

COPY

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 THOMAS S. LAZAR
Supervising Deputy Attorney General
3 MARTIN W. HAGAN, State Bar No. 155553
Deputy Attorney General
4 110 West "A" Street, Suite 1100
San Diego, CA 92101
5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2094
7 Facsimile: (619) 645-2061

FILED

SEP 16 2008

ACUPUNCTURE BOARD

8 Attorneys for Complainant

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

12 In the Matter of the Accusation Against:

Case No. 1A-2007-166

13 JIAN LIN, L.Ac.
6080 University Avenue
14 San Diego, CA 92115
Acupuncture License No. AC 6933

ACCUSATION

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

19 1. Janelle Wedge (Complainant) brings this Accusation solely in her official
20 capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

21 2. On or about January 19, 2000, the Acupuncture Board issued Acupuncture
22 License Number AC 6933 to JIAN LIN, L.Ac. (Respondent). The Acupuncture License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on September 30,
24 2009, unless renewed.

25 ///

26 ///

27 ///

28 ///

1 **JURISDICTION**

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

5 4. Title 16, Section 1399.456 of the California Code of Regulations (“CCR”)
6 states:

7 “It is unprofessional conduct for an acupuncturist to use the title ‘Doctor’ or
8 the abbreviation ‘Dr.’ in connection with the practice of acupuncture unless he or she
9 possesses a license or certificate which authorizes such use or possesses an earned
10 doctorate degree from an accredited, approved or authorized educational institution
11 as set forth under Article 4 (commencing with Section 94760) of Chapter 7 of Part
12 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise
13 related to the authorized practice of an acupuncturist as set forth in Sections 4927 and
14 4937 of the Code.

15 The use of the title ‘Doctor’ or the abbreviation ‘Dr.’ by an acupuncturist as
16 authorized above without further indicating the type of license, certificate or degree
17 which authorizes such use, constitutes unprofessional conduct.”

18 5. Section 4955 of the Code states:

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

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

22 “. . . .”

23 "(c) False or misleading advertising.

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

27 "(e) Except for good cause, the knowing failure to protect patients by
28 failing to follow infection control guidelines of the board, thereby risking

1 transmission of blood-borne infectious diseases from licensee to patient, from patient
2 to patient, and from patient to licensee. In administering this subdivision, the board
3 shall consider referencing the standards, regulations, and guidelines of the State
4 Department of Health Services developed pursuant to Section 1250.11 of the Health
5 and Safety Code and the standards, regulations, and guidelines pursuant to the
6 California Occupational Safety and Health Act of 1973 (Part 1 (commencing with
7 Section 6300) of Division 5 of the Labor Code) for preventing the transmission of
8 HIV, hepatitis B, and other blood-borne pathogens in health care settings. As
9 necessary, the board shall consult with the Medical Board of California, the
10 California Board of Podiatric Medicine, the Dental Board of California, the Board
11 of Registered Nursing, and the Board of Vocational Nursing and Psychiatric
12 Technicians, to encourage appropriate consistency in the implementation of this
13 subdivision.

14 "The board shall seek to ensure that licensees are informed of the
15 responsibility of licensees and others to follow infection control guidelines, and of
16 the most recent scientifically recognized safeguards for minimizing the risk of
17 transmission of blood-borne infectious diseases.

18 ". . . .

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

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

24 ". . . .

25 "(l) the failure to notify the board of the use of any false, assumed, or
26 fictitious name other than the name under which he or she is licensed as an individual
27 to practice acupuncture."

28 ///

1 6. Section 4955.1 of the Code states:

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

5 "...."

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

8 "...."

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

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

13 7. Title 16, Section 1399.451 of the California Code of Regulations states:

14 In treating a patient, an acupuncturist shall adhere to the following
15 procedures:

16 "...."

17 "(h) Needles shall be disposed of by placing them in a sealed, unbreakable
18 container marked 'Hazardous Waste' and disposed of in accordance with state and
19 local law."

20 **COST RECOVERY**

21 8. Section 4959 of the Code states:

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

27 "(b) The costs to be assessed shall be fixed by the administrative law judge
28 and shall not in any event be increased by the board. When the board does not adopt

1 a proposed decision and remands the case to an administrative law judge, the
2 administrative law judge shall not increase the amount of any costs assessed in the
3 proposed decision.”

4 “(c) When the payment directed in the board's order for payment of costs
5 is not made by the licensee, the board may enforce the order for payment in the
6 superior court in the county where the administrative hearing was held. This right
7 of enforcement shall be in addition to any other rights the board may have as to any
8 licensee directed to pay costs.

9 “(d) In any judicial action for the recovery of costs, proof of the board's
10 decision shall be conclusive proof of the validity of the order of payment and the
11 terms for payment.

12 “(e) All costs recovered under this section shall be considered a
13 reimbursement for costs incurred and shall be deposited in the Acupuncture Fund.”

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Unauthorized Use of the Title “Doctor” or “Dr.”)**

16 9. Respondent is subject to disciplinary action under section 4955, as defined
17 by section 4955, subdivision (d), and Title 16, Section 1399.456 of the CCR, in that Respondent has
18 used the title of “doctor” and “Dr.” in, among other things, signs and business cards when he did not
19 possess an earned doctorate degree which would permit him to use title of “doctor” and “Dr.” as
20 more particularly alleged hereinafter:

21 (a) Respondent is the owner and operator of “Dr. Lin’s Acupuncture &
22 Chinese Herbs Center” located at 6080 University Avenue in San Diego, California.

23 (b) On or about December 11, 2007, Special Agent J.S., from the
24 California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed
25 a search warrant at “Dr. Lin’s Acupuncture & Chinese Herbs Center” in regards to a
26 Medi-Cal fraud investigation. During this visit, Special Agent J.S. interviewed
27 Respondent and Ms. Y.P.T., the “secretary” and part owner of “Dr. Lin’s
28 Acupuncture & Chinese Herbs Center.” During this interview, Respondent admitted

1 he did not have a doctorate and that he was not considered a doctor in the United
2 States. After Special Agent J.S. concluded his interviews of Respondent and Ms.
3 Y.P.T., they were both advised that Respondent could no longer have “Dr.” on his
4 sign and could no longer refer to himself as a doctor to his patients. Respondent and
5 Ms. Y.P.T. both acknowledged they understood.

6 (c) On or about July 7, 2008, Department of Consumer Affairs (“DCA”)
7 Senior Investigator D.C. did a premises inspection at Respondent’s acupuncture
8 business. Upon arriving at the premises, Senior Investigator D.C. observed a large
9 sign over the door to Respondent’s clinic which stated “Dr. Lin’s Acupuncture and
10 Chinese Herbs Center.” After entering the premises, Senior Investigator D.C. saw
11 business cards on the top of the counter in the receptionist area. He confiscated one
12 of the business cards which also stated “Dr. Lin’s Acupuncture and Chinese Herbs
13 Center.”

14 **SECOND CAUSE FOR DISCIPLINE**

15 **(False or Misleading Advertising)**

16 10. Respondent is further subject to disciplinary action under section 4955, as
17 defined by sections 4955, subdivision (c), in that Respondent has engaged in false or misleading
18 advertising by representing that he is a doctor or “Dr.” when, in fact, he does not possess an earned
19 doctorate degree which would permit him to use title of “doctor” and “Dr.” as more particularly
20 alleged hereinafter:

21 (a) Paragraph 9, above, is incorporated by reference and realleged as if
22 fully set forth herein.

23 (b) Respondent has represented to patients that he is a doctor through,
24 among other things, his sign and business cards which use the terminology of “Dr.
25 Lin’s Acupuncture and Chinese Herbs Center.” The use of “Dr.” is false because
26 Respondent does not possess an earned doctorate degree which would permit him to
27 use the title of “doctor” and “Dr.” Moreover, Respondent’s use of the terms “doctor”
28 or “Dr.” is misleading in that it conveys a level of expertise, specialization, and/or

1 possession of a medical degree or doctorate degree none of which is possessed by
2 Respondent.

3 **THIRD CAUSE FOR DISCIPLINE**

4 **(Dishonesty or Corruption)**

5 11. Respondent is further subject to disciplinary action under section 4955.1, as
6 defined by section 4955.1, subdivision (c), in that Respondent has committed an act or acts of
7 dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist
8 as more particularly alleged herein.

9 (a) Paragraphs 9 and 10, above, are incorporated by reference and
10 realleged as if fully set forth herein.

11 **FOURTH CAUSE FOR DISCIPLINE**

12 **(Failure to Follow Infection Control Guidelines)**

13 12 Respondent is further subject to disciplinary action under section 4955, as
14 defined by section 4955, subdivisions (d) and (e) and Title 16, Section 1399.451, subdivision (h),
15 of the CCR, in that Respondent failed to follow infection control guidelines thereby risking
16 transmission of blood-borne infectious diseases as more particularly alleged hereinafter:

17 (a) On or about December 11, 2007, Special Agent J.S., from the
18 California Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed
19 a search warrant at "Dr. Lin's Acupuncture & Chinese Herbs Center" in regards to a
20 Medi-Cal fraud investigation. During this visit, Special Agent J.S. observed used
21 acupuncture needles that were placed in unsealed plastic buckets under the patient
22 beds and some of the acupuncture needles were on the carpet next to the containers.

23 (b) On or about July 7, 2008, Department of Consumer Affairs ("DCA")
24 Senior Investigator D.C. did a premises inspection at Respondent's acupuncture
25 business. During the premises inspection, Senior Investigator D.C. observed used
26 acupuncture needles in two rooms that were being stored in unsecured half-gallon red
27 plastic sharps containers which did not contain any tops.

28 ///

1 **FIFTH CAUSE FOR DISCIPLINE**

2 **(Aiding and Abetting the Unlicensed Practice of Acupuncture)**

3 13 Respondent is subject to disciplinary action under section 4955, as defined
4 by section 4955, subdivision (d), in that Respondent aided and abetted the unlicensed practice of
5 acupuncture in having an unlicensed individual remove acupuncture needles from patients as more
6 particularly alleged herein.

7 (a) On or about December 11, 2007, Special Agent J.S., from the
8 California Department of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed
9 a search warrant at "Dr. Lin's Acupuncture & Chinese Herbs Center" in regards to a
10 Medi-Cal fraud investigation. During this visit, Special Agent J.S. observed, Ms.
11 Y.P.T., the part owner of "Dr. Lin's Acupuncture & Chinese Herbs Center," remove
12 acupuncture needles from a patient. When Special Agent J.S. interviewed Ms.
13 Y.P.T. she stated that she does not insert needles into patients but did occasionally
14 take acupuncture needles out of patients if Respondent was busy. Ms. Y.P.T. is not
15 a licensed acupuncturist.

16 **PRAYER**

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

- 19 1. Revoking or suspending Acupuncture License Number AC 6933, issued to
20 JIAN LIN, L.Ac.;
- 21 2. Ordering JIAN LIN, L.Ac., to pay the Acupuncture Board the reasonable costs
22 of the investigation and enforcement of this case, pursuant to Business and Professions Code section
23 4959; and

24 ///

25 ///


26 ///

27 ///

28 ///

3. Taking such other and further action as deemed necessary and proper.

DATED: SEP 16 2008


JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

SD2008801962

80275135.wpd