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

13 In the Matter of the Accusation Against:

Case No. 1A-2016-175

14
15 **JEFFREY CHIEH JEN TIEN, L.AC.**
16 **12674 Orella Court**
Saratoga, CA 95070

ACCUSATION

17
18 **Acupuncturist License No. AC 12992**

19 Respondent.
20

21 The Complaint alleges:

22 **PARTIES**

23 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity
24 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

25 2. On or about February 24, 2009, the Acupuncture Board issued Acupuncturist License
26 No. AC 12992 to Jeffrey Chieh Jen Tien, L.Ac. (Respondent). The Acupuncturist License was in
27 full force and effect at all times relevant to the charges brought herein and will expire on May 31,
28 2020, unless renewed.

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 (Code) unless otherwise indicated.

4. Section 4928.1 of the Code states:

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

5. Section 4927 of the Code states:

...

(d) 'Acupuncture' means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping and moxibustion.

...

6. 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 limited to, the following:

...

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

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7. 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 limited to, any of the following:

...

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

...

8. Section 4955.2 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 any one of the following:

(a) Gross negligence.

...

(c) Incompetence.

9. California Code of Regulations, title 16, section 1399.451 states:

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

...

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

...

10. California Code of Regulations, title 16, section 1399.453 states:

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

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1 **COST RECOVERY**

2 11. Section 4959 of the Code states:

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

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

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

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

17 (e) All costs recovered under this section shall be considered a reimbursement for
18 costs incurred and shall be deposited in the Acupuncture fund.

19
20 **FACTUAL ALLEGATIONS**

21 12. On or about June 29, 2015, Patient 1¹ saw Respondent for treatment of his neck pain
22 as a result of a motor vehicle accident. Respondent performed a treatment which included a
23 cupping procedure called “liniment stationary cupping”. The performance of this procedure
24 resulted in burns to the Patient’s neck. Respondent treated Patient’s burns without referring him
25 to a physician.

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27 _____
28 ¹ The names of the patient and/or witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

1 13. On or about May 27, 2015, an informed consent form was signed by Patient 1. The
2 informed consent form did not contain an explanation of the cupping procedure or description of
3 possible complications.

4 14. On or about June 29, 2015, Respondent treated Patient 1 using the following
5 equipment: hemostat, five cups, cotton balls, and rubbing alcohol. Respondent performed a
6 cupping technique (“liniment stationary cupping”) upon the Patient 1 in which the “liniment”
7 leaked out of the seal cup and the residual heat from the hemostat then lit on fire, which caused
8 minor burns to Patient 1. Respondent, smothered the flames, then used ice to treat the Patient 1’s
9 burns. Respondent then went to their home to retrieve a burn cream. Respondent applied the
10 burn cream to the Patient 1’s burn area, topically, bandaged the burn area, and told Patient 1 to
11 leave it for twenty-four (24) hours and to return to Respondent’s office the following day.
12 Respondent did not refer Patient 1 to a physician following the incident.

13 **Standard of Care**

14 15. An informed consent form including the procedure(s) to be performed, disclosing the
15 possible complication(s) arising from discharging such procedures, should be discussed with
16 patient and signed afterwards.

17 16. The strongly recommended safety guidelines to avoid dire cupping burns are as
18 follows: the burning material must be placed in the deepest part of the cup, not near the rim;
19 remove the burning material before applying the cup to the patient’s skin; never retain the burning
20 material inside the cup when the cup is placed onto the skin.

21 17. An Acupuncturist shall keep complete and accurate records on each patient who is
22 given treatment, including but not limited to, treatments given, progress made and complications,
23 if any, resulting of the treatment.

24 18. If complication(s) arise out of discharging a treatment, the patient “shall be referred
25 immediately to a physician or dentist or podiatrist”² ... by the acupuncture provider.

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28 ² California Code of Regulations, Title 16, Section 1399.451 (e).

1 19. The informed consent form signed by Patient 1 did not include the cupping procedure
2 with the patient before or after performing it. Therefore, Patient 1 underwent cupping unaware of
3 the hazards, complications, that could arise. This is an extreme departure of the standard of care.

4 20. Respondent's failed to follow one or more of the safety guideline recommendation to
5 "Avoid Fire Cupping Burns"³; therefore Patient 1 was harmed. This was an extreme deviation of
6 the standard of care.

7 21. On or about June 29, 2015 a "Report by person involved" was completed by
8 Respondent describing the incident, there was no acupuncture progress note reflecting the
9 treatment rendered and the complication arising of discharging the cupping procedure completed
10 by Respondent. This is an extreme departure from the standard of care.

11 22. Respondent failed to immediately refer Patient 1 to a physician following the incident
12 and injuries sustained by the Patient 1. Respondent made no referral of Patient 1 to a physician.
13 This is an extreme departure of the standard of care.

14 **FIRST CAUSE FOR DISCIPLINE**

15 **(Gross Negligence)**

16 23. Respondent is subject to disciplinary action under 4955.2, subdivision (a), in that he
17 was grossly negligent in his care and treatment of his patient, Patient 1. The circumstances are as
18 follows:

19 24. complainant refers to, and by reference incorporates herein as if fully set forth the
20 facts and circumstances alleged in paragraphs 12 through 22, above.

21 25. Respondent's failure to conform to the applicable standard of care when treating
22 Patient 1, includes the following acts and/or omissions which constitutes extreme departures from
23 the standard of practice:

24 A. General safe practices for sue of an open flame were not followed during the cupping
25 procedure, therefore burns were caused to the patient.

26
27 ³ Clean Needle Technique 7th Manual, Published by the Council of Colleges of
28 Acupuncture and Oriental Medicine © 2015, Revised January 2016. "Fire Cupping" (pages 31 -
32).

1 B. The complication (burns) were treated by Respondent which is not within the scope
2 and practice of an acupuncturist to do so.

3 C. Patient should have been referred to a physician for the prompt attention of the
4 complication arising from discharging the treatment and records should have reflected such the
5 complications Respondent encountered when discharging the treatment. Further, on the date of
6 the incident, there was neither a progress note nor a referral to a physician documented.

7 **SECOND CAUSE FOR DISCIPLINE**

8 **(Failure to Maintain Adequate and Accurate Records Relating to the**
9 **Provision of Services to their Patients.)**

10 26. Respondent is subject to disciplinary action under 4955.1, subdivision (e), in that he
11 failed to maintain adequate and accurate records relating to the provisions of services to his
12 patient, Patient 1. The circumstances are as follows:

13 27. Complainant refers to, and by reference incorporates herein as if fully set forth the
14 facts and circumstances alleged in paragraphs 12 through 22, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 **(Incompetence)**

17 28. Respondent is subject to disciplinary action under 4955.2, subdivision (c), in that he
18 was incompetent in his care and treatment of his patient, Patient 1. The circumstances are as
19 follows:

20 29. Complainant refers to, and by reference incorporates herein as if fully set forth the
21 facts and circumstances alleged in paragraphs 12 through 22, above.

22 **FOURTH CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct)**

24 30. Respondent is subject to disciplinary action under section 4955 of the Code for
25 unprofessional conduct. The circumstances are as follows:

26 31. Complainant refers to, and by reference incorporates herein as if fully set forth the
27 facts and circumstances alleged in paragraphs 12 through 25, above.

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PRAYER

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

1. Revoking or suspending Acupuncturist License No. AC 12992, issued to Jeffrey Chieh Jen Tien, L.Ac.;
2. Ordering Jeffrey Chieh Jen Tien, L.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: April 15, 2020

Original Signature on File
BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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