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FILED

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ACUPUNCTURE BOARD

7
8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1A-2012-31

11 HONGWEI SUN

12 5460 Sunol Blvd #2
13 Pleasanton, CA 94566

FIRST AMENDED ACCUSATION

14 Acupuncture License No. AC 8581

15 Respondent.
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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 (Board), Department of Consumer Affairs.

22 2. On September 17, 2002, the Board issued Acupuncture License Number AC 8581 to
23 Hongwei Sun (Respondent). The Acupuncture License was in full force and effect at all times
24 relevant to the charges brought herein and will expire on November 30, 2015, unless renewed.

25 JURISDICTION

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

1 4. Section 726 of the Code states:

2 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
3 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
4 licensed under this division, under any initiative act referred to in this division and under Chapter
5 17 (commencing with Section 9000) of Division 3."

6 5. Section 4955 of the Code states:

7 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
8 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 (d) Aiding or abetting in, or violating or conspiring in, directly or indirectly,
11 the violation of the terms of this chapter or any regulation adopted by the board
12 pursuant to this chapter."

13 6. Section 4955.1 of the Code states:

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

17 "..."

18 (e) Failing to maintain adequate and accurate records relating to the provision
19 of services to their patients."

20 7. Section 4955.2 of the Code states:

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

23 (a) Gross negligence.

24 (b) Repeated negligent acts.

25 (c) Incompetence."

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1 8. California Code of Regulations, title 19, section 1399.453, states:

2 "An acupuncturist shall keep complete and accurate records on each patient who is given
3 acupuncture treatment, including but not limited to, treatments given and progress made as a
4 result of the acupuncture treatments."

5 COST RECOVERY

6 9. Section 4959 of the Code states:

7 "(a) The board may request the administrative law judge, under his or her
8 proposed decision in resolution of a disciplinary proceeding before the board, to
9 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
10 not to exceed actual and reasonable costs of the investigation and prosecution of the
11 case.

12 "(b) The costs to be assessed shall be fixed by the administrative law judge and
13 shall not in any event be increased by the board. When the board does not adopt a
14 proposed decision and remands the case to an administrative law judge, the
15 administrative law judge shall not increase the amount of any costs assessed in the
16 proposed decision.

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

22 "(d) In any judicial action for the recovery of costs, proof of the board's
23 decision shall be conclusive proof of the validity of the order of payment and the
24 terms for payment.

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

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1 FIRST CAUSE FOR DISCIPLINE

2 **(Sexual Misconduct and Unprofessional Conduct**

3 **Involving Adult Female Patient)**

4 10. On or about May 2, 2012, J.K.¹, a psychologist, filed an on-line complaint with the
5 Acupuncture Board. J.K. stated that her patient, N.S., a minor female, reported that Respondent
6 had touched her inappropriately during an acupuncture treatment session. M.F., N.S.'s mother,
7 also reported that Respondent had touched M.F. inappropriately during an acupuncture treatment
8 session.

9 11. M.F. began treatment with Respondent on or about March 23, 2012 for, among other
10 things, pain stemming from fibromyalgia, including pain in her neck and arms. She returned to
11 Respondent for acupuncture treatment on or about March 26, 2012 and on or about April 9, 2012.
12 During one of her treatment sessions, she told Respondent that she thought her daughter, N.S.,
13 who was experiencing pain similar to her own, would also benefit from acupuncture treatment.
14 Respondent agreed to treat N.S.

15 Patient N.S.

16 12. On or about April 2, 2012, N.S. began treatment with Respondent for, among other
17 things, pain stemming from fibromyalgia and endometriosis, including pain in her neck,
18 shoulders, back and hips, and pain related to her menstrual period. During the treatment session,
19 Respondent placed acupuncture needles in N.S.'s head, neck, legs and abdomen. N.S. had no
20 complaints about the session.

21 13. On or about April 6, 2012, N.S. returned for a second treatment session with
22 Respondent. Respondent placed acupuncture needles in her ankles, neck, back, forehead and
23 chest.

24 14. N.S. was fifteen-years-old when she was treated by Respondent.

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28 ¹ Patient and reporting witness names are abbreviated to protect privacy.

Patient M.F.

15. On or about April 9, 2012, M.F., unaware of the details of her daughter's recent treatment, returned to Respondent for acupuncture treatment. Since her clothing was loose fitting, she kept her clothing on during treatment. During the treatment session, Respondent pulled up M.F.'s skirt, spread her thighs apart, and pushed her panties to one side, exposing her vagina. Respondent then rubbed and pinched her outer vagina, and rubbed and pinched her clitoris. M.F. felt uncomfortable but did not say anything. Respondent then placed acupuncture needles and left the room for about forty five minutes before returning and removing the needles.

16. At no time during his treatment of M.F. did Respondent inform her of the reasons for exposing or contacting her vaginal area. Nor did Respondent obtain her consent to do so.

17. Startled by Respondent's conduct during this treatment session, M.F. became concerned about Respondent's treatment of her daughter. She asked N.S. about the details of her treatment sessions with Respondent, and N.S. described to her how Respondent had exposed and touched her vaginal area. Neither M.F. nor N.S. ever returned to Respondent for further acupuncture treatment.

18. Respondent's actions as described in paragraphs 10 through 17 constitute sexual misconduct and unprofessional conduct, and establish cause to discipline his license pursuant to Code sections 726 and 4955.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

19. Paragraphs 10 through 18 are incorporated herein.

20. Respondent's actions are an extreme departure from the standard of care and constitute gross negligence in violation of code section 4955.2(a).

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts: Inadequate Recordkeeping)

21. Paragraphs 10 through 18 are incorporated herein.

