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KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General
ASHLEY HARLAN
Deputy Attorney General
State Bar No. 284586
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5709
Facsimile: (415) 703-1234
Attorneys for Complainant

FILED

SEP 30 2014

ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:
BENG YUE YAN
1854 35th Avenue
San Francisco, CA 94122
Acupuncture License No. AC 61

Respondent

Case No. 1A-2012-18

ACCUSATION

Complainant alleges:

PARTIES

1. Terri Thorfinnson ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board ("Board"), Department of Consumer Affairs.
2. On or about October 21, 1976, the Board issued Acupuncture License Number AC 61 to Beng Yue Yan ("Respondent"). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein. The Acupuncture License expired on August 31, 2014 and has not been renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
3 the authority of the following laws. All section references are to the Business and Professions
4 Code unless otherwise indicated.

5 4. Section 118 of the Code states, in relevant part:

6 "...

7 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
8 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
9 order of a court of law, or its surrender without the written consent of the board, shall not, during
10 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
11 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
12 provided by law or to enter or order suspending or revoking the license or otherwise taking
13 disciplinary action against the licensee on any such ground."

14 5. Section 726 of the Code states, in relevant part:

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

19 6. Section 4955 of the Code states, in relevant part:

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

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

23 "...

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

1 7. Section 4955.1 of the Code states, in relevant part:
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 a fraudulent act including, but not be
4 limited to, any of the following:

5 "...
6 "(e) Failing to maintain adequate and accurate records relating to the provision
7 of services to their patients."

8 8. Section 4955.2 of the Code states:
9 "The board may deny, suspend, revoke, or impose probationary conditions upon the license
10 of any acupuncturist if he or she is guilty of committing any one of the following:

11 "(a) Gross negligence.
12 "(b) Repeated negligent acts.
13 "(c) Incompetence."

14 9. California Code of Regulations, title 16, section 1399.453, states:
15 "An acupuncturist shall keep complete and accurate records on each patient who is given
16 acupuncture treatment, including but not limited to, treatments given and progress made as a
17 result of the acupuncture treatments"

18 COST RECOVERY

19 10. Section 4959 of the Code states:
20 "(a) The board may request the administrative law judge, under his or her proposed
21 decision in resolution of a disciplinary proceeding before the board, to direct any licensee found
22 guilty of unprofessional conduct to pay to the board a sum not to exceed actual and reasonable
23 costs of the investigation and prosecution of the case.

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

28

1 B.M.'s office and informed a female employee of the incident who advised her to cancel her
2 remaining appointments.

3 SECOND CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct - Gross Negligence)

5 15. Paragraphs 10 through 13 are incorporated herein.

6 16. Respondent's license is subject to disciplinary action for unprofessional conduct
7 under Code section 4955.2, in that Respondent committed an extreme departure from the standard
8 of care by rubbing his penis against Patient S.B.'s arm.

9 THIRD CAUSE FOR DISCIPLINE

10 (Unprofessional Conduct - Inadequate Recordkeeping)

11 17. Paragraphs 10 through 13 are incorporated herein.

12 18. Respondent's license is subject to disciplinary action for unprofessional conduct
13 under Code section 4955.1(e) and California Code of Regulations, title 16, section 1399.453, in
14 that a review of S.B.'s translated (Kanji to English) patient records indicate that Respondent
15 failed to chart the following:

- 16 A. S.B.'s tongue, pulse, and other objective findings;
17 B. S.B.'s TCM diagnosis; treatment plan, or goals; and
18 C. Acupuncture points for S.B.'s January 19, 2012 treatment session.

19
20 PRAYER

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

- 23 1. Revoking or suspending Acupuncture License Number AC 61, issued to Beng Yue
24 Yan;
25 2. Ordering Beng Yue Yan to pay to the Acupuncture Board the reasonable costs of the
26 investigation and enforcement of this case, pursuant to Business and Professions Code section
27 4959; and
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3. Taking such other and further action as deemed necessary and proper.

DATED: SEP 30 2014



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

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