

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

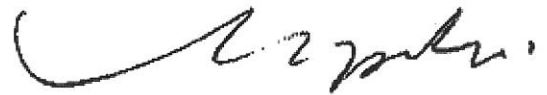
In the Matter of the Accusation Against:)	Case No. 1A-2013-118
)	
ERIK NIELSEN, L.AC.)	OAH No. 2015050354
1864 Orinda Ct.)	
Thousand Oaks, CA 91362)	
)	
Acupuncture License No. AC 3657)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on November 18, 2015.

It is so ORDERED October 19, 2015.



Michael Shi, L.Ac, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

1 KAMALA D. HARRIS
Attorney General of California
2 E. A. JONES III
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-2867
Facsimile: (213) 897-9395
7 E-mail: Wendy.Widlus@doj.ca.gov
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-2013-118

13 **ERIK NIELSEN, L.Ac.**
1864 Orinda Ct.
14 **Thousand Oaks, CA 91362**
Acupuncturist License No. AC 3657,

OAH No. 2015050354

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

15
16 Respondent.

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18
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Terri Thorfinnson (“Complainant”) is the Executive Officer of the Acupuncture
23 Board. She brought this action solely in her official capacity and is represented in this matter by
24 Kamala D. Harris, Attorney General of the State of California, by Wendy Widlus, Deputy
25 Attorney General.

26 2. Respondent ERIK NIELSEN, L.Ac. (“Respondent”) is represented in this proceeding
27 by attorney Robert F. Hahn, Esq., whose address is: 2550 Ninth Street, Suite 101,
28 Berkeley, CA 94710.

1 **CULPABILITY**

2 9. Respondent understands and agrees that the charges and allegations in the Fifth Cause
3 for Discipline in Accusation No. 1A-2013-118, if proven at a hearing, constitute cause for
4 imposing discipline upon his Acupuncturist License.

5 10. For the purpose of resolving the Accusation without the expense and uncertainty of
6 further proceedings, Respondent does not contest that, at an administrative hearing, Complainant
7 could establish a *prima facie* case with respect to the charges in the Fifth Cause for Discipline in
8 Accusation No. 1A-2013-118, and Respondent hereby gives up his right to contest those charges.

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

12 **CONTINGENCY**

13 12. This stipulation shall be subject to approval by the Acupuncture Board. Respondent
14 understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may
15 communicate directly with the Board regarding this stipulation and settlement, without notice to
16 or participation by Respondent or his counsel. By signing the stipulation, Respondent
17 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
18 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
19 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
20 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
21 and the Board shall not be disqualified from further action by having considered this matter.

22 13. The parties understand and agree that Portable Document Format (PDF) and facsimile
23 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
24 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

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

28 //

1 **DISCIPLINARY ORDER**

2 **IT IS HEREBY ORDERED** that Respondent Erik Nielsen, L.Ac., as holder of
3 Acupuncturist License No. AC 3657, shall be and is hereby publically reprimanded pursuant to
4 California Business and Professions Code section 495. This Public Reprimand is issued in
5 connection with Respondent's conduct as set forth in Accusation No. 1A-2013-118, and as
6 summarized below:

7 A. **PUBLIC REPRIMAND**

8 In May 2013 and June 2013, you performed acupuncture, ultrasound, deep heat,
9 oriental massage, and prescribed herbal remedies for Ms. Z. to increase her fertility. Your
10 records for your treatment do not fully, adequately, and accurately reflect the treatments
11 you provided. You therefore committed unprofessional conduct by failing to maintain
12 adequate and accurate records relating to the services you provided to the patient as more
13 fully described in Accusation No. 1A-2013-118.

14 **ACCEPTANCE**

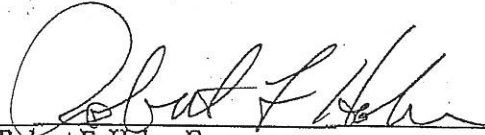
15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
16 discussed it with my attorney, Robert F. Hahn, Esq. I understand the stipulation and the effect it
17 will have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary
18 Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order
19 of the Acupuncture Board.

20
21 DATED: 8-12-15


ERIK NIELSEN, L.AC.
Respondent

22
23 I have read and fully discussed with Respondent ERIK NIELSEN; L.Ac. the terms and
24 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
25 I approve its form and content.

26 DATED: 8-13-15


Robert F. Hahn, Esq.
Attorney for Respondent

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ENDORSEMENT

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

Dated: 8/7/15

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General



WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1A-2013-118

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KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
WENDY WIDLUS
Deputy Attorney General
State Bar No. 82958
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2867
Facsimile: (213) 897-9395
E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

FILED
APR 14 2015
ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:
ERIK NIELSEN, L.Ac.
1864 Orinda Ct.
Thousand Oaks, CA 91362
Acupuncturist License No. AC 3657,

Respondent.

Case No. 1A-2013-118

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board.
2. On or about August 23, 1989, the Acupuncture Board issued Acupuncturist License No. AC 3657 to Erik Nielsen, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4928.1 of the Code states:

6 "Protection of the public shall be the highest priority for the acupuncture board in
7 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
8 public is inconsistent with other interests sought to be promoted, the protection of the public shall
9 be paramount."

10 5. Section 4927, subdivision (d), of the Code states:

11 "'Acupuncture' means the stimulation of a certain point or points on or near the surface of
12 the body by the insertion of needles to prevent or modify the perception of pain or to normalize
13 physiological functions, including pain control, for the treatment of certain diseases or
14 dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and
15 moxibustion."

16 6. Section 4937 of the Code states, in pertinent part:

17 "An acupuncturist's license authorizes the holder thereof:

18 "(a) To engage in the practice of acupuncture.

19 "(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques,
20 exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and
21 dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits
22 any person who does not possess an acupuncturist's license or another license as a healing arts
23 practitioner from performing, or prescribing the use of any modality listed in this subdivision.

24 "..."

25 7. Section 4955 of the Code states:

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

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

1 “...”

2 “(i) Any action or conduct that would have warranted the denial of the
3 acupuncture license.

4 “...”

5 8. Section 4955.2 of the Code states, in pertinent part:

6 “The board may deny, suspend, revoke, or impose probationary conditions upon the license
7 of any acupuncturist if he or she is guilty of committing any one of the following:

8 “... ”

9 “(c) Incompetence.”

10 9. Section 2052 of the Code states:

11 “(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who
12 advertises or holds himself or herself out as practicing, any system or mode of treating the sick or
13 afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment,
14 blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition
15 of any person, without having at the time of so doing a valid, unrevoked, or unsuspended
16 certificate as provided in this chapter or with or without being authorized to perform the act
17 pursuant to a certificate obtained in accordance with some other provision of law is guilty of a
18 public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by
19 imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in
20 a County jail not exceeding one year, or by both the fine and either imprisonment.

21 “...”

22 “(c) The remedy provided in this section shall not preclude any other remedy provided by
23 law.”

24 9. Section 726 of the Code states, in pertinent part:

25 “The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
26 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
27 licensed under this division, under any initiative act referred to in this division and under Chapter
28 17 (commencing with Section 9000) of Division 3.”

1 Respondent told Ms. Z. to remove her underwear, but did not leave the room while she
2 removed her underwear. Ms. Z. laid on her back on the examination table with her legs extended
3 in front of her during Respondent's internal examination which took approximately 2 minutes.

4 Respondent placed the gloved fingers of his hand into Ms. Z.'s vagina while he placed his
5 other hand on her stomach. While Respondent had his hand in Ms. Z.'s vagina he told her to
6 tighten her buttocks and suck in her stomach. Ms. Z. was surprised and humiliated by
7 Respondent's instructions to tighten her buttocks and suck in her stomach, as she had never been
8 instructed to do this during any other vaginal examination.

9 16. After Respondent removed his hand from Ms. Z.'s vagina he asked how her neck felt.
10 Ms. Z. told Respondent her neck was fine but Respondent repeatedly asked if he could check her
11 neck, so Ms. Z. permitted him to do so. Respondent had Ms. Z. lay on her back and grasp the side
12 of the examination table which caused her gown to open and expose her body to Respondent.
13 Respondent stretched Ms. Z.'s neck and told her to stand up and face away from him. After Ms.
14 Z. stood up Respondent picked her up and cracked her back.

15 Ms. Z. got dressed, and Respondent provided her with various herbs. When Ms. Z. paid
16 Respondent he said he would only accept payment for the herbs and would not charge her for the
17 other services he had performed during this visit. Ms. Z. filed a formal complaint with the Board
18 about Respondent's actions during this visit.

19 17. Respondent's records for Ms. Z.'s June 8, 2013, visit document only the types of
20 herbs he dispensed to her, and does not mention the breast or vaginal examination, nor the spinal
21 manipulation he performed. The Board's investigator questioned Respondent about Ms. Z.'s
22 treatment which included her June 8, 2013, visit. Respondent denied performing a breast or a
23 vaginal examination. Respondent stated there was no reason for him to conduct a pelvic
24 examination because he knew her fibroids were smaller after he palpated her stomach. During his
25 interview with the Board's investigator Respondent stated he had performed acupuncture,
26 ultrasound, deep heat, and oriental massage during Ms. Z.'s visit. However, Respondent's
27 records for Ms. Z.'s June 8, 2013, visit do not reflect those treatments.

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FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

18. Respondent is subject to disciplinary action under section 726 of the Code in that he committed acts of sexual misconduct with Patient Ms. Z. during acupuncture treatment. The circumstances are as follows:

19. Complainant refers to, and by reference incorporates herein paragraphs 14 through 18, inclusive, above.

SECOND CAUSE FOR DISCIPLINE

(Unlicensed Practice of Medicine)

20. Respondent is further subject to disciplinary action under section 2052, subdivision (a) of the Code in that his acts of sexual misconduct with Patient Ms. Z. constitute the unlicensed practice of medicine.

21. Complainant refers to, and by reference incorporates herein paragraphs 14 through 18, inclusive, above.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

22. Respondent is further subject to disciplinary action under section 4955, subdivision (i) of the Code in that he engaged in unprofessional conduct by breaching the rules or ethical code of conduct of the profession of acupuncture, and by engaging in conduct unbecoming to an acupuncturist in good standing in the profession and which demonstrates an unfitness to practice acupuncture.² The circumstances are as follows:

23. Complainant refers to, and by reference incorporates herein paragraphs 14 through 18, inclusive, above.

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² See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

1 **FOURTH CAUSE FOR DISCIPLINE**

2 (Incompetence)

3 24. Respondent is further subject to disciplinary action under section 4955, subdivision
4 (c), of the Code in that the Respondent's care and treatment of Patient Ms. Z demonstrated
5 incompetence.

6 25. Complainant refers to, and by reference incorporates herein paragraphs 14 through
7 18, inclusive, above.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 (Inadequate and Inaccurate Records)

10 26. Respondent is further subject to disciplinary action under section 4955.1, subdivision
11 (e), of the Code and section 1399.453 of title 16 of the California Code of Regulations in that he
12 failed to keep complete and accurate records regarding the Respondent's care and treatment of
13 Patient Ms. Z.

14 27. Complainant refers to, and by reference incorporates herein paragraphs 14 through
15 18, inclusive, above.

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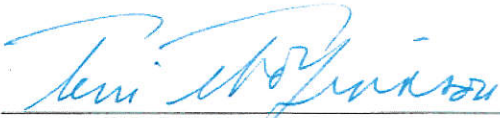
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PRAYER

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

1. Revoking or suspending Acupuncturist License Number AC 3657, issued to Erik Nielsen;
2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;
3. If placed on probation, ordering him to pay the Acupuncture Board the costs of probation monitoring; and;
4. Taking such other and further action as deemed necessary and proper.

DATED: APR 14 2015



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

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