

FILED

JUN - 7 2005

ACUPUNCTURE BOARD

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

COPY

In the Matter of the Accusation filed Against:)
)
DUONG HUY HA)
1304 - 15th Street)
Santa Monica, CA 90404)
)
Acupuncturist License No. AC-1500)
Respondent.)

Case No. 1A-2001-128
OAH No. L20040903863

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, State of California, as it's decision in the above entitled matter.

This Decision shall become effective on JUN 26 2005.

IT IS SO ORDERED MAY 26 2005.

Shari Asplund
Shari Asplund
Chair
Acupuncture Board
Department of Consumer Affairs
State of California

1 BILL LOCKYER, Attorney General
of the State of California
2 IVAN O. CAMPBELL, State Bar No. 216049
Deputy Attorney General
3 California Department of Justice
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4 Los Angeles, CA 90013
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6 Attorneys for Complainant

7 **BEFORE THE**
8 **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 HUY HA
1304 15th Street, #204
12 Santa Monica, CA 90404

OAH No. L2004030863

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 Acupuncturist License No. AC-1500

14 Respondent.
15

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
17 above-entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Marilyn Nielsen (Complainant) is the Executive Officer of the
20 Acupuncture Board, Department of Consumer Affairs. Ms. Nielsen brought this action solely in
21 her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the
22 State of California, and by Ivan O. Campbell, Deputy Attorney General.

23 2. Respondent Duong Huy Ha (Respondent) is represented in this proceeding
24 by attorney Peter R. Osinoff, Bonne, Bridges, Mueller, O'Keefe & Nichols, 3699 Wilshire
25 Boulevard, 10th Floor, Los Angeles, CA 90010-2719.

26 3. On or about August 30, 1983, the Acupuncture Board issued
27 Acupuncturist License No. AC-1500 to Duong Huy Ha (Respondent). Said license is current and
28 up to date and will expire on November 30, 2006, unless renewed.

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9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could present a factual basis for the charges in the Accusation, and that Respondent hereby waives his right to contest those charges.

10. Respondent agrees that his Acupuncturist License is subject to discipline and he is to be bound by the Acupuncture Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Acupuncture Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Acupuncturist License No. AC-1500 issued to Respondent Duong Huy Ha (Respondent) is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. ACTUAL SUSPENSION

As part of probation, respondent is suspended from the practice of acupuncture for thirty (30) days. Respondent's suspension shall commence on the sixteenth (16) calendar day after the effective date of this decision.

1 2. PRACTICE MONITOR

2 Within ninety (90) calendar days of the effective date of this decision, respondent
3 shall submit to the Acupuncture Board for its prior approval, the name and qualifications of one
4 or more California licensed acupuncturists whose license is clear (no record of complaints) and
5 current and who has agreed to serve as a practice monitor. Once approved, the monitor shall
6 submit to the Acupuncture Board a plan by which respondent's practice shall be monitored. The
7 monitor's education and experience shall be in the same field of practice as that of the
8 respondent. The monitor shall submit written reports to the Acupuncture Board on a quarterly
9 basis verifying that monitoring has taken place and providing an evaluation of respondent's
10 performance. It shall be respondent's responsibility to assure that the required reports are filed in
11 a timely fashion. The respondent shall provide access to the monitor of respondent's fiscal and
12 client records and shall be permitted to make direct contact with patients. Further, the monitor
13 shall have no prior business, professional, personal or other relationship with respondent.
14 Respondent shall execute a release authorizing the monitor to divulge any information that the
15 Acupuncture Board may request.

16 Respondent shall notify all current and potential patients of any term or condition
17 of probation which will affect their treatment or the confidentiality of their records (such as this
18 condition which requires a practice monitor). Such notification shall be signed by each patient
19 prior to continuing or commencing treatment.

20 If the monitor quits or is otherwise no longer available, respondent shall not
21 practice until a new monitor has been approved by the Acupuncture Board. All costs of
22 monitoring shall be borne by the respondent. Monitoring shall consist of at least one hour per
23 week of individual face to face meetings.

24
25 3. REIMBURSEMENT FOR PROBATION SURVEILLANCE
26 MONITORING

27 Respondent shall reimburse the Acupuncture Board for the hourly costs it incurs
28 in monitoring the probation to ensure compliance for the duration of the probation period.

1 4. OBEY ALL LAWS

2 Respondent shall obey all federal, state and local laws and all regulations
3 governing the practice of acupuncture in California. A full and detailed account of any and all
4 violations of law shall be reported by the respondent to the Acupuncture Board in writing within
5 seventy-two (72) hours of occurrence.

6
7 5. QUARTERLY REPORTS

8 Respondent shall submit quarterly declarations under penalty of perjury on forms
9 provided by the Acupuncture Board, stating whether there has been compliance with all the
10 conditions of probation.

11
12 6. SURVEILLANCE PROGRAM

13 Respondent shall comply with the Acupuncture Board's probation surveillance
14 program and shall, upon reasonable notice, report to the assigned investigative district office.
15 Respondent shall contact the assigned probation surveillance monitor regarding any questions
16 specific to the probation order. Respondent shall not have any unsolicited or unapproved contact
17 with 1) complainants associated with the case; 2) Acupuncture Board members or members of its
18 staff, or 3) persons serving the Board as expert examiners.

19
20 7. INTERVIEW WITH THE ACUPUNCTURE BOARD OR ITS
21 DESIGNEE

22 Respondent shall appear in person for interviews with the Acupuncture Board or
23 its designee upon request at various intervals and with reasonable notice.

24
25 8. CHANGES OF EMPLOYMENT

26 Respondent shall notify the Acupuncture Board in writing, through the assigned
27 probation surveillance compliance officer of any and all changes of employment, location and
28 address within 30 days of such change.

1 9. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE

2 In the event respondent should leave California to reside or to practice outside the
3 State, respondent must notify the Acupuncture Board in writing of the dates of departure and
4 return. Periods of residency or practice outside California will not apply to the reduction of this
5 probationary period.

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7 10. COST RECOVERY

8 Within ninety (90) calendar days from the effective date of this decision,
9 respondent shall pay, or make arrangements to pay, the Acupuncture Board the amount of
10 \$4,100.00 for its investigative and prosecution costs. The filing of bankruptcy or period of non-
11 practice by respondent shall not relieve the respondent of his obligation to reimburse the Board
12 for its costs.

13
14 11. VIOLATION OF PROBATION

15 If respondent violates probation in any respect, the Acupuncture Board may, after
16 giving respondent notice and the opportunity to be heard, revoke probation and carry out the
17 disciplinary order that was stated. If an accusation or petition to revoke probation is filed against
18 respondent during probation, the Board shall have continuing jurisdiction until the matter is final,
19 and the period of probation shall be extended until the matter is final. No petition for
20 modification or termination of probation shall be considered while there is an accusation or
21 petition to revoke probation pending against respondent.

22
23 12. COMPLETION OF PROBATION

24 Upon successful completion of probation, respondent's license will be fully
25 restored.

26
27 ///

28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and
3 have fully discussed it with my attorney, Peter R. Osinoff. I understand the stipulation and the
4 effect it will have on my Acupuncturist License. I enter into this Stipulated Settlement and
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
6 Decision and Order of the Acupuncture Board.

7 DATED: 3/28/05.

8
9 
10 DUONG HUY HA
Respondent

11 I have read and fully discussed with Respondent Duong Huy Ha the terms and
12 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
13 Order. I approve its form and content.

14 DATED: 3/28/05.

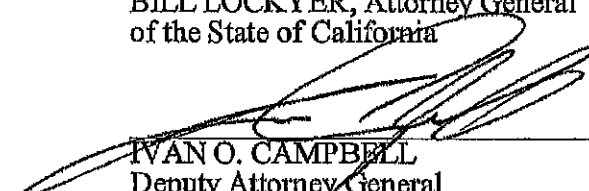
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16
17 PETER R. OSINOFF
18 Attorney for Respondent

19 ENDORSEMENT

20 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
21 submitted for consideration by the Acupuncture Board.

22 DATED: 4/11/05.

23
24
25 BILL LOCKYER, Attorney General
of the State of California

26 
27 IVAN O. CAMPBELL
28 Deputy Attorney General
Attorneys for Complainant