

FILED

MAY 28 2009

ACUPUNCTURE BOARD

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 JENNIFER N. PAREDES, State Bar No. 228103
Deputy Attorney General
4 1300 I Street, Suite 125
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5 Sacramento, CA 94244-2550
Telephone: (916) 324-5389
6 Facsimile: (916) 327-2247

7 Attorneys for Complainant

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

10 In the Matter of the Accusation Against:

Case No. 1A-2008-114

11 **PETER KWAI LUK, A.C.**
12 Post Office Box 26832
Fresno, CA 93729

A C C U S A T I O N

13
14 Acupuncturist License No. AC 5572

15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about February 19, 1997, the Acupuncture Board issued
22 Acupuncturist License Number AC 5572 to Peter Kwai Luk, A.C. (Respondent). Unless
23 renewed, the license will expire on March 31, 2010.

24 **JURISDICTION**

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

28 4. Section 4955 of the Code states:

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

3 5. Section 4955.2 of the Code states:

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

7 "(a) Gross negligence.

8 "(b) Repeated negligent acts.

9 "(c) Incompetence."

10 6. Section 726 of the Code states:

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

15 **FIRST CAUSE FOR DISCIPLINE**

16 (Sexual misconduct)

17 [Bus. & Prof. Code section 726]

18 7. Respondent is subject to disciplinary action under section 726 in that
19 Respondent's conduct constituted sexual misconduct. The circumstances are as follows:

20 8. On or about September 18, 2008, J.P.¹ arrived for a scheduled appointment
21 with Respondent at his business located at 371 E. Bullard Ave. in Fresno, California. J.P.
22 sought treatment from Respondent for fibromyalgia and endometriosis.

23 9. Upon arrival at Respondent's place of business, Respondent first
24 interviewed J.P. to discuss her medical conditions for which she sought treatment. Respondent
25 documented complaints of fibromyalgia, endometriosis, rectal bleeding during menstruation,
26 pain, anxiety, chest tightness, and palpitations. Next, after directing J.P. to remove her clothes
27 and don a robe, Respondent administered acupuncture to J.P. Following removal of the

28 1. To protect patient confidentiality in a case involving sexual misconduct, the
complaining witness will be referred to by only her initials in all public documents.

1 acupuncture needles, Respondent proceeded to massage J.P.'s chest between her breasts,
2 occasionally grazing her breasts.

3 10. Following treatment on September 18, 2008, J.P. scheduled another
4 appointment for September 19, 2008. When J.P. arrived on September 19, 2008, she described
5 to Respondent feeling heightened anxiety the previous night. Respondent documented in his
6 notes complaint of whole body pain and frequent body twitching. After J.P. changed into a robe,
7 Respondent administered acupuncture to J.P.'s back. Upon removal of the needles from her
8 back, Respondent told J.P. to turn over to treat her front. During this treatment, Respondent
9 massaged J.P.'s breasts.

10 11. J.P. returned for a third scheduled appointment on September 20, 2008.
11 Respondent advised J.P. to change into a robe and engaged J.P. in conversation about her weight.
12 Respondent repeated the treatment he administered the previous day, including the breast
13 massage, commenting that the breast massage would relieve stress.

14 12. J.P. returned for a fourth scheduled appointment on September 22, 2008.
15 Respondent gave J.P. a robe to wear and advised her he would treat her that day for her
16 endometriosis. Respondent had J.P. lie on her stomach while he administered acupuncture and
17 massaged her buttocks and thighs. Respondent then told J.P. to turn over and lie on her back.
18 Respondent stood to J.P.'s right as she turned over and closed her eyes. J.P. felt something wet
19 on her left nipple and opened her eyes to see Respondent sucking on her left nipple. J.P. pushed
20 Respondent away and accused him of sucking her nipple. Respondent repeatedly apologized and
21 J.P. ended the session and left the office.

22 13. Respondent failed to document in his notes of treatment from September
23 18, 19, 20, or 22 that he administered acupuncture or acupressure to any points on J.P.'s breasts
24 to treat any symptoms she presented to him. Instead, Respondent's records of treatment
25 indicated that the closest points of treatment to the breast he documented were "SP. 21" located
26 in the armpit, "LV. 14" located in the midsection of the rib cage well below the breast, "CV. 17"
27 located on the sternum at the nipple line in the middle of the chest, and on September 22, 2008,
28 "Lung 1" and "Lung 2" located near the collar bone.

1 14. Respondent's conduct as set forth below constitutes sexual misconduct
2 and his license is subject to discipline within the meaning of section 726:

- 3 a. Respondent massaged J.P.'s breasts September 19, 20, and 22,
4 2008.
- 5 b. Respondent placed his mouth on J.P.'s nipple September 22, 2008.

6 **SECOND CAUSE FOR DISCIPLINE**
7 (Unprofessional conduct)
8 [Bus. & Prof. Code section 4955]

8 15. Complainant realleges paragraphs 7 through 13 as if fully set forth herein.

9 16. Respondent is subject to disciplinary action under section 4955 in that
10 Respondent's conduct constituted unprofessional conduct as follows:

- 11 a. Respondent massaged J.P.'s breasts September 19, 20, and 22,
12 2008.
- 13 b. Respondent placed his mouth on J.P.'s nipple September 22, 2008.

14 **THIRD CAUSE FOR DISCIPLINE**
15 (Gross Negligence)
16 [Bus. & Prof. Code section 4955.2]

16 17. Complainant realleges paragraphs 7 through 13 as if fully set forth herein.

17 18. Respondent is subject to disciplinary action under section 4955 in that
18 Respondent's conduct constituted unprofessional conduct as follows:

- 19 a. Respondent massaged J.P.'s breasts September 19, 20, and 22,
20 2008.
- 21 b. Respondent placed his mouth on J.P.'s nipple September 22, 2008.

22 **PRAYER**

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

- 25 I. Revoking or suspending Acupuncturist License Number AC 5572, issued
26 to Peter Kwai Luk, A.C. Peter Kwai Luk, AC.


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2. Ordering Peter Kwai Luk, AC to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;

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

DATED: MAY 28 2009


JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GAIL M. HEPPELL
Supervising Deputy Attorney General
3 JENNIFER N. PAREDES, State Bar No. 228103
Deputy Attorney General
4 1300 I Street, Suite 125
P.O. Box 944255
5 Sacramento, CA 94244-2550
Telephone: (916) 324-5389
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

12 **PETER KWAI LUK, A.C.**
Post Office Box 26832
13 Fresno, CA 93279
14 Acupuncturist License No. AC 5572

Respondent.

Case No. 1A-2008-114

STATEMENT TO RESPONDENT

[Gov. Code §§ 11504, 11505(b)]

18 **TO RESPONDENT:**

19 Enclosed is a copy of the Accusation that has been filed with the Acupuncture
20 Board of the Department of Consumer Affairs (Board), and which is hereby served on you.

21 Unless a written request for a hearing signed by you or on your behalf is delivered
22 or mailed to the Board, represented by Deputy Attorney General Jennifer N. Paredes, within
23 fifteen (15) days after a copy of the Accusation was personally served on you or mailed to you,
24 you will be deemed to have waived your right to a hearing in this matter and the Board may
25 proceed upon the Accusation without a hearing and may take action thereon as provided by law.

26 The request for hearing may be made by delivering or mailing one of the enclosed
27 forms entitled "Notice of Defense," or by delivering or mailing a Notice of Defense as provided
28 in section 11506 of the Government Code, to:

1 Jennifer N. Paredes
2 Deputy Attorney General
3 1300 I Street, Suite 125
4 P.O. Box 944255
5 Sacramento, California 94244-2550.

6 You may, but need not, be represented by counsel at any or all stages of these
7 proceedings.

8 The enclosed Notice of Defense, if signed and filed with the Board, shall be
9 deemed a specific denial of all parts of the Accusation, but you will not be permitted to raise any
10 objection to the form of the Accusation unless you file a further Notice of Defense as provided in
11 section 11506 of the Government Code within fifteen (15) days after service of the Accusation
12 on you.

13 If you file any Notice of Defense within the time permitted, a hearing will be held
14 on the charges made in the Accusation.

15 The hearing may be postponed for good cause. If you have good cause, you are
16 obliged to notify the Office of Administrative Hearings, Attn: General Jurisdiction, 2349
17 Gateway Oaks, Suite 200, Sacramento, CA 95833-4231, within ten (10) working days after you
18 discover the good cause. Failure to notify the Office of Administrative Hearings within ten (10)
19 days will deprive you of a postponement.

20 Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are
21 enclosed.

22 If you desire the names and addresses of witnesses or an opportunity to inspect
23 and copy the items mentioned in section 11507.6 of the Government Code in the possession,
24 custody or control of the Board you may send a Request for Discovery to the above designated
25 Deputy Attorney General.

26 **NOTICE REGARDING STIPULATED SETTLEMENTS**

27 It may be possible to avoid the time, expense and uncertainties involved in an
28 administrative hearing by disposing of this matter through a stipulated settlement. A stipulated
settlement is a binding written agreement between you and the government regarding the matters

1 charged and the discipline to be imposed. Such a stipulation would have to be approved by the
2 Acupuncture Board but, once approved, it would be incorporated into a final order.

3 Any stipulation must be consistent with the Board's established disciplinary
4 guidelines; however, all matters in mitigation or aggravation will be considered. A copy of the
5 Board's Disciplinary Guidelines will be provided to you on your written request to the state
6 agency bringing this action.

7 If you are interested in pursuing this alternative to a formal administrative hearing,
8 or if you have any questions, you or your attorney should contact Deputy Attorney General
9 Jennifer N. Paredes at the earliest opportunity.

10 DATED: 5/8/09

11 EDMUND G. BROWN JR., Attorney General
of the State of California

12 GAIL M. HEPPELL
13 Supervising Deputy Attorney General

14
15 
16 JENNIFER N. PAREDES
Deputy Attorney General

17 Attorneys for Complainant
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ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10
11 In the Matter of the Accusation Against:

Case No. 1A-2008-114

12 **PETER KWAI LUK, A.C.**
Post Office Box 26832
13 Fresno, CA 93279

REQUEST FOR DISCOVERY

[Gov. Code § 11507.6]

14 Acupuncturist License No. AC 5572

15 Respondent.

16
17 TO RESPONDENT:

18 Under section 11507.6 of the Government Code of the State of California, parties
19 to an administrative hearing, including the Complainant, are entitled to certain information
20 concerning the opposing party's case. A copy of the provisions of section 11507.6 of the
21 Government Code concerning such rights is included among the papers served.

22
23 PURSUANT TO SECTION 11507.6 OF THE GOVERNMENT CODE, YOU
24 ARE HEREBY REQUESTED TO:

- 25 1. Provide the names and addresses of witnesses to the extent known to the
26 Respondent, including, but not limited to, those intended to be called to testify at the hearing, and
27 2. Provide an opportunity for the Complainant to inspect and make a copy of any of
28 the following in the possession or custody or under control of the Respondent:

1 a. A statement of a person, other than the Respondent, named in the initial
2 administrative pleading, or in any additional pleading, when it is claimed that the act or
3 omission of the Respondent as to this person is the basis for the administrative
4 proceeding;

5 b. A statement pertaining to the subject matter of the proceeding made by any
6 party to another party or persons;

7 c. Statements of witnesses then proposed to be called by the Respondent and
8 of other persons having personal knowledge of the acts, omissions or events which are the
9 basis for the proceeding, not included in (a) or (b) above;

10 d. All writings, including but not limited to reports of mental, physical and
11 blood examinations and things which the Respondent now proposes to offer in evidence;

12 e. Any other writing or thing which is relevant and which would be
13 admissible in evidence, including but not limited to, any patient or hospital records
14 pertaining to the persons named in the pleading;

15 f. Investigative reports made by or on behalf of the Respondent pertaining to
16 the subject matter of the proceeding, to the extent that these reports (1) contain the names
17 and addresses of witnesses or of persons having personal knowledge of the acts,
18 omissions or events which are the basis for the proceeding, or (2) reflect matters
19 perceived by the investigator in the course of his or her investigation, or (3) contain or
20 include by attachment any statement or writing described in (a) to (e), inclusive, or
21 summary thereof.

22 For the purpose of this Request for Discovery, "statements" include written
23 statements by the person, signed, or otherwise authenticated by him or her, stenographic,
24 mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person,
25 and written reports or summaries of these oral statements.

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YOU ARE HEREBY FURTHER NOTIFIED that nothing in this Request for Discovery should be deemed to authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as attorney's work product.

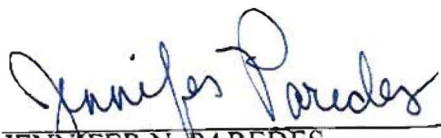
Your response to this Request for Discovery should be directed to the undersigned attorney for the Complainant at the address on the first page of this Request for Discovery **within 30 days after service** of the Accusation.

Failure without substantial justification to comply with this Request for Discovery may subject the Respondent to sanctions pursuant to sections 11507.7 and 11455.10 to 11455.30 of the Government Code.

DATED: 5/8/09

EDMUND G. BROWN JR., Attorney General
of the State of California

GAIL M. HEPPELL
Supervising Deputy Attorney General



JENNIFER N. PAREDES
Deputy Attorney General

Attorneys for Complainant

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ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

PETER KWAI LUK, A.C.

Post Office Box 26832
Fresno, CA 93279

Acupuncturist License No. AC 5572

Respondent.

Case No. 1A-2008-114

NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

I, the undersigned Respondent in the above-entitled proceeding, hereby acknowledge receipt of a copy of the Accusation; Statement to Respondent; Government Code sections 11507.5, 11507.6 and 11507.7, Complainant's Request for Discovery; Disciplinary Guidelines; and two copies of a Notice of Defense.

I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name

Respondent's Signature

Respondent's Mailing Address

City, State and Zip Code

Respondent's Telephone Number

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name

Counsel's Mailing Address

City, State and Zip Code

Counsel's Telephone Number

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

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PETER KWAI LUK, A.C.
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Acupuncturist License No. AC 5572

Respondent.

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NOTICE OF DEFENSE

[Gov. Code §§ 11505 and 11506]

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I hereby request a hearing to permit me to present my defense to the charges contained in the Accusation.

DATED: _____

Respondent's Name _____

Respondent's Signature _____

Respondent's Mailing Address _____

City, State and Zip Code _____

Respondent's Telephone Number _____

Check appropriate box:

- I am represented by counsel, whose name, address and telephone number appear below:

Counsel's Name _____

Counsel's Mailing Address _____

City, State and Zip Code _____

Counsel's Telephone Number _____

- I am not now represented by counsel. If and when counsel is retained, immediate notification of the attorney's name, address and telephone number will be filed with the Office of Administrative Hearing and a copy sent to counsel for Complainant so that counsel will be on record to receive legal notices, pleadings and other papers.

The agency taking the action described in the Accusation may have formulated guidelines to assist the administrative law judge in reaching an appropriate penalty. You may obtain a copy of the guidelines by requesting them from the agency in writing.

**COPY OF GOVERNMENT CODE SECTIONS 11507.5, 11507.6 AND 11507.7
PROVIDED PURSUANT TO GOVERNMENT CODE SECTIONS 11504 AND 11505**

SECTION 11507.5: Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

SECTION 11507.6: Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

SECTION 11507.7: Petition to compel discovery; Order; Sanctions

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.
