

1 KAMALA D. HARRIS
Attorney General of California
2 JUDITH T. ALVARADO
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-2867
Facsimile: (213) 897-9395
7 E-mail: Wendy.Widlus@doj.ca.gov
8 *Attorneys for Complainant*

FILED

FEB 19 2015

ACUPUNCTURE BOARD

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

12 In the Matter of the Accusation Against:
13 **JONATHAN HWAKAN WU, L.AC.**
14 **1718 Colorado Blvd., Ste. 105**
15 **Los Angeles, CA 90041**
16 **Acupuncturist License No. AC 6971,**
Respondent.

Case No. 1A-2010-189
A C C U S A T I O N

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity
21 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board).
22 2. On or about January 19, 2000, the Board issued Acupuncturist License Number
23 AC 6971 to JONATHAN HWAKAN WU, L.Ac. (Respondent). The Acupuncturist License was
24 in full force and effect at all times relevant to the charges brought herein and will expire on July
25 31, 2015, unless renewed.

26
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

JURISDICTION

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

4. Section 4955 of the Code states:

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

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

“(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

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

“(c) False or misleading advertising.

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

“(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational

1 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5
2 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other
3 blood-borne pathogens in health care settings. As necessary, the board shall consult
4 with the Medical Board of California, the California Board of Podiatric Medicine, the
5 Dental Board of California, the Board of Registered Nursing, and the Board of
6 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
7 consistency in the implementation of this subdivision.

8 “The board shall seek to ensure that licensees are informed of the responsibility
9 of licensees and others to follow infection control guidelines, and of the most recent
10 scientifically recognized safeguards for minimizing the risk of transmission of
11 blood-borne infectious diseases.

12 “(f) The use of threats or harassment against any patient or licensee for
13 providing evidence in a disciplinary action, other legal action, or in an investigation
14 contemplating a disciplinary action or other legal action.

15 “(g) Discharging an employee primarily for attempting to comply with the
16 terms of this chapter.

17 “(h) Disciplinary action taken by any public agency for any act substantially
18 related to the qualifications, functions, or duties of an acupuncturist or any
19 professional health care licensee.

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

22 “(j) The violation of any law or local ordinance on an acupuncturist's business
23 premises by an acupuncturist's employee or a person who is working under the
24 acupuncturist's professional license or business permit, that is substantially related to
25 the qualifications, functions, or duties of an acupuncturist. These violations shall
26 subject the acupuncturist who employed the individuals, or under whose
27 acupuncturist license the employee is working, to disciplinary action.

28 //

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

3 **FIRST CAUSE FOR DISCIPLINE**

4 (Repeated Negligent Acts)

5 7. Respondent is subject to disciplinary action under section 4955.2, subsection (b) of
6 the Code in that he committed repeated negligent acts in the care and treatment of patient S.M.¹
7 The circumstances are as follows:

8 8. Patient, S.M, a then 30-year-old-female, had an initial patient visit with Respondent
9 on or about March 31, 2009. S.M. presented with chronic back, neck and arm pain associated
10 with a work-related injury for which she took SOMA and Darvocet. S.M. was referred to
11 Respondent by her orthopedic surgeon for acupuncture treatment to relieve her pain. Besides her
12 injury, S.M. presented in good health and had no history of respiratory problems. During this
13 visit, Respondent administered acupuncture treatment to S.M. without complaints.

14 8. On or about April 6, 2009, S.M. returned to Respondent’s office for acupuncture
15 treatment. Respondent administered acupuncture treatment at the following points: GB-20, GB-
16 21, Bai Lao, SI-12, SI-13, and UB-10. Due to close proximity to the lung the GB-21 point is a
17 potentially dangerous point, and SI-12 and SI-13 are well-known dangerous points, to all
18 acupuncturists providing treatment. The standard of practice for treatment at such points close to
19 the lung is to employ insertion of short needles.² The use of long needles³ increases the risk for
20 miscalculating depth of insertion and pneumothorax (collapsed lung). Respondent inserted long,
21 1.5 inch needles at these points instead of short needles.

22 9. The standard of care for insertion to the point GB-21 is to use the technique known as
23 the pinching method.⁴ Use of the pinching method at GB-21 greatly reduces risk of

24 ¹ The names of patients are kept confidential to protect their privacy, but will be revealed to
25 Respondent upon his written request for discovery.

26 ² Short needles are defined as 0.5 to 1 inch needles.

27 ³ Long needles are defined as 1.5 to 4 inch needles, which are best used for fleshy areas.

28 ⁴ The pinching method requires that the practitioner pinches up the trapezius muscle at the GB-21
(continued...)

1 pneumothorax. Respondent failed to employ this method when he administered acupuncture at
2 the GB-21 point.

3 10. As Respondent inserted the last two needles, patient S.M. felt an intense, sharp pain.
4 After insertion of all the needles, Respondent left the treatment room and did not return until
5 about 15 minutes later. S.M. then complained to Respondent of intense pain where Respondent
6 had inserted the last two needles. Respondent adjusted the two needles, then left the room again
7 for several minutes. When he returned, S.M. again complained that she was still experiencing
8 intense pain. Respondent then removed the two needles and began massaging the area with his
9 elbow. S.M. reported that the pain became more intense with the massage, and asked Respondent
10 to stop massaging the area. Respondent then removed the rest of the needles and left the room for
11 several minutes. During this time S.M. began to experience difficulty breathing and worsening
12 pain.

13 11. After Respondent returned to the treatment room, S.M. complained of difficulty
14 breathing and worsening pain. Respondent informed S.M. that he might have punctured her lung
15 and insisted on driving S.M. to the hospital, instead of calling 911 at S.M.'s request. During the
16 ride to the hospital, Respondent repeatedly urged S.M. to withhold the fact that her symptoms
17 were attributed to the acupuncture treatments that Respondent had administered. The hospital
18 later diagnosed S.M. with pneumothorax.

19 12. In his Board interview, Respondent explained that he had performed the same
20 treatments on other patients with no problems and was unsure as to how or why the treatment
21 may have caused pneumothorax.

22 13. Respondent committed repeated negligent acts and/ or omissions in the care and
23 treatment of patient S.M. as follows:

24 A. By failing to use short needles for insertions close to the lung when he administered
25 acupuncture to S.M;

26 _____
27 (...continued)
28 using the thumb and index finger. The needle is then carefully inserted into the muscle and the muscle is released.

1 B. By failing to employ the pinching method when he inserted the needle to the GB-21
2 point;

3 C. By failing to observe the patient for 30 minutes following needle insertion, in
4 accordance with practice standards and despite reports from the patient of symptoms of severe
5 pain and difficulty breathing; and

6 D. By repeatedly attempting to conceal the fact that his acupuncture treatment caused the
7 patient's injury, a deception which could have delayed the emergency room's diagnosis of
8 pneumothorax.

9 **SECOND CAUSE FOR DISCIPLINE**

10 (Incompetence)

11 14. Respondent is subject to disciplinary action under section 4955.2, subsection (c), of
12 the Code in that he exhibited incompetence in the care and treatment of patient S.M. The
13 circumstances are as follows:

14 15. The facts and circumstances described in paragraphs 7 through 12 are incorporated
15 herein as if set forth in full.

16 **PRAYER**

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

19 1. Revoking or suspending Acupuncturist License Number AC 6971, issued to
20 JONATHAN HWAKAN WU, L.Ac.;

21 2. Ordering Jonathan Hwakan Wu, L.Ac. to pay the Acupuncture Board the reasonable
22 costs of the investigation and enforcement of this case, pursuant to Business and Professions
23 Code section 4959;

24 3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of
25 probation monitoring; and

26 4. Taking such other and further action as deemed necessary and proper.
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

FEB 19 2015

DATED: _____



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

LA2013609495
61490303.docx