did adjust H.W.'s neck, and her mother was startled by the crack she
13 heard.

14 SECOND CAUSE FOR DISCIPLINE

15 (Gross Negligence)

16 10. By reason of the facts and circumstances alleged above in the First Cause for
17 Discipline, Respondent is subject to disciplinary action under section 4955.2, subdivision (a) of
18 the Code for gross negligence.

19 THIRD CAUSE FOR DISCIPLINE

20 (Inadequate Record Keeping)

21 11. Respondent is subject to disciplinary action under section 4955.1, subdivision (e) of
22 the Code in that he failed to include a differential diagnosis to support the treatment protocol
23 pertaining to massaging specific areas of the patient.

24 PRAYER

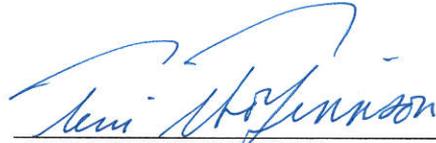
25 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
26 and that following the hearing, the Acupuncture Board issue a decision:

27 1. Revoking or suspending Acupuncunturist's License Number AC 4473, issued to
28 Subhash Ramchandra Gharmalkar, L.Ac.

1 2. Ordering Respondent to pay the Acupuncture Board the reasonable costs of the
2 investigation and enforcement of this case, pursuant to Business and Professions Code section
3 4959;

4 3. Taking such other and further action as deemed necessary and proper.
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8 DATED: **APR 25 2014**



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

Complainant

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