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7
8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1A-2001-128

11 DUONG H. HA, L.Ac.,
12 1304 15th Street, #204
13 Santa Monica, California 90404

ACCUSATION

14 Acupuncturist License No. AC-1500,

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Marilyn Nielsen brings this Accusation solely in her official capacity as
20 the Executive Officer of the Acupuncture Board ("Board").

21 2. On or about August 30, 1983, the Board issued Acupuncturist License
22 Number AC-1500 to Duong H. Ha ("Respondent"). His license was in full force and effect at all
23 times relevant to the charges brought herein and will expire on November 30, 2003, unless
24 renewed.

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FILED

DEC 22 2003

ACUPUNCTURE BOARD

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3. This Accusation is brought under the authority of the following laws. All

4. Section 4955 of the Code states:

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

5. Section 4955.1 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:

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

6. 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.

"(c) Incompetence."

7. 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."

8. Section 4959 of the Code states:

“(a) The board may request the administrative law judge, under his or her proposed decision in resolution of a disciplinary proceeding before the board, to direct any licensee found guilty of unprofessional conduct to pay to the board a sum not to

1 exceed actual and reasonable costs of the investigation and prosecution of the case.”

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3 FIRST CAUSE FOR DISCIPLINE

4 (Gross Negligence)

5 9. Respondent is subject to disciplinary action under Code section 4955.2,
6 subdivision (a), in that he committed gross negligence in the care and treatment of a patient.

7 The circumstances are as follows:

8 10. On or about January 29, 2003, Senior Investigator Mike Brown, in an
9 undercover capacity, visited Santa Monica Acupuncture Medical Center (“Clinic”). While Mr.
10 Brown was filling out patient information forms, Respondent came into the reception area and
11 greeted him. Mr. Brown was then taken into an examination room.

12 11. After waiting in the examination room for about 15 minutes, Respondent
13 appeared and asked Mr. Brown if he wanted cancer prevention treatment. Respondent also
14 asked Mr. Brown if he had brought any medical records with him. Mr. Brown answered “no”.
15 Respondent then proceeded to ask Mr. Brown what his PSA reading was and Mr. Brown told
16 him 4.0. Mr. Brown also told him that his prior PSA reading had been 3.9 and that after his
17 latest result, his physician wanted him to get a biopsy of the prostate.

18 12. Respondent next asked Mr. Brown about his family history regarding
19 prostate cancer. Mr. Brown answered that his father had died from prostate cancer and that his
20 brother was recently diagnosed with prostate cancer. Mr. Brown also stated that his brother’s
21 cancer had not spread from the prostate.

22 13. Respondent informed Mr. Brown that there was a 90% chance that he had
23 prostate cancer with a 10% chance it was a benign enlargement due to family history.

24 Respondent informed Mr. Brown that his goal was to treat the cancer.

25 14. Respondent informed Mr. Brown that he had two choices of treatment.
26 The first was to treat the cancer with Chinese medicine and acupuncture under the assumption
27 that Mr. Brown had cancer. The second was to use Western medicine and Chinese medicine.
28 Respondent explained that if Mr. Brown was to opt for the Chinese and Western method of

1 treatment, then he would need a biopsy to confirm that he had cancer.

2 15. Mr. Brown asked Respondent if the Chinese method of cancer treatment
3 was as good as the Western method. Respondent answered that according to most recent studies
4 his chances were the same. Furthermore, Respondent stated that if he were to use the Western
5 approach, he would use Lupron Depot and acupuncture because it was the least invasive. He
6 stated that the Western approach requires that Lupron Depot injections and acupuncture be
7 administered for seven years.

8 16. Respondent told Mr. Brown that he had to use electrified acupuncture
9 because he had to teach the electrons to get rid of the cancer. Respondent also told Mr. Brown
10 that the acupuncture needle does not go into the prostate but rather, a capillary near the prostate.
11 Respondent then told Mr. Brown that he had been treating cancer this way since 1975.

12 17. Finally, Respondent told Mr. Brown to get another PSA reading and then
13 schedule another appointment for the first treatment in two weeks.

14 18. The medical record for Mr. Brown's visit to Respondent did not contain
15 the patient information and advice given to Mr. Brown. Nor did the record contain the purpose
16 of Mr. Brown's visit.

17 19. Respondent's claim that he could diagnose, treat and cure prostate cancer
18 in the manner described above constituted an extreme departure from the standard of care and
19 gross negligence.

20 SECOND CAUSE FOR DISCIPLINE

21 (Repeated Negligent Acts)

22 20. Respondent is subject to disciplinary action under Code section 4955.2,
23 subdivision (b), in that he committed repeated negligent acts in the care and treatment of Mr.
24 Brown. The circumstances are as follows:

25 21. The facts and allegations in paragraphs 9 through 19, inclusive, are
26 incorporated herein by reference.

27 22. The following acts and omissions of Respondent during his care, treatment
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1 and management of patient Mr. Brown, singularly and collectively, constituted departures from
2 the standard of care:

- 3 A. Respondent claimed he could diagnose, treat and cure cancer.
- 4 B. Respondent's failure to keep adequate records.

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6 THIRD CAUSE FOR DISCIPLINE

7 (Incompetence)

8 23. Respondent is subject to disciplinary action under Code section 4955.2,
9 subdivision (c), for incompetence in the care and treatment of Mr. Brown. The circumstances
10 are as follows:

11 24. The facts and allegations in paragraphs 9 through 19, inclusive, are
12 incorporated herein by reference.

13 25. The following acts and omissions of Respondent during his care, treatment
14 and management of patient Mr. Brown, singularly and collectively, constituted incompetence:

- 15 A. Respondent's belief that a decrease of electrons leads to cancer.

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17 FOURTH CAUSE FOR DISCIPLINE

18 (Failure to Keep Adequate Records)

19 26. Respondent is subject to disciplinary action under Code section 4955.1,
20 subdivision (e) and California Code of Regulations, title 19, section 1399.453, in that he failed to
21 keep adequate and accurate records relating to the provision of services to a patient. The
22 circumstances are as follows:

23 27. The facts and allegations in paragraphs 9 through 19, inclusive, are
24 incorporated herein by reference.

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1 FOURTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Claiming to Cure Cancer)

3 28. Respondent is subject to disciplinary action under Code section 4955 in
4 that he committed unprofessional conduct by claiming to be able to cure cancer in a patient. The
5 circumstances are as follows:

6 29. The facts and allegations in paragraphs 9 through 19, inclusive, are
7 incorporated herein by reference.

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9 DISCIPLINE CONSIDERATIONS

10 30. To determine the degree of discipline, if any, to be imposed on
11 Respondent, Complainant alleges that on or about December 31, 1993, in a prior disciplinary
12 action entitled In the Matter of the Accusation Against Duong H. Ha before the Acupuncture
13 Board, in Case Number 1A-1990-3347, Respondent's license was placed on 5 years' probation,
14 and suspended for 60 days for giving injection therapy to a patient who as a result, suffered
15 physical and emotional trauma and injury. That decision is now final and is incorporated by
16 reference as if fully set forth.

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1. Revoking or suspending Acupuncturist License Number AC-1500, issued to Duong H. Ha;

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

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