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FILED
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ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:
ERIK NIELSEN, L.Ac.
1864 Orinda Ct.
Thousand Oaks, CA 91362
Acupuncturist License No. AC 3657,

Respondent.

Case No. 1A-2013-118

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board.
2. On or about August 23, 1989, the Acupuncture Board issued Acupuncturist License No. AC 3657 to Erik Nielsen, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2016, unless renewed.

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1 **JURISDICTION**

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

5 4. Section 4928.1 of the Code states:

6 “Protection of the public shall be the highest priority for the acupuncture board in
7 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
8 public is inconsistent with other interests sought to be promoted, the protection of the public shall
9 be paramount.”

10 5. Section 4927, subdivision (d), of the Code states:

11 “‘Acupuncture’ means the stimulation of a certain point or points on or near the surface of
12 the body by the insertion of needles to prevent or modify the perception of pain or to normalize
13 physiological functions, including pain control, for the treatment of certain diseases or
14 dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and
15 moxibustion.”

16 6. Section 4937 of the Code states, in pertinent part:

17 “An acupuncturist's license authorizes the holder thereof:

18 “(a) To engage in the practice of acupuncture.

19 “(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques,
20 exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and
21 dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits
22 any person who does not possess an acupuncturist’s license or another license as a healing arts
23 practitioner from performing, or prescribing the use of any modality listed in this subdivision.

24 “. . .”

25 7. Section 4955 of the Code states:

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

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

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“...”

“(i) Any action or conduct that would have warranted the denial of the acupuncture license.

“...”

8. Section 4955.2 of the Code states, in pertinent part:

“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:

“... ”

“(c) Incompetence.”

9. Section 2052 of the Code states:

“(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or with or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a County jail not exceeding one year, or by both the fine and either imprisonment.

“...”

“(c) The remedy provided in this section shall not preclude any other remedy provided by law.”

9. Section 726 of the Code states, in pertinent part:

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

1 Respondent told Ms. Z. to remove her underwear, but did not leave the room while she
2 removed her underwear. Ms. Z. laid on her back on the examination table with her legs extended
3 in front of her during Respondent's internal examination which took approximately 2 minutes.

4 Respondent placed the gloved fingers of his hand into Ms. Z.'s vagina while he placed his
5 other hand on her stomach. While Respondent had his hand in Ms. Z.'s vagina he told her to
6 tighten her buttocks and suck in her stomach. Ms. Z. was surprised and humiliated by
7 Respondent's instructions to tighten her buttocks and suck in her stomach, as she had never been
8 instructed to do this during any other vaginal examination.

9 16. After Respondent removed his hand from Ms. Z.'s vagina he asked how her neck felt.
10 Ms. Z. told Respondent her neck was fine but Respondent repeatedly asked if he could check her
11 neck, so Ms. Z. permitted him to do so. Respondent had Ms. Z. lay on her back and grasp the side
12 of the examination table which caused her gown to open and expose her body to Respondent.
13 Respondent stretched Ms. Z.'s neck and told her to stand up and face away from him. After Ms.
14 Z. stood up Respondent picked her up and cracked her back.

15 Ms. Z. got dressed, and Respondent provided her with various herbs. When Ms. Z. paid
16 Respondent he said he would only accept payment for the herbs and would not charge her for the
17 other services he had performed during this visit. Ms. Z. filed a formal complaint with the Board
18 about Respondent's actions during this visit.

19 17. Respondent's records for Ms. Z.'s June 8, 2013, visit document only the types of
20 herbs he dispensed to her, and does not mention the breast or vaginal examination, nor the spinal
21 manipulation he performed. The Board's investigator questioned Respondent about Ms. Z.'s
22 treatment which included her June 8, 2013, visit. Respondent denied performing a breast or a
23 vaginal examination. Respondent stated there was no reason for him to conduct a pelvic
24 examination because he knew her fibroids were smaller after he palpated her stomach. During his
25 interview with the Board's investigator Respondent stated he had performed acupuncture,
26 ultrasound, deep heat, and oriental massage during Ms. Z.'s visit. However, Respondent's
27 records for Ms. Z.'s June 8, 2013, visit do not reflect those treatments.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (Sexual Misconduct)

3 18. Respondent is subject to disciplinary action under section 726 of the Code in that he
4 committed acts of sexual misconduct with Patient Ms. Z. during acupuncture treatment. The
5 circumstances are as follows:

6 19. Complainant refers to, and by reference incorporates herein paragraphs 14 through
7 18, inclusive, above.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Unlicensed Practice of Medicine)

10 20. Respondent is further subject to disciplinary action under section 2052, subdivision
11 (a) of the Code in that his acts of sexual misconduct with Patient Ms. Z. constitute the unlicensed
12 practice of medicine.

13 21. Complainant refers to, and by reference incorporates herein paragraphs 14 through
14 18, inclusive, above.

15 **THIRD CAUSE FOR DISCIPLINE**

16 (Unprofessional Conduct)

17 22. Respondent is further subject to disciplinary action under section 4955, subdivision
18 (i) of the Code in that he engaged in unprofessional conduct by breaching the rules or ethical code
19 of conduct of the profession of acupuncture, and by engaging in conduct unbecoming to an
20 acupuncturist in good standing in the profession and which demonstrates an unfitness to practice
21 acupuncture.² The circumstances are as follows:

22 23. Complainant refers to, and by reference incorporates herein paragraphs 14 through
23 18, inclusive, above.

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28 ² See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.

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FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

24. Respondent is further subject to disciplinary action under section 4955, subdivision (c), of the Code in that the Respondent's care and treatment of Patient Ms. Z demonstrated incompetence.

25. Complainant refers to, and by reference incorporates herein paragraphs 14 through 18, inclusive, above.

FIFTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Records)

26. Respondent is further subject to disciplinary action under section 4955.1, subdivision (e), of the Code and section 1399.453 of title 16 of the California Code of Regulations in that he failed to keep complete and accurate records regarding the Respondent's care and treatment of Patient Ms. Z.

27. Complainant refers to, and by reference incorporates herein paragraphs 14 through 18, inclusive, 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 Number AC 3657, issued to Erik Nielsen;
2. Ordering him 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. If placed on probation, ordering him to pay the Acupuncture Board the costs of probation monitoring; and;
4. Taking such other and further action as deemed necessary and proper.

DATED: APR 14 2015



TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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