

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

In the Matter of the Accusation Against:

MIN LI DAO LIANG, L.Ac.

Acupuncture License No. AC 6666, Respondent

Agency Case No. 1A-2017-57

OAH No. 2019110466

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective on September 8, 2020.

IT IS SO ORDERED this 7th day of August 2020.

Original signed by:

Amy Matecki, MD, L.Ac.
Acupuncture Board
Department of Consumer Affairs
State of California

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MIN LI DAO LIANG, L.Ac., Respondent.

Acupuncturist License No. AC 6666

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PROPOSED DECISION

Administrative Law Judge Karen Reichmann, State of California, Office of Administrative Hearings, heard this matter on June 22 through June 24, 2020, by telephone and videoconference.

Deputy Attorney General Lynne K. Dombrowski appeared on behalf of complainant Benjamin Bodea, Executive Officer of the Acupuncture Board, Department of Consumer Affairs, State of California.

Attorney at Law James J. Huang, John Kitta & Associates, represented respondent Min Li Dao Liang, who was present.

The record closed and the matter was submitted for decision on June 24, 2020.

FACTUAL FINDINGS

Procedural Background

1. Complainant Benjamin Bodea, Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board), filed the Accusation solely in his official capacity.

2. On May 18, 1999, the Board issued Acupuncturist License No. AC 6666 to respondent Min Li Dao Liang. The license was in full force and effect at all times relevant to the Accusation, and will expire on December 31, 2020, unless renewed.

3. Complainant seeks discipline against respondent's license based on alleged unprofessional conduct and/or sexual misconduct during a treatment session with a patient on March 3, 2017, and his failure to maintain an adequate and accurate record of the treatment session. Respondent denies the patient's allegations.

Patient A

4. Patient A was in her late 40s when she sought treatment from respondent. She is originally from Hong Kong and immigrated to the United States to attend college. She has worked in the project management field for more than 20 years. She moved to the San Francisco Bay Area in 2014.

Patient A primarily seeks care from Traditional Chinese Medicine (TCM) practitioners, and has received treatment from numerous TCM practitioners in the United States.

5. Patient A attended an open house for current and prospective acupuncture students in early 2017. At this event, she met and befriended TW, who

was a student. Patient A asked TW for a referral for a TCM practitioner. TW suggested respondent. TW had studied under respondent and had also received treatment from him.

6. Patient A arrived at respondent's clinic in the Chinatown region of San Francisco on March 3, 2017 at approximately 2:00 p.m. She filled out a patient intake form. She was interviewed and examined by respondent. They spoke in Mandarin. Patient A did not receive acupuncture. Two bags of Chinese medicine were dispensed to her at the end of the appointment. She did not have enough cash to pay the full amount charged; she paid part of the bill and left with a balance. Other details of the treatment session are disputed and will be discussed below.

7. Respondent documented the treatment session in a handwritten note in Mandarin, translated in its entirety as follows:

Pale appearance, dizziness and heavy headed, poor sleep quality, many dreams, depressed mood, easily agitated, reduced food intake, tired and fatigued, has Mediterranean anemia medical history, tongue exhibited light purple color, tongue coating dark grey, pulse weak.

Respondent also documented the Chinese medicinal herbs that were dispensed to Patient A. No heartrate or blood pressure reading was recorded.

Patient A's Complaints to the Police and the Board

8. Patient A was uncomfortable with her experience at respondent's clinic. She contacted TW to talk about what had happened. Patient A decided to contact the

police. She went to the San Francisco Police Department to make a police report on March 8, 2017.

POLICE REPORT

9. Respondent wrote a statement detailing her recollection of the treatment session in connection to her police report. Patient A's written statement from March 2017, submitted to the police department, is summarized as follows:

Patient A called respondent's clinic in the morning and made an appointment for that afternoon. After a discussion regarding payment, respondent escorted her to his office. She told him she had experienced an elevated heartrate the prior year which she had relieved by massage. She was seeking treatment for a strange sensation on the right side of her head. She told respondent that she had been diagnosed by a Western medicine doctor with Mediterranean anemia. She complained of being pale and tired. Respondent inquired about Patient A's marital status. After she stated that she was single, respondent told her that she was suffering from depression and menopause, and that she would have prevented her symptoms if she had married and had children. Respondent then asked her how many men she had slept with. Patient A was uncomfortable with these queries. Respondent checked her pulse on her wrist. Then he suddenly approached Patient A with a stethoscope and motioned to her to lift her shirt as he pulled it up. While using the stethoscope on her chest,

he placed his hand on her breast for what seemed like an unnecessarily long time while looking at his watch. He told her that her heartrate was 76. He put his hands on her face and hugged her. He repeated holding her face and hugging her 10-20 times during Patient's A's visit. He moved her to an examination room and touched her legs while assisting her onto an examination table. He examined her abdomen and breasts. They returned to the office and conversed for 15-20 minutes, during which time respondent discovered that Patient A's parents were from the same region in China as respondent. Respondent and Patient A returned to the examination room and respondent directed her to the table for another examination. He lifted her shirt and exposed her breasts by folding down the fabric of her bra. He "knocked" on her torso and explained that he was locating her organs by counting her ribs and listening to what sounds he heard. He told her he was giving her a thorough examination because her parents were from the same area in China. He touched her bare breasts, and continued to leave his hand on her breast after she told him she was uncomfortable. He commented on lumps he felt in her breasts, and she told him they are benign. He told her they could become cancer. Throughout the visit, Patient A noticed respondent staring at her breasts while talking to her. He told her she must have been pretty when she was younger. She felt unsafe and unable to leave the clinic. She was there for two hours

and no one else was present. He never examined her head or neck.

ACUPUNCTURE BOARD COMPLAINT

10. On March 10, 2017, Patient A submitted an online complaint against respondent on the Board's website. She wrote:

This doctor held my face and hugged me 10-12 times, used many excuses to touch my bare breasts even when I told him I felt uncomfortable and asked him to stop. He also asked me if I have frequent sexual desire and how many men I slept with which I don't believe is information needed to diagnose [my] problem.

Investigation

11. Patient A's complaint was referred to Department of Consumer Affairs Investigator Karen West. West conducted an investigation, wrote a report, and testified at hearing. She was a credible and unbiased witness.

12. West first contacted Patient A by telephone on August 31, 2017. Patient A informed West about the written statement she had made in connection to her police report. Patient A emailed West this statement, and West did not have further contact with Patient A. West requested the police report from the San Francisco Police Department. She received a three-page document confirming that Patient A complained to the police about respondent's conduct shortly after it occurred.

13. West contacted Patient A's friend, TW, who confirmed that Patient A had reported being sexually harassed by respondent shortly after the treatment session.

TW also stated that she knew several people who had received treatment from respondent and she had never heard anything negative about him from anyone else.

14. West sent a letter to respondent asking to set up an interview. Respondent's daughter called West on June 4, 2018, and told her she was assisting her father because he does not speak English. West communicated to respondent's daughter that there had been a complaint involved sexual touching of a female patient. Respondent's daughter called West again on June 6. She stated that she told respondent about the investigation and that he denied the allegations. She also expressed her concern about respondent's heart condition which she feared could be exacerbated by the stress of the investigation. West arranged for an in person interview to take place the following week. She identified the name of the patient to respondent's daughter, and asked that the patient's file be available during the interview.

15. West interviewed respondent, his wife, Mei Chen (Chen), and his daughter at respondent's clinic in San Francisco on June 11, 2018. Respondent's daughter acted as an interpreter when West interviewed Chen; West used a telephone interpreting service when she interviewed respondent.

16. Chen works at the clinic as the office manager and receptionist. She told West she remembered Patient A. Chen stated that Patient A was treated only in respondent's office with the door open, and that she had a clear view from the reception desk the whole time. Chen reacted angrily to the complaint and stated that Patient A was treated well because her parents were from the same region in China as Chen and respondent. She also told West that Patient A complained of being poor and seemed to think Chen and respondent were wealthy.

17. When interviewed by West, respondent denied using a “knocking” method on patients. West observed a stethoscope on respondent’s desk, and asked him about it. He told her he uses it to take blood pressure, applying it to a patient’s arm, and that he sometimes uses it to listen to a patient’s breathing, by placing it on a patient’s back, on top of garments. He denied using it under a patient’s shirt.

Respondent denied touching Patient A’s breasts, hugging Patient A, asking about her relationships, or touching her face. Respondent began to cry during the interview, and told West that he has never touched any patients inappropriately.

Patient A’s Testimony

18. At hearing, Patient A was uncomfortable and somewhat reluctant to testify. Patient A recalled arriving at respondent’s clinic and having a discussion about payment, because respondent would not take her credit card and she did not have enough cash. She called TW on her cellphone, and it was arranged that Patient A would pay any balance for the visit to TW, who would pay respondent when she next saw him. Patient A testified that there might have been a male patient leaving the clinic when she first got there, but that there was no one else present during the treatment session.

19. Patient A explained that she spent several days working on her written statement in 2017, trying to be precise and trying to minimize her emotions. She believes her written statement best reflects what happened because it was written close in time to the events and with her best intentions to be accurate. She has tried not to think about the incident since then. Patient A’s testimony was consistent with her written statement and was found credible. Notably, she testified at hearing that respondent asked her about her sexual experiences, told her she should have married

and had children, touched her on the face with his hands and hugged her repeatedly, and told that she must have been pretty. Patient A recalled her body being “inappropriately exposed and touched” by respondent. She recalled respondent lifting her shirt and putting his hand on her breast while ostensibly measuring her heartrate, and later “knocking” on her torso with his knuckles. She further testified that respondent used the exam as an excuse to touch her breasts and that he touched her leg as he assisted her to lay down on the examination table. She recalled that he touched her breasts and commented about lumps, and that he continued even after she asked him to stop. Patient A has not had any experience remotely like this by any other TCM practitioner.

20. Patient A felt uncomfortable throughout her time at respondent’s clinic, but did not feel like she could safely leave, so she “pretended everything was okay.” Afterward she wandered around Chinatown for a long while trying to process her experience. She felt violated, but she had doubts about whether she had been “oversensitive.” Patient A talked to her friend TW, and then decided to file a complaint against respondent because of her concern that he could engage in similar conduct with others, including his students and young girls. She also believes strongly that TCM is a “great thing for humanity,” and does not want bad actors to harm its reputation. She has never filed any other complaint against a practitioner and has never filed any other police report.

Respondent’s Evidence

BACKGROUND

21. Respondent described his background. He studied Chinese Medicine at the university in Fujian. He worked as a TCM practitioner in a hospital in Fujian from

1971 until 1998. Toward the end of his tenure, he was the chief of the TCM department. Respondent also taught at the university in Fujian and published academic articles.

22. Respondent immigrated to the United States in 1998. He passed the acupuncturist examination in 1999 and opened his clinic in 2000. Respondent has provided acupuncture services at several hospitals in San Francisco. Respondent has taught at the Academy of Chinese Culture and Health Sciences since 2001.

23. Respondent has been married for 47 years and has two adult children.

RESPONDENT'S AND CHEN'S TESTIMONY REGARDING PATIENT A'S VISIT

24. Respondent strongly denied the allegations made by Patient A. Respondent and his wife both testified about Patient A's visit to the clinic on March 3, 2017. Their testimony was largely consistent with each other; however, for reasons discussed below, they were not found to be credible witnesses.

25. Respondent and Chen were adamant that Chen is always at the clinic with respondent, and that there has never been any occasion when respondent was at the clinic without her. They both related remembering details about Patient A's visit. These details were not provided during the interview with West. They explained that they remembered them later. Both stated that they were not aware of the identity of the complaining patient until West arrived at the clinic to interview them. Respondent stated that he was unaware of the nature of the complaint until that time as well.

Chen stated that Patient A did not have an appointment and arrived at around 2:00 p.m. Patient AK was scheduled for an appointment at 2:30 p.m. Chen stated that she told Patient A she could not be treated. Patient A begged and showed a picture on

her phone of her friend who was a student of respondent. They had discussions about payment because respondent did not have enough cash and respondent did not accept credit cards or Patient A's Medi-Cal insurance. Patient A opened her purse to see how much cash she had, and the contents spilled out. Respondent and his wife reported seeing cosmetics and condoms.

According to respondent and Chen, Patient A said her parents were from the same region as respondent and Chen. Patient A admired the clinic and reported that she was poor and needed help. She told them she could no longer sustain living in the United States and hoped to move back to Hong Kong with her parents, although she was not sure they would accept her. She said she had nowhere to live, no job, and had been dumped by two boyfriends. She asked them for money, noting that they were from the same countryside in China.

After they refused to give her money, she threatened them, saying "you wait and see, you will have trouble in the future." Chen described Patient A as being a very strange person, and unlike anyone who had ever come to the clinic.

Respondent and Chen stated that Patient A was only present at the clinic for 20 minutes. Respondent examined and interviewed her in his office and did not take her into the treatment room. He took his pulse on her wrist and looked at her tongue. The desk was between them and the door was open.

Respondent stated Patient A was only there 20 minutes because she was in a hurry and had something urgent to do; Chen stated that Patient A was only there 20 minutes because patient AK was scheduled for 2:30 p.m. and respondent did not have time to provide additional treatment.

Chen testified that a man walked into the clinic at 2:10 p.m., while Patient A was being treated, and asked to be treated for acute pain in the lower back. Respondent agreed to treat him because he was a tourist from Shanghai, agreed to pay cash, and was in severe pain. Chen testified that this patient was at the clinic until 3:00 p.m. and received acupuncture treatment. Chen testified that patient AK arrived at 2:30 p.m. for her scheduled appointment. She was treated and left the clinic within an hour. Patient records from the two patients was entered into the record; neither reflects what time the patient was treated. An appointment card for patient AK was offered into evidence reflecting an appointment at 2:30 p.m., on March 3, 2017. This evidence was meant to discredit Patient A's testimony that she was at the clinic for two hours. The clinic maintains an appointment book, but it is destroyed each year in April.

26. Respondent adamantly denied engaging in improper sexual conduct with Patient A. He specifically denied touching Patient A's breasts, denied using a stethoscope during the treatment session, denied commenting on her physical attractiveness, and denied moving the fabric of her bra to expose her nipples.

27. Respondent expressed anger about Patient A's complaint, and with the Board. He believes he has been treated very unfairly and wants to "regain his innocence." He was unaware of the complaint against him until he received West's letter on June 1, 2018, more than one year after Patient A's visit. He also complained about the delay in scheduling a hearing. He believes these delays have harmed his ability to defend himself against the allegations.

28. Respondent closed his clinic in August 2019. He explained that after the Accusation was published on the Board's website, patients, as well as students and teachers where he teaches started asking him about it. He became upset and his blood pressure became elevated by the stress. He lost energy and could not continue

treating patients. He also accused the Board of contacting insurance companies and telling them not to contract with his clinic, harming him financially.

TESTIMONY OF PATIENTS GF AND AK

29. Respondent presented testimony from two other patients. Patient GF stated that he received treatment from respondent beginning in 2001, and was treated dozens of times during 2017 and 2018. He was not treated on March 3, 2017, as he was in China. He stated that Chen was always present at the clinic. Respondent never used a stethoscope during treatment. He agreed to testify at the hearing because he does not believe the charges against respondent. Respondent told him that someone had made false accusations against him. GF believes that respondent is honest and treats his patients well.

30. Patient AK testified that she was treated by respondent on three days in 2017, including on March 3, the same day as Patient A's visit. AK stated that Chen was present at the clinic each time, and that she never saw a female patient.

AK agreed to testify because she believes respondent and his wife are good people who are being sabotaged. She wanted to help them because they are elderly people being "set up." She was contacted by Chen in December 2019 and asked if she had an appointment card reflecting the time of her appointment. AK reported that she had indeed kept two business-card sized appointment cards from the clinic, including a card with the handwritten date and time of March 3, 2017 at 2:30 p.m. AK explained that she always retains these appointment cards from her doctors, even years after the appointment has occurred. Respondent presented the appointment card and testimony of AK in an attempt to discredit Patient A's account that she was at the clinic for two hours and that no one else was present.

Credibility

31. Patient A's testimony was credible. Her testimony was consistent with her prior written statement made the week after the treatment session. There was no apparent motive for her to fabricate allegations against respondent. Patient A's actions after the incident were consistent with what would be expected from an individual who had been subjected to the alleged misconduct: she contacted her friend shortly after the incident, filed a police report within days, and filed a complaint with the Board within one week. Patient's A's testimony was corroborated in part by investigator West, who observed a stethoscope at the clinic.

32. In contrast, respondent and his wife provided inconsistent testimony. Some of the testimony was implausible. Respondent's demeanor and attitude at hearing further diminished his credibility. Respondent and Chen disparaged Patient A in a manner which also diminished their credibility.

In addition, respondent appears to have fabricated evidence (the appointment card of patient AK) in order to bolster his case, further diminishing his credibility. Patient AK's testimony that she still had an appointment card from March 2017 when called by respondent and Chen in December 2019 was not credible. Patients GF and AK both demonstrated their bias by acknowledging that they were trying to help respondent, because they believed he had been falsely accused of misconduct. Their testimony did not discredit the credible testimony of Patient A.

Expert Opinion

33. Barbara Berger, L.Ac., was retained by complainant as an expert witness. Berger has been a licensed acupuncturist in California since 1979. She has written articles and taught continuing education courses. She has served as an expert for the

Board since 2012. Berger reviewed West's investigation file and supporting documents. Berger wrote a report with her conclusions and testified at hearing. She explained that when providing an expert opinion for the Board, she does not assess the credibility of a complaining patient. In reaching her conclusions in this matter, she assumed that Patient A's statement was truthful. Berger's testimony and expert report were persuasive.

Berger explained the standard of care for a competent acupuncturist. First, a patient history should be taken and documented. Then, there are four steps used to diagnose the patient: 1) look at the patient's face/tongue/ears/demeanor; 2) listen to respiration or other sounds; 3) check pulse by placing hand on the patient's wrist; and 4) ask questions. An acupuncturist must document the treatment session. Everything that happens must be documented including patient history. The patient history should include questions about family history, any accidents, and the patient's medical history. The acupuncturist usually inquires about: sensation of hot and cold, perspiration, headache, dizziness, quality and location of pain, urine and stool, thirst, appetite, and sleep. When a practitioner needs to touch a patient, he or she must tell them and get permission before doing so.

The documentation of a treatment session is commonly performed by means of a "SOAP" note, as is used by other healing arts practitioners. A "SOAP" note contains: 1) a statement of the patient's subjective complaint; 2) a summary of objective findings; 3) an assessment or diagnosis; and 4) a treatment plan.

Berger explained that a stethoscope is very rarely used in TCM. If it is used, the practitioner must notify the patient and secure permission before using it. Berger has never heard of an acupuncturist using it on a patient's chest under the shirt. If a

stethoscope is used to measure blood pressure or pulse, the result should be recorded in the patient's record.

Berger explained that hugging a patient, touching the patient's face with both hands, asking questions about the patient's sexual history, making comments about the patient's marital or parenting status, touching a patient's breasts, counting ribs and "knocking" the patient's organs all constitute acts which are an extreme departure from the standard of care.

Berger opined that there was no legitimate reason for an acupuncturist to examine or touch Patient A's breasts during the treatment session of March 3, 2017, and that there was no legitimate reason to lift Patient A's shirt to use a stethoscope on her chest.

Berger opined that respondent violated boundaries by touching Patient A sexually, and also violated boundaries emotionally by his comments to her about marriage and children.

Berger also reviewed respondent's patient record from the March 3, 2017 treatment session. She concluded that respondent failed to include an assessment/diagnosis or a treatment plan.

Ultimate Findings

34. Based on the credible testimony of Patient A and West, the documentary evidence, the lack of credibility of respondent and his witnesses, and the persuasive expert opinion evidence of Berger, clear and convincing evidence established that respondent engaged in unprofessional conduct during his treatment of Patient A, as follows:

- a. Respondent did not obtain and/or failed to document an appropriate history and physical examination.
- b. Respondent asked questions about her sexual history that were not relevant to her symptoms and description of the problems for which she sought treatment.
- c. Respondent commented to Patient A that her problems were caused by menopause and depression, a diagnosis that was not supported or documented in the medical record, and was not based in acupuncture or TCM.
- d. Respondent used diagnostic methods that are not supported for use, specifically use of a stethoscope on her chest and "knocking" on her organs.
- e. Respondent touched the patient, particularly her breasts, in a manner that violated the standard of care and constituted sexual misconduct.

Costs

35. In connection with the investigation of this matter, the Department of Consumer Affairs has billed the Board \$8,326.75 for investigation and expert witness costs. In connection with the prosecution of this Accusation, the Department of Justice has billed the Board a total of \$31,487.50 for legal services provided through June 19, 2020. These charges are supported by certifications that comply with the requirements of California Code of Regulations, title 1, section 1042. The total of \$39,814.25 in enforcement costs sought by complainant is deemed reasonable.

LEGAL CONCLUSIONS

1. The standard of proof in this proceeding is clear and convincing evidence, and the burden of proof is on complainant. (*Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.) "Clear and convincing evidence requires a finding of high probability. The evidence must be so clear as to leave no substantial doubt. It must be sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.)

2. Business and Professions Code section 4955 provides that the Board may discipline the license of a licensed acupuncturist for unprofessional conduct. Section 726 provides that any act of sexual abuse or misconduct committed by a licensee with a patient constitutes unprofessional conduct and is grounds for license discipline. Section 4955.2 provides that the Board may discipline the license of a licensed acupuncturist for gross negligence, repeated negligent acts, or incompetence.

Cause for discipline under these sections arising from Patient A's March 3, 2017, treatment session was established, in light of the matters set forth in Findings 33 and 34.

3. Business and Professions Code section 4955.1, subdivision (e), provides that the Board may discipline the license of a licensee who commits a fraudulent act, which includes failing to maintain adequate and accurate records relating to the provisions of services to patients. Cause for discipline was established in light of the matters set forth in Factual Findings 7, 33, and 34.

4. Cause for discipline having been established, the appropriate level of discipline to impose must be determined. In its Disciplinary Guidelines, the Board

directs that outright revocation of licensure is expected in cases involving patient sexual abuse. There is no reason to deviate from this recommendation. Revocation of respondent's license is necessary for the protection of the public.

5. Business and Professions Code section 4959 authorizes the Board to recover its reasonable costs of investigation and prosecution. In *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32, the California Supreme Court set forth standards by which a licensing board must exercise its discretion to reduce or eliminate cost awards to ensure that licensees with potentially meritorious claims are not deterred from exercising their right to an administrative hearing. Those standards include whether the licensee has been successful at hearing in getting the charges dismissed or reduced, the licensee's good faith belief in the merits of his or her position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

The evidence did not establish a basis to reduce the costs in this matter. The reasonable costs of \$39,814.25, as set forth in Factual Finding 35, shall be imposed.

ORDER

1. Acupuncturist License No. AC 6666, issued to respondent Min Li Dao Liang, is revoked.

2. If and when respondent's license is reinstated, he shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 4959, in the amount of \$39,814.25.

DATE: July 22, 2020

DocuSigned by:
Karen Reichmann
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KAREN REICHMANN

Administrative Law Judge

Office of Administrative Hearings