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FILED

JUN 30 2011

ACUPUNCTURE BOARD

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

In the Matter of the Statement of Issues
Against:
SUSAN W. SHAO
1223 37th Avenue #103
Oakland, CA 94601

Applicant.

Case No. 1A-2010-173

STATEMENT OF ISSUES

Complainant alleges:

PARTIES

1. Janelle Wedge (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
2. On or about September 22, 2010, the Acupuncture Board, Department of Consumer Affairs, received an application for an acupuncture license from Susan W. Shao (Applicant). On or about September 18, 2010, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on March 16, 2011. On April 1, 2011, Applicant requested a hearing.

JURISDICTION

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3. This Statement of Issues 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 unless otherwise indicated.

4. 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 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.

...

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

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:

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

6. Section 475 of the Code states:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

"(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

"(2) Conviction of a crime.

1 “(3) Commission of any act involving dishonesty, fraud or deceit with the intent to
2 substantially benefit himself or another, or substantially injure another.

3 “(4) Commission of any act which, if done by a licentiate of the business or profession in
4 question, would be grounds for suspension or revocation of license.”

5 7. Section 480 of the Code states, in pertinent part:

6 “(a) A board may deny a license regulated by this code on the grounds that the applicant has
7 one of the following:

8 - “(1) Been convicted of a crime. A conviction within the meaning of this section means a
9 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
10 board is permitted to take following the establishment of a conviction that may be taken when the
11 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
12 an order granting probation is made suspending the imposition of sentence, irrespective of a
13 subsequent order under the provisions of Section 1203.4 of the Penal Code.

14 “(2) Done any act involving dishonesty, fraud or deceit with the intent to substantially
15 benefit himself or another, or substantially injure another; or

16 “(3)(A) Done any act which if done by a licentiate of the business or profession in question,
17 would be grounds for suspension or revocation of license.

18 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
19 substantially related to the qualifications, functions or duties of the business or profession for
20 which application is made.

21 “..”

22 “(c) A board may deny a license regulated by this code on the ground that the applicant
23 knowingly made a false statement of fact required to be revealed in the application for such
24 license.”

25 8. Section 490 of the Code provides, in pertinent part, that a board may suspend or
26 revoke a license on the ground that the licensee has been convicted of a crime substantially
27 related to the qualifications, functions, or duties of the business or profession for which the
28 license was issued.

1 9. Section 493 of the Code provides, in pertinent part, that “in a proceeding conducted
2 by a board within the department pursuant to law to deny an application for a license or to
3 suspend or revoke a license or otherwise take disciplinary action against a person who holds a
4 license, upon the ground that the applicant or the licensee has been convicted of a crime
5 substantially related to the qualifications, functions, and duties of the licensee in question, the
6 record of conviction of the crime shall be conclusive evidence of the fact that the conviction
7 occurred, but only of that fact, and the board may inquire into the circumstances surrounding the
8 commission of the crime in order to fix the degree of discipline or to determine if the conviction
9 is substantially related to the qualifications, functions, and duties of the licensee in question.”

10 FIRST CAUSE FOR DENIAL OF APPLICATION

11 (Substantially-related Conviction)

12 10. Applicant's application is subject to denial under code sections 475(1)(2), 480(A)(1)
13 480(3)(B), 490(a) and (c), and 4955(b) in that on or about 2009, she was convicted of a
14 misdemeanor violation of San Jose Municipal Code section 6.44.110 [massage therapy license
15 required.] The circumstances are as follows:

16 11. On or about November 7, 2007, in case no. 896899, a Notice to Appear was issued to
17 Applicant, based on a misdemeanor violation of Penal Code section 647.b [solicitation for
18 prostitution] and a misdemeanor violation of Penal Code section 315 [maintaining a place for
19 prostitution]. On the same day, an administrative citation was issued, which charged Applicant
20 with violating the following San Jose Municipal Code sections: 6.44.090 massage business permit
21 required, 6.44.100 massage ownership/management license required, 6.44.270(a) no listing of
22 services , 6.44.230(a) maintain client records and 6.44.230(c) two year records maintenance
23 requirement.

24 12. On or about October 28, 2009, in case no. CC 896899, the District Attorney amended
25 the charges to allege a misdemeanor violation of San Jose Municipal Code section 6.44.110
26 [massage therapy license required]. Applicant was convicted on her plea of nolo contendere, and
27 in view of her plea, the District Attorney dismissed Penal Code section 315 [maintaining a place
28

1 for prostitution.] Applicant was sentenced to one year court probation and ordered to pay a fine
2 of \$170.00.

3 13. The circumstances are as follows:

4 On or about October 18, 2007, San Jose Police Officers investigated Willow Glen
5 Acupuncture in San Jose, California for prostitution activity and an illegal massage business.
6 Officer Brasil checked the San Jose Police Department Permits Unit and learned that the business
7 did not have a massage permit on file.

8 14. On or about October 18, 2007, University of California Officer Chan conducted an
9 undercover investigation of Willow Glen Acupuncture. He posed as a customer and called the
10 telephone number listed for the business. He spoke to an unidentified female and scheduled an
11 appointment for that day.

12 A. At approximately 8:30 p.m., Officer Chen went to the business and spoke to a woman
13 "Mary" (later identified as Applicant). She directed him to enter a room. In the room, he
14 observed a massage table, a small portable heater, a small cabinet containing towels, lotions and
15 oils, and acupuncture pictures on the walls. Applicant told him that the cost for "a half hour"
16 would be \$40.00. He paid her with \$100.00 of pre-recorded Vice Department funds. She told
17 him to undress and left the room. She gave him three \$20 bills in change. Officer Chen laid face
18 down on the massage table and used a towel to cover his buttocks area.

19 B. Applicant re-entered the room. She was not wearing a city-issued massage therapist
20 identification card. She immediately moved the white towel leaving his buttocks area exposed.
21 She began massaging his upper back and lower back area. They engaged in casual conversation.
22 Within a couple minutes, Applicant began massaging his buttocks area. She then attempted to
23 grab for his groin area. She stopped massaging and asked if his friend, who recommended the
24 place, had explained that he needed to tip her. Officer Chen nodded his head, indicating "yes."
25 Applicant immediately told him to flip over onto his backside, and he followed her direction.

26 C. Officer Chen motioned to her with both hands clenched and asked her if "we could
27 fuck?" which is street terminology meaning sexual intercourse. She replied, "No, we don't do
28 that here. We only do hand jobs" which he understood to mean street terminology for manual

1 stimulation of the penis. She then raised her right hand and displayed four fingers to him. Based
2 on his training and experience, he believed that Applicant's hand gesture meant \$40.00 for a hand
3 job. He asked if he should pay her now, and she told him that he could pay her later. He believed
4 that the conversation was an agreement for prostitution. She then attempted to reach for his groin
5 again, and he believed that this was an act of furtherance towards the act of prostitution. He
6 stalled for time and his half hour massage was complete. As he was getting ready to leave,
7 Applicant asked him for her tip and/or payment. He provided her with the three \$20 dollar bills
8 she had given him as change.

9 D. On or about November 7, 2007, Officer Chan returned to the business to confirm that
10 it was conducting prostitution and/or illegal massage. He scheduled an appointment and was able
11 to solicit an act of prostitution (manual stimulation) and full body massage from a female later
12 identified as X.Z. Officer Chan and two San Jose Police officers entered the business at
13 approximately 12:20 p.m. No one was in the front section of the office. The officers conducted a
14 sweep of the business and located Applicant performing a massage on an adult male.

15 E. Officer Brasil later showed Officer Chen a photo from the San Jose Police
16 Department database, and Officer Chen positively identified the female as Applicant, who had
17 provided a massage to him at Willow Glen Acupuncture.

18 15. Therefore, Applicant's application for licensure is subject to denial based on her
19 misdemeanor conviction to violating San Jose Municipal Code section 6.44.110 [massage therapy
20 license required] which is substantially related to the qualifications, functions and duties of an
21 acupuncturist.

22 SECOND CAUSE FOR DENIAL OF APPLICATION

23 (Corrupt act)

24 16. Paragraphs 11 through 14 are incorporated herein.

25 17. Respondent's actions described above constitute corrupt acts in violation of code
26 section 4955.1(c) [committing any act involving dishonesty or corruption with respect to the
27 qualifications, functions or duties of an acupuncturist.]
28

1 THIRD CAUSE FOR DISCIPLINE

2 (Dishonest Acts)

3 18. Paragraphs 11 through 14 are incorporated herein.

4 19. Respondent's application is subject to denial under code sections 475(a)(1) and 480(c)
5 [knowingly making a false statement of material fact], 475(a)(3) and 480(a)(2) [dishonesty],
6 4955(i) [any act or conduct that would have warranted the denial of the acupuncture license] and
7 4955.1 (c) [committing any act involving dishonesty or corruption with respect to the
8 qualifications, functions or duties of an acupuncturist.]

9 The circumstances are as follows:

10 20. On or about March 30, 2010, Applicant completed an application for the California
11 Acupuncture Licensing Examination. The application at page 3, question 17 asked: "Have you
12 ever been convicted of, or pled nolo contendere to any offense, misdemeanor or felony in any
13 state, the United States, or a foreign country? NOTE: You are **required** to list any conviction that
14 has been set aside and dismissed under Section 1203.4 Penal Code or under any other provision
15 of law." Applicant answered "no," dated it March 30, 2010 and signed directly underneath a
16 paragraph which stated "I hereby certify under penalty of perjury under the laws of the State of
17 California that all statements made herein are true in every respect, and that misstatements, or
18 omissions of material facts may be cause for denial of this application, or for suspension or
19 revocation of a license." However, at the time Applicant signed the application for examination,
20 she was aware on October 28, 2009, she had been convicted of a misdemeanor violation of San
21 Jose Municipal Code section 6.44.110 [massage therapy license required].

22 21. Respondent's application is subject to denial in that she knowingly made a false
23 statement of material fact in violation of code sections 475(a)(1) and 480(c) [knowingly making a
24 false statement of material fact], section 475(a)(3) and section 480(a)(2) [dishonesty], section
25 4955(i) [any act or conduct that would have warranted the denial of the acupuncture license] and
26 section 4955.1 (c) [committing any act involving dishonesty or corruption with respect to the
27 qualifications, functions or duties of an acupuncturist.]

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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. Denying the application of Susan W. Shao for an acupuncture license;
2. Taking such other and further action as deemed necessary and proper.

DATED: JUN 30 2011


JANNELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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