

FILED

AUG 18 2010

ACUPUNCTURE BOARD

1 EDMUND G. BROWN JR.
 Attorney General of California
 2 THOMAS S. LAZAR
 Supervising Deputy Attorney General
 3 HEIDI R. WEISBAUM
 Deputy Attorney General
 4 State Bar No. 101489
 110 West "A" Street, Suite 1100
 5 San Diego, CA 92101
 P.O. Box 85266
 6 San Diego, CA 92186-5266
 Telephone: (619) 645-2098
 7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
 9 **BEFORE THE**
ACUPUNCTURE BOARD
 10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
 11

12 In the Matter of the Accusation Against:

Case No. 1A-2009-238

13 **JIAN LIN, L.Ac.**
 6080 University Avenue
 14 San Diego, CA 92115

ACCUSATION

15 Acupuncture License No. AC6933

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

22 2. On or about January 19, 2000, the Acupuncture Board issued Acupuncture License
23 Number AC6933 to Jian Lin, L.Ac. (Respondent). The Acupuncture License was in full force
24 and effect at all relevant times and will expire on September 30, 2011, unless renewed.

25 **PRIOR DISCIPLINARY HISTORY**

26 3. On September 16, 2008, Accusation No. 1A-2007-166, was filed against Respondent.
27 On August 14, 2009, a Stipulated Settlement and Disciplinary Order became effective that

28 ///

1 imposed discipline on Respondent's Acupuncture License No. AC6933, consisting of a
2 revocation stayed, five years of probation and terms and conditions.

3 JURISDICTION

4 4. This Accusation is brought before the California Acupuncture Board (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code (Code) unless otherwise indicated.

7 5. Section 4955 of the Code states:

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

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

11 "...

12 "(b) Conviction of a crime substantially related to the qualifications, functions,
13 or duties of an acupuncturist, the record of conviction being conclusive
14 evidence thereof.

15 "..."

16 6. Section 4955.1 of the Code states:

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

20 "...

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

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

24 "..."

25 COST RECOVERY

26 7. Section 4959 of the Code states:

27 "(a) The board may request the administrative law judge, under his or her
28 proposed decision in resolution of a disciplinary proceeding before the board, to

1 direct any licensee found guilty of unprofessional conduct to pay to the board a
2 sum not to exceed actual and reasonable costs of the investigation and
3 prosecution of the case.

4 “(b) The costs to be assessed shall be fixed by the administrative law judge
5 and shall not in any event be increased by the board. When the board does not
6 adopt a proposed decision and remands the case to an administrative law judge,
7 the administrative law judge shall not increase the amount of any costs assessed
8 in the proposed decision.”

9 “(c) When the payment directed in the board's order for payment of costs is
10 not made by the licensee, the board may enforce the order for payment in the
11 superior court in the county where the administrative hearing was held. This
12 right of enforcement shall be in addition to any other rights the board may have
13 as to any licensee directed to pay costs.

14 “(d) In any judicial action for the recovery of costs, proof of the board's
15 decision shall be conclusive proof of the validity of the order of payment and
16 the terms for payment.

17 “(e) All costs recovered under this section shall be considered a
18 reimbursement for costs incurred and shall be deposited in the Acupuncture
19 Fund.”

20 **FIRST CAUSE FOR DISCIPLINE**

21 (Conviction of a Substantially Related Crime)

22 8. Respondent is subject to disciplinary action under Code section 4955, subdivision (b),
23 in that he was convicted of a crime substantially related to the qualifications, functions or duties
24 of an acupuncturist. The circumstances are as follows:

25 9. From or about June 16, 2004 to or about November 18, 2006, Respondent submitted
26 fraudulent claims to the Medi-Cal program for acupuncture services that were not provided.

27 ///

28 ///

1 10. On or about August 6, 2008, a felony criminal complaint entitled *People of the State*
2 *of California v. Jian Lin*, Case No. CD216826, was filed in San Diego County Superior Court
3 charging Respondent with one count of making a false claim for payment of a health care benefit
4 in excess of \$400, in violation of Penal Code section 550, subdivision (a)(6), and one count of
5 grand theft in excess of \$400, in violation of Penal Code section 487, subdivision (a).

6 11. On or about October 17, 2008, Respondent entered a guilty plea to a violation of
7 Penal Code section 550, subdivision (a)(6) [making a false claim for payment of a health care
8 benefit], which had been reduced to a misdemeanor, and was sentenced to one year of summary
9 probation, restitution in the amount of \$1700 to the Medi-Cal program, a restriction from
10 participating in the Medi-Cal program while on probation, and other fines.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Fraudulent Act as an Acupuncturist)

13 12. Respondent is further subject to disciplinary action under Code section 4955.1,
14 subdivision (b), in that he committed a fraudulent or dishonest act as an acupuncturist as set forth
15 in paragraphs 9 through 11 above, which are incorporated herein by reference.

16 **THIRD CAUSE FOR DISCIPLINE**

17 (Dishonesty)

18 13. Respondent is further subject to disciplinary action under Code section 4955.1,
19 subdivision (c), in that he committed dishonesty with respect to the qualifications, functions, or
20 duties of an acupuncturist, as described below:

21 A. On or about August 12, 2009, Respondent signed the renewal application for his
22 Acupuncture License No. AC6933, stating under penalty of perjury that the facts on the
23 renewal form were true and correct.

24 B. On the renewal form, Respondent checked the "No" box to the question asking if he
25 had been convicted of any crime, despite knowing he had been convicted of a crime in
26 October 2008, as set forth in paragraph 11, above, and incorporated herein by reference.

27 ///

28 ///

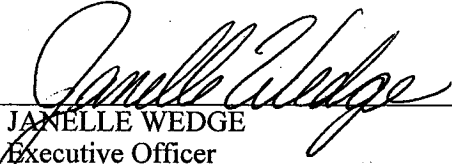
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

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

1. Revoking, suspending or imposing probationary conditions on Acupuncture License Number AC 6933, issued to Respondent Jian Lin, L.Ac.;
2. Ordering Respondent Jian Lin, L.Ac., to pay to the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and,
3. Taking such other and further action as deemed necessary and proper to protect the public.

DATED: **AUG 18 2010**



JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant