

FILED

FEB 3 2010

ACUPUNCTURE BOARD

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARGARET PHE
Deputy Attorney General
3 State Bar No. 207205
300 South Spring Street, Suite 1702
4 Los Angeles, California 90013
Telephone: (213) 576-7776
5 Facsimile: (213) 897-1071
Attorneys for Complainant
6

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

10 In the Matter of the Accusation Against:

Case No. 1A-2009-81

11 BRUCE YING-ZEN LIN, L.Ac.

A C C U S A T I O N

12 325 Union Avenue
13 Pomona, California 91768

14 Licensed Acupuncturist No. AC 8171,

15 Respondent.
16

17
18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about November 6, 2001, the Acupuncture Board of California (Board)
23 issued Licensed Acupuncturist Number AC 8171 to Bruce Ying-Zen Lin. (Respondent). The
24 Acupuncturist License was in full force and effect at all times relevant to the charges brought
25 herein and will expire on June 30, 2011, unless renewed.

26 **JURISDICTION**

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

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

4. Section 4955 of the Code states in part:

"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:

"...

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

"...

"(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.

"..."

5. Section 4955.1 of the Code states:

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

"..."

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

"(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

"..."

6. Section 4956 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter. The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal

Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.”

COST RECOVERY

7. Section 4959 of the Code states:

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

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

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

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

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

UNITED STATES CRIMINAL STATUTES

8. Title 18 of the United States Code section 2 provides (Aiding and Abetting and Causing an Act to be Done):

“(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

“(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.”

1 9. Title 18 of the United States Code section 1001 (Use of False Writing Containing
2 False Statements) provides in part:

3 “(a) Except as otherwise provided in this section, whoever, in any matter
4 within the jurisdiction of the executive, legislative, or judicial branch of the
5 Government of the United States, knowingly and willfully—

6 “ . . .

7 “(3) makes or uses any false writing or document knowing the same to
8 contain any materially false, fictitious, or fraudulent statement or entry;

9 “shall be fined under this title, imprisoned not more than 5 years or, if the
10 offense involves international or domestic terrorism (as defined in section
11 2331), imprisoned not more than 8 years, or both. If the matter relates to an
12 offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term
13 of imprisonment imposed under this section shall be not more than 8 years.”

14 10. Title 26 of the United States Code section 7206 provides in part (Fraud and False
15 Statements):

16 “Any person who—

17 “(1) Declaration under penalties of perjury.--Willfully makes and subscribes any
18 return, statement, or other document, which contains or is verified by a written
19 declaration that it is made under the penalties of perjury, and which he does not
20 believe to be true and correct as to every material matter . . .”

21 “ . . .

22 “shall be guilty of a felony and, upon conviction thereof, shall be fined not more
23 than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more
24 than 3 years, or both, together with the costs of prosecution.”

25 **FIRST CAUSE FOR DISCIPLINE**

26 (Conviction of a Crime)

27 11. Respondent is subject to disciplinary action under Business and Professions code
28 sections 4955, 4955.1, and 4956, in that he was convicted of crimes substantially related to the
qualifications, functions or duties of an acupuncturist. In particular, Respondent was convicted of
felony fraud and false statements, use of false writing containing false statements, and aiding and
abetting and causing an act to be done in violation of the United States Code. The facts and
circumstances are as follows:

1 Counts 19 through 23

2 (18 U.S.C. § 1956, subd. (a)(1)(B)(i))

3 14. On or about January 3, 2002 through April 10, 2002, "Respondent knowingly
4 conducted, attempted to conduct, and aided, abetted, counseled, commanded, induced, and
5 procured. . . financial transactions affecting interstate and foreign commerce, knowing that the
6 property involved in each of the financial transactions represented the proceeds of some form of
7 unlawful activity, and which property was, in fact, the proceeds of specified unlawful activity,
8 that is distribution of ephedrine, a list I chemical, knowing or having reasonable cause it would be
9 used to manufacture a controlled substance, namely, methamphetamine, a schedule II controlled
10 substance, and knowing that each of the transactions was designed in whole or in part to conceal
11 and disguise the nature, the location, the source, the ownership, and the control of the proceeds of
12 said specified unlawful activity." It was further alleged that Counts 19 through 23 involved the
13 sale by Respondent of 1,875 kilograms Ma Huang on five different dates in exchange for varying
14 amounts of money ranging from approximately \$14,718.75 to \$16,218.75.

15 Count 24

16 (26 U.S.C. § 7206, subd. (1))

17 15. On or about April 9, 2002, Respondent did and willfully made and subscribed to a
18 United States Income Tax Return, Form 1040, for the taxable year 2001, which he did not believe

19 shrubby plant that are sources of the drug are native to China, where the aboveground parts are
20 collected in the fall and dried for drug use. The root of *E. sinica* or *E. intermedia* is known as ma
21 huang gen and is considered to be a distinct drug, used for its antisudorific (anti-sleep) properties.
22 Ma huang is one of the earliest and best known drugs of Chinese traditional medicine, referenced
23 in the *Shen Nong Ben Cao Jing*, one of the foundation books of Chinese medicine (about 100
24 AD). It was and still is used to induce perspiration and to treat the symptoms of bronchial
25 asthma, colds, and influenza. Chemical investigations of ephedra in the early 20th century
26 resulted in the isolation of the alkaloids ephedrine and pseudoephedrine, which were identified as
27 the major pharmacologically active compounds in the aboveground portions of the plant. While
28 asthma treatment is one of the classical clinical uses for pure ephedrine as a pharmaceutical drug,
dietary supplements promote ephedra as the herb for weight loss and increasing athletic
performance. Ephedra has been a major component of herbal supplements for weight loss and
athletic performance, often with caffeine also added. Ephedra use has been linked to
cardiovascular adverse effects, including hypertension, stroke, and MI. (Ma Huang. Review of
Natural Products. facts and comparisons 4.0 [online], 2004, Available from Wolters Kluwer
Health, Inc. Accessed April 17, 2007. Copyright © 2009 Wolters Kluwer Health,
<http://www.drugs.com/npc/ma-huang.html>.)

1 to be true and correct as to every material matter contained therein. Said document was verified
2 by a written declaration that it was made under the penalties of perjury and was filed with the
3 Internal Revenue Service ("IRS"). Respondent reported a total income of \$325,831.00, even
4 though he knew and believed that the reported figure did not include an additional income of
5 approximately \$190,748.00 that he received in 2001.

6 Counts 25 through 26

7 (18 U.S.C. §§ 1001, subd. (a)(3), 2)

8 16. On or about June 6, 2002, in a matter within the jurisdiction of the Internal
9 Revenue Service – Criminal Investigations ("IRS-CI") and the former United States Customs
10 Service (presently known as the United States Bureau of Immigration and Customs Enforcement)
11 ("ICE"), Respondent, and others known and unknown to the Grand Jury, aiding and abetting each
12 other, knowingly and willfully made and used, and caused to be made and used, false writings
13 and documents, knowing the same to contain materially false, fictitious, and fraudulent statements
14 and entries. It was further alleged that Respondent created two false invoices to substantiate two
15 sales of Ma Huang that he claimed to have made to C.L. and which he provided to Special Agents
16 from the IRS and ICE during their investigation of C.L., when in truth and in fact, as Respondent
17 well knew, the two invoices were prepared after the sales of Ma Huang to C.L. in order to cover
18 up the undocumented and unlawful distribution of Ma Huang to C.L.

19 17. On or about July 31, 2006, Respondent entered into a plea agreement.

20 18. On or about August 1, 2006, a change of plea hearing was held, and Respondent
21 entered into a Revised Plea Agreement, wherein he pled guilty to Counts 24, 25 and 26. The plea
22 was accepted and entered. The court ordered the preparation of a Presentence Report, and set the
23 sentencing hearing for January 2007.

24 19. Notably, the Revised Plea Agreement for Defendant Bruce Lin filed on or about
25 August 1, 2006, states under the *Nature of Offense* section that in order for Respondent to be
26 guilty of violating Count 24 of the Indictment, it was determined to be true that Respondent
27 willfully made and signed a tax return for the year 2001, under penalty of perjury, that contained
28 materially false information, in that the tax return did not report the total amount of his gross

1 receipts. Additionally, Respondent knew that the tax return he signed did not report all of his
2 gross receipts and that he signed the tax return with the specific intent to violate the law. It
3 further states that Respondent is, in fact, guilty of the offense.

4 Moreover, it states that in order for Respondent to be guilty of violating Counts 25 through
5 26, it was in fact true that Respondent used a writing which contained a false statement in a
6 matter within the jurisdiction of the IRS-CI, that he acted willfully in that he acted deliberately
7 and with knowledge that the statement was untrue, and that the statement was material to the IRS-
8 CI activities or decisions.

9 20. The Revised Plea Agreement for Defendant Bruce Lin filed on or about August 1,
10 2006, also contained a *Factual Basis* agreed upon and stipulated to by the United States Attorney
11 and Respondent. The facts stipulated to by the parties were as follows:

12 Respondent is the owner of Essential Pharmaceutical Corporation based in Pomona,
13 California. From at least June 13, 2001, through April 10, 2002, Respondent through his
14 corporation Essential Pharmaceutical purchased approximately 32,050 kilograms of Ma Huang
15 extract. The Ma Huang extract was purchased to be sold to L.K. and C.L. for cash. L.K. and
16 C.L. were the only persons to whom Ma Huang extract was sold, with the exception of minimal
17 amounts that were used in the production of other orders. The labels on the Ma Huang extract
18 containers were removed by Essential Pharmaceutical employees during shipping. Respondent
19 and Essential Pharmaceutical Corporation kept no records of the transactions during 2001 and
20 during the subsequent tax filing season. Respondent never informed his tax professional of the
21 clandestine business relationship with L.K. and C.L.

22 In June 2002, Respondent was interviewed by federal law enforcement agents and was
23 asked specifically about the Ma Huang extract. Respondent lied about the amount sold to L.K.
24 and C.L. and caused two false invoices to be created to legitimize his explanation to the agents.
25 Respondent also omitted his largest source of the Ma Huang when interviewed by agents.
26 Respondent lied to his largest supplier who inquired as to the reason he was purchasing the
27 volume of Ma Huang. Respondent told the supplier that he was using it in dietary supplements.
28

1 Evidence subpoenaed from Essential Pharmaceutical Corporation indicates that the invoice
2 number on the invoices for the Ma Huang extract sold to L.K. and C.L. were generated on April
3 12, 2002, the same date when L.K. and C.L. were arrested. Bank account records show the
4 deposit of currency into one of Respondent's bank accounts during the time he was selling Ma
5 Huang to L.K. and C.L. Respondent also had \$83,000 cash at his residence, which was seized on
6 June 28, 2002. Evidence has shown that Essential Pharmaceutical Corporation does not deal in
7 cash.

8 Respondent received approximately 23 payments for Ma Huang extract from L.K. and C.L.
9 These payments were for orders placed by C.L. for Ma Huang and were made in cash at
10 Respondent's request. Respondent failed to report the 18 payments received in 2001 and only
11 reported the 2002 payments receipts after learning about C.L.'s arrest in that he issued the false
12 invoices which recognized Ma Huang income. In 2001, Respondent reported \$325,831 in total
13 income on his U.S. Individual Income Tax Return, but failed to report approximately \$190,748.
14 The non-reported income was also not reported on Essential Pharmaceutical Corporation's U.S.
15 Corporate Income Tax Return for S Corporations on his Schedule K-1. Respondent signed, under
16 penalty of perjury, his 2001 return on April 9, 2002, even though he knew that the approximately
17 \$190,748 in Ma Huang proceeds constituted income that had not been reported on his 2001 tax
18 return. Respondent agreed that the tax loss for the unreported income was approximately
19 \$75,834.

20 21. On or about February 5, 2007, during the sentencing hearing, Respondent pled
21 guilty to Counts 24 through 26. On the Government's motion, the Court dismissed Counts 1
22 through 23 in the interest of justice. Pursuant to the Sentencing Reform Act of 1984, the Court
23 suspended the imposition of sentence for Counts 24, 25 and 26 and placed Respondent on
24 probation for a term of two years (the term consists of two years on each of Counts 24, 25 and 26
25 of the Indictment, all such terms to run concurrently) under the following conditions:

- 26 (1) Respondent shall comply with the rules and regulations of the U.S. Probation
27 Office and General Order 318;

- 1 (2) During the period of community supervision, Respondent shall pay the special
2 assessment and fine in accordance with the judgment's orders pertaining to
3 such payment;
- 4 (3) Respondent shall participate for a period of ten months in a home detention
5 program which does not include electronic monitoring and shall observe all
6 rules of such program, as directed by the Probation Officer;
- 7 (4) Respondent shall perform 300 hours of community service, as directed by the
8 Probation Officer;
- 9 (5) Respondent shall truthfully and timely file and pay taxes owed for the years of
10 conviction; and shall truthfully and timely file and pay taxes during the period
11 of community supervision. Further, Respondent shall show proof to the
12 Probation Officer of compliance with the order; and
- 13 (6) Respondent shall cooperate in the collection of his DNA sample.

14 Additionally, the Court ordered Respondent to do the following: (1) pay to the United
15 States a special assessment of \$300, due immediately; (2) pay to the United States a total fine of
16 \$15,000, which shall bear interest as provided by law, to be paid in full no later than 30 days from
17 the date of the judgment; and (3) comply with General Order No. 01-05. The drug testing
18 condition mandated by statute was suspended based on the Court's determination that Respondent
19 posed a low risk of future substance abuse.

20 22. On or about April 3, 2007, a Satisfaction of Judgment was filed by the United States
21 Attorney as to Respondent acknowledging full satisfaction of the monetary impositions entered
22 on January 2007 in favor of the United States of America.

23 **SECOND CAUSE FOR DISCIPLINE**

24 (Fraud or Dishonest Act)

25 23. Respondent is subject to disciplinary action under Business and Professions Code
26 section 4955.1, subdivisions (b) and (c), in the that he committed fraud or a dishonest act when he
27 willfully made and signed a 2001 tax return under penalty of perjury knowing that it contained
28

1 false information, and when he utilized a writing containing a false statement during an IRS-CI
2 investigation. The circumstances are as follows:

3 24. Paragraphs 12 to 22, inclusive, above are incorporated herein by reference as if
4 fully set forth.

5 **THIRD CAUSE FOR DISCIPLINE**

6 (Unprofessional Conduct)

7 25. Respondent is subject to disciplinary action under Business and Professions Code
8 sections 4955, subdivisions (b) and (d), and 4956, in that he was convicted of felony fraud and
9 false statements, use of false writing containing false statements, and aiding and abetting and
10 causing an act to be done in violation of committing fraud and making false statements. The
11 circumstances are as follows:

12 26. Paragraphs 12 to 24, inclusive, above are incorporated herein by reference as if
13 fully set forth.

14 **PRAYER**


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

17 1. Revoking or suspending Licensed Acupuncturist Number AC 8171, issued to
18 Respondent Bruce Ying-Zen Lin.

19 2. Ordering Bruce Ying-Zen Lin to pay the Board the reasonable costs of the
20 investigation and enforcement of this case, pursuant to Business and Professions Code section
21 4959;

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

23
24
25 DATED: FEB - 3 2010


26 JANELLE WEDGE
27 Executive Officer
28 Acupuncture Board
State of California
Complainant