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FILED

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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-2010-209

13 **Xiaobo Zhang, L.AC**
619 W. F Street,
Oakdale, CA 95361

A C C U S A T I O N

14 **Acupuncturist License No. AC 7631**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about February 9, 2001, the Board issued Acupuncturist License Number AC
22 7631 to Xiaobo Zhang, L.AC. (hereinafter "Respondent"). Respondent's license is presently
23 active, and will expire June 30, 2012.

24 **JURISDICTION**

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

1 4. Section 4928.1 of the Code states:

2 "Protection of the public shall be the highest priority for the Acupuncture
3 Board in exercising its licensing, regulatory, and disciplinary functions. Whenever
4 the protection of the public is inconsistent with other interests sought to be
5 promoted, the protection of the public shall be paramount. "

6 5. Section 4955 of the Code states:

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

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

10 "...

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

14 "(e) Except for good cause, the knowing failure to protect patients by failing to
15 follow infection control guidelines of the board, thereby risking transmission of blood-
16 borne infectious diseases from licensee to patient, from patient to patient, and from patient
17 to licensee. In administering this subdivision, the board shall consider referencing the
18 standards, regulations, and guidelines of the State Department of Health Services
19 developed pursuant to Section 1250.11 of the Health and Safety Code and the standards,
20 regulations, and guidelines pursuant to the California Occupational Safety and Health Act
21 of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for
22 preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in
23 health care settings. As necessary, the board shall consult with the Medical Board of
24 California, the California Board of Podiatric Medicine, the Dental Board of California, the
25 Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric
26 Technicians, to encourage appropriate consistency in the implementation of this
27 subdivision.

1 The board shall seek to ensure that licensees are informed of the responsibility of
2 licensees and others to follow infection control guidelines, and of the most recent
3 scientifically recognized safeguards for minimizing the risk of transmission of blood-
4 borne infectious diseases.”

5 6. Title 16 Section 1399.450 of the California Code of Regulations states:

6 “Every acupuncture office shall be maintained in a clean and sanitary condition at
7 all times, and shall have a readily accessible bathroom facility in accordance with Title 24,
8 Part 2, Building Standards Code Sections 494A.1 and 1994 Uniform Building Code
9 Section 2902.3.”

10 7. Title 16 Section 1399.451 of the California Code of Regulations states:

11 “In treating a patient, an acupuncturist shall adhere to the following procedures:

12 “(a) The acupuncturist’s hands shall be brush-scrubbed with soap and warm water
13 immediately before examining patients or handling acupuncture needles and other
14 instruments, and between patients.

15 “(b) All instruments shall be sterilized before and between uses in a manner which
16 will destroy all microorganisms. All needle trays which contain sterile needles shall also
17 be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip
18 indicator which shows that sterilization is complete.

19 “(c) Acupuncture points, where needles are to be inserted, shall be cleaned with an
20 appropriate antiseptic before insertion of the needle.

21 “(d) In the event an acupuncture needle inserted in a patient breaks subcutaneously,
22 the treating acupuncturist shall immediately consult a physician. An acupuncturist shall
23 not sever or penetrate the tissues in order to excise such a needle.

24 “(e) Any complication, including but not limited to, hematoma, peritonitis or
25 pneumothorax arising out of acupuncture treatment shall be referred immediately to a
26 physician or dentist or podiatrist, if appropriate, if immediate medical treatment is
27 required.

1 “(f) Acupuncture shall not be performed using hypodermic needles.

2 “(g) All instruments to be discarded shall be disposed of safely.

3 “(h) Needles shall be disposed of by placing them in a sealed, unbreakable
4 container marked “Hazardous Waste” and disposed of in accordance with state and local
5 law.”

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Unprofessional Conduct-Unsanitary Practices)**

8 **[Bus & Prof. Code §4955(d),(e); Title 16 §§ 1399.450,1399.451 (a),(b),(h)]**

9 8. Respondent is subject to disciplinary action under section 4955(d), (e) and Title 16 §§
10 1399.450,1399.451 (a),(b),(h) in that she failed to keep her place of business in a sanitary
11 condition and follow proper sanitary procedures in her care and treatment of patients for the
12 period of June 2004 to October of 2010. The circumstances are set forth below:

13 9. Respondent practices acupuncture at her place of business at 619 West F Street,
14 Oakdale, CA 95361.

15 10. On or about a period of six years, 2004 to 2010, patients JB and SB saw Respondent
16 for acupuncture services. During their treatments, both JB and SB observed that the facility had a
17 lot of cobwebs in the corners of the room and that the window sills were dirty. SB observed that
18 the disposable pillow cases were not changed all the time.

19 11. On or about December 27, 2010, investigators from the Board inspected the business
20 premises of Respondent and made the following observations:

21 A. The investigator observed that the reception area was dirty, and the counter had flecks
22 of what appeared to be blood on the counter. The reception area had herb bottles without lids and
23 had files stacked in piles that were falling over.

24 B. The investigator observed that Respondent does not keep her hazardous waste,
25 specifically, used needles, in a hazardous waste container. Respondent admitted to the
26 investigator that she did not have a hazardous waste container for the period of 2006 to October
27 2010. Respondent kept the used needles in used herb bottles and stored it in boxes in her office.

28 C. Respondent did not have running hot water in the restroom.

1 D. Respondent admitted to investigators that she did not wash her hands before she sees
2 each client.

3 E. Respondent's rest room had dirt and hair on the floor.

4 F. The treatment rooms had the guide tubes and other trash scattered on the floor. In one
5 of the treatment rooms, at the foot of the bed, the investigator observed and noted that the needle
6 guide tube and two lines of blood on the paper were present.

7 G. Respondent's office space was filled with boxes, garbage, and used acupuncture
8 needles stored in empty herb bottles.

9 H. Respondent admitted to the investigator that she did not change the disposable pillow
10 cases after each client.

11 I. Respondent's business card states that she is an "M.D. (PRC), L.AC. Chinese
12 Medicine and Acupuncture."

13 12. Respondent's actions constitute unprofessional conduct and subject her to discipline
14 within the meaning of section 4955(d), (e) and Title 16 §§ 1399.450,1399.451 (a),(b),(h) in that
15 she failed to keep her place of business in a sanitary condition and follow proper sanitary
16 procedures in her care and treatment of patients as described above.

17 **SECOND CAUSE FOR DISCIPLINE**

18 (Misrepresentation)
19 [Bus & Prof. Code § 4955]

20 13. Complainant refers to and, by this reference, incorporates herein paragraphs 10, 12 (I)
21 above, as though fully set forth.

22 14. Respondent is subject to disciplinary action in that she misrepresented to her patients
23 that she is a medical doctor by using the suffix M.D. Said conduct constitutes unprofessional
24 conduct.

25 **PRAYER**

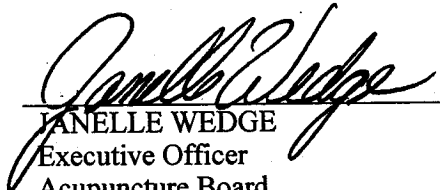
26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Acupuncture Board issue a decision:

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1. Revoking or suspending Acupuncturist License Number AC 7631, issued to Xiaobo Zhang;
2. Ordering Respondent to pay 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.

DATED: SEP 22 2011


JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

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