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FILED

JUL 31 2013

ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:
SUNNY CHEN YOUNG
1745 Saratoga Avenue, Suite D
San Jose, CA 95129

Acupuncture License No. AC 5361

Respondent.

Case No. 1A-2011-161

ACCUSATION

Complainant alleges:

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
2. On or about July 17, 1996, the Acupuncture Board (Board) issued Acupuncture License Number AC 5361 to Sunny Chen Young (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2013, unless renewed.

JURISDICTION

1
2 3. This Accusation is brought before the Board, Department of Consumer Affairs, under
3 the authority of the following laws. All section references are to the Business and Professions
4 Code unless otherwise indicated.

5 4. Section 4955 of the Code states:

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

8 "Unprofessional conduct shall include, but not be limited to, the following:

9 ...

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

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

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

21 6. Section 4956 of the Code states:

22 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
23 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
24 is deemed to be a conviction within the meaning of this chapter.

25 "The board may order a license suspended or revoked, or may deny a license, or may
26 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
27 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
28 suspending the imposition of sentence irrespective of a subsequent order under the provisions of

1 Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
2 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
3 complaint, information, or indictment."

4 COST RECOVERY

5 7. Section 4959 of the Code states:

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

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

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

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

24 "(e) All costs recovered under this section shall be considered a reimbursement
25 for costs incurred and shall be deposited in the Acupuncture Fund."
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1 FIRST CAUSE FOR DISCIPLINE

2 (Substantially-related conviction)

3 8. Respondent is subject to disciplinary action under code section 4955(b) and 4956 in
4 that she was convicted of violating Penal Code section 550(a)(6), making a fraudulent claim for
5 health care benefit. The circumstances are as follows:

6 9. On or about March 11, 2011, R.S.¹ went to Respondent's acupuncture clinic for care
7 and treatment of his wrist. Respondent provided acupuncture treatment, then billed R.S.'s
8 insurance company Anthem Blue Cross (Anthem). R.S. did not return to Respondent for
9 acupuncture treatment; however, in April 2011, he received a quarterly statement from his
10 insurance company which indicated Respondent had billed Anthem for approximately thirty
11 seven acupuncture treatment sessions between October 2010 and April 2011. Respondent billed
12 Anthem approximately \$10,724.00 for treatment allegedly provided to R.S., and Anthem paid
13 Respondent approximately \$4,863.83. Respondent endorsed and deposited the checks into two
14 bank accounts in her name.

15 10. On or about September 11, 2012, a criminal felony complaint titled *People of the*
16 *State of California vs. Sunny Chen Young*, case no. C1240627 was filed in Santa Clara County
17 Superior Court. Count 1 charged Respondent with a felony violation of Penal Code section
18 550(a)(6), making a fraudulent claim for payment of a health care benefit in an amount exceeding
19 \$950.00. Count 2 charged Respondent with a felony violation of Penal Code section 550(a)(7),
20 submitting a false claim for health benefit. Count 3 charged Respondent with a felony violation
21 of Penal Code section 550(a)(8), presenting multiple claims for health care benefit.

22 11. On or about January 16, 2013, Respondent was convicted on her plea of nolo
23 contendere to a misdemeanor violation of Penal Code section 550(a)(6), making a fraudulent
24 claim for payment of a health care benefit in an amount exceeding \$950.00. The District
25 Attorney dismissed Counts 2 and 3 in view of her plea. Respondent was granted three years
26

27 ¹ Initials are used to protect patient privacy. The patient name will be provided upon a
28 request for discovery.

1 formal probation, sentenced to serve ninety days in county jail, and ordered to pay \$4,573.87 in
2 restitution to Anthem Blue Cross Insurance.

3 12. Therefore, Respondent's license is subject to disciplinary action for unprofessional
4 conduct based on her substantially related conviction which is in violation of code sections
5 4955(b) and 4956.

6 SECOND CAUSE FOR DISCIPLINE

7 (Fraudulent or Dishonest Act substantially-related to the practice of acupuncture)

8 13. Paragraphs 9 through 11 are incorporated herein.


9 14. Respondent's act of submitting thirty seven claims for payment to Patient R.S.'s
10 insurance company for treatment Respondent never provided to R.S. constitutes a dishonest act
11 substantially related to the practice of acupuncture in violation of code sections 4955.1(b) and
12 4955.1(c).

13 PRAYER

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

- 16 1. Revoking or suspending Acupuncture License Number AC 5361, issued to Sunny
17 Chen Young;
- 18 2. Ordering Sunny Chen Young to pay to the Acupuncture Board the reasonable costs of
19 the investigation and enforcement of this case; and if placed on probation, the cost of probation
20 monitoring pursuant to Business and Professions Code section 4959 and California Code of
21 Regulations section 1399.469;
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 7/24/13

24 
25 TERRI THORFINN SON
26 Executive Officer
27 Acupuncture Board
28 Department of Consumer Affairs
State of California
Complainant

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