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FILED

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ACUPUNCTURE BOARD

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

12 In the Matter of the Accusation Against:

Case No. 1A-2012-5

13 KARL DAKO CHANG, L.AC.
474 High School Drive
14 Bishop, California 93514

A C C U S A T I O N

15 Acupuncturist License No. AC 13939,
16 Respondent.

17
18 Complainant alleges:

19 PARTIES

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

22 2. On or about September 27, 2010, the Acupuncture Board issued Acupuncturist
23 License number AC 13939 to Karl Dako Chang ("Respondent"). That license was in full force
24 and effect at all times relevant to the charges brought herein and will expire on March 31, 2014,
25 unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Acupuncture Board ("Board"), Department of
28 Consumer Affairs, State of California under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 726 of the Code states:

3 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
4 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
5 licensed under this division, under any initiative act referred to in this division and under Chapter
6 17 (commencing with Section 9000) of Division 3.

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

11 5. Section 4955 of the Code states:

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

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

15 "..."

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

19 "..."

20 6. Section 4955.1 of the Code states:

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

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

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

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

28 "(d) Altering or modifying the medical record of any person, with fraudulent

1 intent, or creating any false medical record.

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

4 7. Section 4955.2 of the Code states:

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

7 "(a) Gross negligence.

8 "(b) Repeated negligent acts.

9 "(c) Incompetence."

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

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

14 COST RECOVERY

15 9. Section 4959 of the Code states:

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

21 "(b) The costs to be assessed shall be fixed by the administrative law judge and
22 shall not in any event be increased by the board. When the board does not adopt a
23 proposed decision and remands the case to an administrative law judge, the
24 administrative law judge shall not increase the amount of any costs assessed in the
25 proposed decision.

26 "(c) When the payment directed in the board's order for payment of costs is not
27 made by the licensee, the board may enforce the order for payment in the superior
28 court in the county where the administrative hearing was held. This right of

1 enforcement shall be in addition to any other rights the board may have as to any
2 licensee directed to pay costs.

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

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

8 FIRST CAUSE FOR DISCIPLINE

9 (Sexual Misconduct)

10 10. Respondent is subject to disciplinary action under section 726 of the Code in that he
11 committed acts of sexual misconduct with Patients A, B, and S.R.¹ during acupuncture treatment.
12 The circumstances are as follows:

13 Patient A

14 11. On December 14, 2011 and January 6, 2012, Patient A, an adult female, went to
15 Respondent's office for acupuncture treatment. Respondent's office is located inside his
16 residence. Patient A sought treatment for symptoms consistent with Premenstrual Syndrome
17 ("PMS"), liver disharmony, and the need to nourish the Heart and calm the Shen.

18 12. On December 14, 2011, Respondent covered Patient A's breasts with a scarf. He
19 asked Patient A for permission to work in between her breasts. She agreed because she thought it
20 was part of treatment. He massaged between her breasts, down her stomach, and back around her
21 breasts.

22 13. On January 6, 2012, at approximately 6:00 p.m., Patient A arrived at Respondent's
23 office for her scheduled appointment. Respondent invited Patient A to use his hot tub to loosen
24 her muscles. Patient A entered the hot tub in the nude since she was unprepared with a swimsuit.
25 Respondent subsequently asked Patient A if he could join her in the hot tub. Patient A agreed to
26 avoid confrontation.

27 _____
28 ¹ The names of the patients are not used to protect their right of privacy.

1 14. Respondent disrobed and entered the hot tub in the nude with Patient A. Respondent
2 asked Patient A if he could work on her shoulders. He stated, "why don't you come over here and
3 let me rub your shoulders?" Patient A declined and informed him that she felt uncomfortable.

4 15. After they got out of the hot tub, Respondent provided treatment to Patient A in one
5 of his treatment rooms. While Patient A lay face down, Respondent massaged her head, neck,
6 shoulders, back, buttocks, and legs. Respondent did not ensure that the sheet covering Patient A
7 was adequately tucked to avoid exposing her private areas when he massaged her buttocks and
8 rotated her leg.

9 16. Respondent then had Patient A turn around on the table. Respondent exposed her
10 breasts without permission and rubbed around and over her breasts and nipples.

11 17. Respondent removed the sheet from Patient A's right leg and bent her right leg and
12 bent it at the knee, and rotated the leg thereby exposing her vagina. Respondent repeated this
13 procedure on her other leg as well. He made no attempt to cover her vagina.

14 18. Respondent moved around the table to sit above Patient A and work on her neck. He
15 made no attempt to cover Patient A's upper body. Respondent had a view of Patient A's exposed
16 breasts the entire time that he worked on her neck.

17 19. As Respondent moved around the table, his body would rub up against Patient A's
18 hands.

19 20. While treating Patient A's lower abdomen with acupuncture, Respondent felt around
20 her lower abdomen inappropriately low and asked Patient A "is this your pelvic bone?" The sheet
21 covering Patient A was pulled down to the area above her crotch.

22 21. The treatment lasted approximately two and three quarter hours later and ended at
23 approximately 8:45 p.m.

24 **Patient B**

25 22. Patient B is a licensed massage therapist. She was employed by Respondent for
26 approximately six months. Patient B sought treatment from Respondent for neck, upper back,
27 shoulder, and scapula pain. She also had symptoms consistent with PMS.

28 23. On a date unknown to Patient B but known to Respondent, Respondent gave Patient

1 B a "Thai" massage as part of treatment. He had her sit on a table. He got up on the table and
2 positioned himself directly behind her. Patient B attempted to hold a sheet tucked between her
3 arms to keep the sheet from falling down. Patient B was nude beneath the sheet.

4 24. Respondent lifted Patient B's arms over her head causing the sheet covering her
5 breasts to fall to her waist. Patient B's breasts became exposed. She became very uncomfortable.
6 She could feel Respondent's body against her. She felt that Respondent's breathing changed when
7 her breasts were exposed. She felt that he was aroused and his body heated up.

8 **Patient S.R.**

9 25. On February 8, 2012, District Attorney Investigator S.R. conducted an undercover
10 operation to determine if Respondent would expose or touch a female patient while providing
11 acupuncture or massage treatments. She went to Respondent's office for treatment regarding
12 shoulder and neck pain associated with S.R.'s fictitious employment. Respondent asked S.R. to
13 remove all her clothes, except her panties, and cover herself with a sheet.

14 26. Respondent conducted acupuncture treatment while S.R. was lying on her back.
15 Respondent then asked S.R. to roll over to her stomach to treat her back side. As S.R. was rolling
16 to her stomach, Respondent lifted the sheet off her body and exposed her breasts.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Gross Negligence)

19 27. Respondent is further subject to disciplinary action under section 4955.2, subdivision
20 (a) of the Code in that his acts of acts of sexual misconduct with Patients A, B, and S.R. constitute
21 an extreme departure from the standard of practice.

22 28. The circumstances are as follows: Paragraphs 11 through 26 are incorporated by
23 reference as if fully set forth herein.

24 **THIRD CAUSE FOR DISCIPLINE**

25 (Unprofessional Conduct)

26 29. Respondent is further subject to disciplinary action under section 4955, subdivision
27 (d) of the Code in that he engaged in unprofessional conduct by breaching the rules or ethical
28 code of conduct of the profession of acupuncture, and by engaging in conduct unbecoming to an

1 acupuncturist in good standing in the profession and which demonstrates an unfitness to practice
2 acupuncture.² The circumstances are as follows:

3 30. Paragraphs 11 through 26 are incorporated by reference as if fully set forth herein.

4 FOURTH CAUSE FOR DISCIPLINE

5 (Inadequate and Inaccurate Records)

6 31. Respondent is further subject to disciplinary action under section 4955.1, subdivision
7 (e) of the Code and section 1399.453 of Title 16 of the California Code of Regulations in that he
8 failed to keep complete and accurate records regarding the medical history of Patients A and B,
9 the chief complaints of Patient A and B, and Respondent's care and treatment of Patients A and B
10 Respondent also failed to sign his treatment notes for both patients.

11 PRAYER

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

- 14 1. Revoking or suspending Acupuncturist License Number AC 13939, issued to Karl
15 Dako Chang;
- 16 2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation
17 and enforcement of this case, pursuant to Business and Professions Code section 4959; and
- 18 3. Taking such other and further action as deemed necessary and proper.

19
20
21 DATED: 10/23/13



22 TERRI THORFINNSON
23 Executive Officer
24 Acupuncture Board
25 Department of Consumer Affairs
26 State of California

27 *Complainant*

28 ² See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.