

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


In the Matter of the Accusation Against:)	Case No. 1A-2008-130
)	
KEGANG DAI, L.AC.)	
404 E. Las Tunas Drive, #108)	
San Gabriel, CA 91776)	
)	
Acupuncture License No. AC 4254)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

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

This Decision shall become effective on **FEB 17 2011** .

It is so ORDERED **JAN 18 2011** .



Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR.
Attorney General of California
2 BENETH A. BROWNE
Deputy Attorney General
3 State Bar No. 202679
300 So. Spring Street, Suite 1702
4 Los Angeles, CA 90013
Telephone: (213) 897-7816
5 Facsimile: (213) 897-9395
Attorneys for Complainant
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7 **BEFORE THE**
ACUPUNCTURE BOARD
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
9

10 In the Matter of the Accusation Against:

Case No. 1A-2008-130

11 KEGANG DAI, L.Ac.

12 404 E. Las Tunas Drive, #108
San Gabriel, California 91776

13 Licensed Acupuncturist AC 4254,

14 Respondent.
15
16

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

17
18 **PARTIES**

19 1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture Board
20 (Board). She brought this action solely in her official capacity and is represented in this matter by
21 Edmund G. Brown Jr., Attorney General of the State of California, by Beneth A. Browne, Deputy
22 Attorney General.

23 2. Kegang Dai (Respondent) is represented in this proceeding by attorney Peter C.
24 Beirne, whose address is: 3303 Del Mar Avenue, Suite A, Rosemead, California 91770.

25 3. On or about September 15, 1992, the Board issued license number AC 4254 to
26 Kegang Dai. That license expired on January 31, 2010, and has not been renewed.

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28 ///

1 **JURISDICTION**

2 4. Accusation No. 1A-2008-130 was filed before the Acupuncture Board (Board),
3 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
4 and all other statutorily required documents were properly served on Respondent on June 9, 2010.
5 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
6 No. 1A-2008-130 is attached as Exhibit A and is incorporated herein by reference.

7 **ADVISEMENT AND WAIVERS**

8 5. Respondent is fully aware of his legal rights in this matter, including the right to a
9 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
10 his own expense; the right to confront and cross-examine the witnesses against him; the right to
11 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
12 the attendance of witnesses and the production of documents; the right to reconsideration and
13 court review of an adverse decision; and all other rights accorded by the California
14 Administrative Procedure Act and other applicable laws.

15 6. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
16 every right set forth above.

17 **CULPABILITY**

18 7. Respondent agrees that, at an administrative hearing, complainant could establish a
19 prima facie case with respect to the charges and allegations contained in Accusation No. Case No.
20 1A-2008-130, a true and correct copy of which is attached hereto as Attachment "A," and that he
21 has thereby subjected his Acupuncture License number AC 4254 to disciplinary action.
22 Respondent further agrees to be bound by the Board's imposition of discipline as set forth in the
23 Disciplinary Order below.

24 8. Respondent agrees that if ever petitions for reinstatement or applies for an
25 acupuncture license again, all of the charges and allegations contained in Accusation No. 1H-
26 2007-173 shall be deemed true, correct and fully admitted by respondent for purposes of any such
27 proceeding or any other licensing proceeding involving respondent in the State of California.
28

1 9. Respondent agrees that his Acupuncture License No. AC 4254 is subject to discipline
2 and he agrees to be bound by the imposition of discipline as set forth in the Disciplinary Order
3 below. Respondent understands that by signing this stipulation he enables the Board to issue an
4 order accepting the surrender of his Acupuncturist License without further process.

5 **CONTINGENCY**

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

15 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
16 License and Order, including facsimile signatures thereto, shall have the same force and effect as
17 the originals.

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

20 **ORDER**

21 IT IS HEREBY ORDERED that Acupuncturist License No. AC 4254, issued to
22 Respondent Kegang Dai, is surrendered and accepted by the Acupuncture Board.

23 13. The surrender of Respondent's Acupuncturist License and the acceptance of the
24 surrendered license by the Board shall constitute the imposition of discipline against Respondent.
25 This stipulation constitutes a record of the discipline and shall become a part of Respondent's
26 license history with the Board.

27 14. Respondent shall lose all rights and privileges as an acupuncturist in California as of
28 the effective date of the Board's Decision and Order.

1 15. Respondent shall cause to be delivered to the Board both his wall license, certificate
2 and, if one was issued, pocket license on or before the effective date of the Decision and Order.

3 16. If Respondent ever files an application for licensure or a petition for reinstatement in
4 the State of California, the Board shall treat it as a petition for reinstatement. Respondent must
5 comply with all the laws, regulations and procedures for reinstatement of a revoked license in
6 effect at the time the petition is filed, and all of the charges and allegations contained in
7 Accusation No. 1A-2008-130 shall be deemed to be true, correct and admitted by Respondent
8 when the Board determines whether to grant or deny the petition.

9 17. If Respondent should ever apply or reapply for a new license or certification, or
10 petition for reinstatement of a license, by any other health care licensing agency in the State of
11 California, all of the charges and allegations contained in Accusation, No. 1A-2008-130 shall be
12 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
13 Issues or any other proceeding seeking to deny or restrict licensure.

14 18. Respondent shall pay the Board its costs of investigation and enforcement in the
15 amount of \$4,547.50 on or before the effective date of the Board's decision.

16 ACCEPTANCE

17 I have carefully read the above Stipulated Surrender of License and Order and have fully
18 discussed it with my attorney, Peter C. Beirne. I understand the stipulation and the effect it will
19 have on my Acupuncturist. I enter into this Stipulated Surrender of License and Order
20 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
21 Acupuncture Board.

22
23 DATED: 12/21/10


24 KEGANG DAI
Respondent

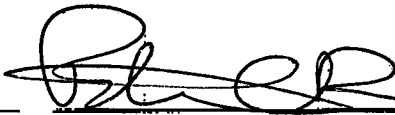
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I have read and fully discussed with Respondent Kegang Dai the terms and conditions and other matters contained in this Stipulated Surrender of License and Order. I approve its form and content.

DATED:

12/21/10



PETER C. BEIRNE
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

DATED: December 30, 2010

Respectfully submitted,
EDMUND G. BROWN JR.
Attorney General of California



BENETH A. BROWNE
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1A-2008-130

1 EDMUND G. BROWN JR.
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 BENETH A. BROWNE
Deputy Attorney General
4 State Bar No. 202679
300 So. Spring Street, Suite 1702
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Attorneys for Complainant
7

FILED

JUN 9 2010

ACUPUNCTURE BOARD

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

12 In the Matter of the Accusation Against:

Case No. 1A-2008-130

13 **KEGANG DAI, L.Ac.**

ACCUSATION

14 404 E. Las Tunas Drive, #108
San Gabriel, CA 91776

15 Licensed Acupuncturist AC 4254,

16 Respondent.

17
18
19 Complainant alleges:

20 PARTIES

21 1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the Acupuncture Board (Board).

23 2. On or about September 15, 1992, the Board issued license number AC 4254 to
24 Kegang Dai (Respondent). That license expired on January 31, 2010, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following
27 provisions of the Business and Professions Code.
28

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

6 (d) In any judicial action for the recovery of costs, proof of the board's
7 decision shall be conclusive proof of the validity of the order of payment and the
8 terms for payment.

9 (e) All costs recovered under this section shall be considered a reimbursement
10 for costs incurred and shall be deposited in the Acupuncture Fund."

11 7. Section 726 of the Code states:

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

16 "This section shall not apply to sexual contact between a physician and surgeon and his or
17 her spouse or person in an equivalent domestic relationship when that physician and surgeon
18 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
19 in an equivalent domestic relationship."

20 FIRST CAUSE FOR DISCIPLINE

21 (Conviction of a Crime)

22 8. Respondent is subject to disciplinary action under Business and Professions Code
23 sections 4955 and 4956, in that he was convicted of crimes substantially related to the
24 qualifications, functions or duties of an acupuncturist.

25 9. On September 3, 2009, in proceedings entitled *People of the State of California v.*
26 *Kegang Dai*, case number 8AH05228 in Los Angeles Superior Court, Respondent was convicted
27 upon his plea of nolo contendere to the crime of sexual battery under California Penal Code
28 section 243.4(e)(1), a misdemeanor, as charged in Count 1 of the complaint against him.

1 10. The facts and circumstances of this offense was alleged and found to be that, "[o]n or
2 about October 2, 2008, [the Respondent] did willfully and unlawfully touch an intimate part of
3 [patient "E.K."], against the will and for the purpose of sexual arousal, sexual gratification and
4 sexual abuse." The Court found that there was a factual basis for the plea and accepted the plea.

5 11. On October 20, 2009, Respondent was placed on summary probation for thirty-six
6 months on terms and conditions among which were terms requiring that he register as a sex
7 offender under Penal Code section 290, that he not treat any female patients, that he not use the
8 title "Dr." in his practice, and that he make restitution to the victim.

9 SECOND CAUSE FOR DISCIPLINE

10 (Sexual Misconduct with a Patient)

11 12. Respondent is subject to further disciplinary action under Business and Professions
12 Code section 726 in that he did engage in acts of sexual abuse, misconduct, or relations with a
13 patient. The circumstances are as follows

14 13. The facts set forth above in paragraphs 9 through 11 are set forth as if fully set forth
15 at this point.

16 14. During the period between on or about January 10, 2008 to on or about October 2,
17 2008, Respondent provided acupuncture care to an adult female patient, "E.K" at his office in San
18 Gabriel, California.

19 15. On October 2, 2008, during an office visit, Respondent improperly touched patient
20 E.K.'s breast in a sexual manner. This act of sexual misconduct resulted in the prosecution and
21 conviction set forth in the First Cause for Discipline.

1 PRAYER

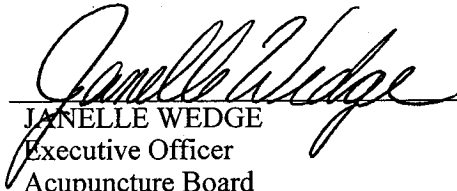
2 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Acupuncture Board issue a decision:

4 1. Revoking or suspending the license number AC 4254, issued to Kegang Dai;

5 2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation
6 and enforcement of this case, pursuant to Business and Professions Code section 4959; and

7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: JUN 09 2010


9 JANELLE WEDGE
10 Executive Officer
11 Acupuncture Board
12 Department of Consumer Affairs
13 State of California
14 Complainant

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14 50651373.doc

DECLARATION OF SERVICE BY MAIL

In the Matter of the Accusation Against:

KEGANG DAI

Case No. 1A-2008-130

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 444 N. 3rd Street, Suite 260, Sacramento, CA 95811. I served a true copy of the attached:

STIPULATED SURRENDER OF LICENSE AND ORDER

by certified/regular mail on each of the following, by placing same in an envelope(s) addressed (respectively) as follows:

<u>NAME and ADDRESS</u>	<u>CERTIFIED MAIL NO.</u>
Kegang Dai, L.Ac. 404 E. Las Tunas Drive, #108 San Gabriel, CA 91776	7009 3410 0000 0533 1462
Beneth A. Browne, DAG California Department of Justice Office of the Attorney General/HQE 300 So. Spring St., Ste. 1702 Los Angeles, CA 90013	regular mail
Robert McKim Bell, SDAG California Department of Justice Office of the Attorney General/HQE 300 So. Spring St., Ste. 1702 Los Angeles, CA 90013	regular mail
Peter C. Beirne 3303 Del Mar Avenue, Suite A Rosemead, CA 91770	regular mail

Each said envelope was, on January 18, 2011, sealed and deposited in the U.S. mail at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid for an attempt at service.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 18, 2011 at Sacramento, California.



DECLARANT