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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **WAN HE** 4415 Norwalk Drive, Unit 21 San Jose, CA 95129 **Acupuncturist License No. AC 11443** Respondent.	Case No. 1A-2013-210 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this First Amended Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about October 26, 2006, the Acupuncture Board issued Acupuncturist License Number AC 11443 to Wan He (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2016, unless renewed.

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JURISDICTION

3. This First Amended 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 unless otherwise indicated.

4. Section 4955 of the Code states, in relevant part:

"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:

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

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

"(l) The failure to notify the board of the use of any false, assumed, or fictitious name than the name under which he or she is licensed as an individual to practice acupuncture."

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:

"(a) Securing a license by fraud or deceit.

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

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

"(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

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

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6. 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; (b) Repeated negligent acts; (c) Incompetence."

7. 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."

COST RECOVERY

8. Section 4959 of the Code states:

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

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

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

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

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

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Failure to Notify the Board of the Use of a Fictitious Name)

9. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955(l) [failure to notify the Board of the use of a fictitious name]. The circumstances are as follows:

10. Respondent is licensed under the name Wan He; however, she owns Dr. Helen He Acupuncture Clinic and is known as Dr. Helen He. Respondent is not licensed by the Board under the name Dr. Helen He. Respondent's medical records also use the web address: www.drhelenhe.com.

11. Respondent committed unprofessional conduct and/or failure to notify the Board of the use of a fictitious name based on the use of Dr. Helen He, rather than the name she is licensed by, Wen He.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct based on the care provided to Patient JB)

12. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955.2, subdivision (b) [repeated negligent acts] in the care provided to Patient JB, incorporating paragraphs 9 through 11, as if fully set forth below.[1] The circumstances are as follows:

13. In early September 2013, JB called Respondent's clinic to inquire whether Respondent was an in-network provider for United Healthcare. JB was told that Respondent was in-network. JB scheduled an appointment for September 11, 2013 from 6 to 7 p.m. Before the appointment, Patient JB completed paperwork, including a patient information sheet, insurance verification form, and a financial policy statement.

14. On or about September 11, 2013, Patient JB went to Respondent's acupuncture office for treatment. JB's chief complaint and reason for seeking treatment was for stress and irritable bowel syndrome. At this first visit, Respondent told JB that she was not in-network and required

[1] Patient initials are used to protect the patient's privacy. Respondent may learn the name of the patient during the discovery process.

her to pay for the treatment at the beginning of the visit. Patient JB paid $165.00 for the acupuncture treatment ($150) and herbs ($15). The patient made a second appointment for September 14, 2013 (a Saturday) at 10:30 a.m. The patient asked that Respondent not bill her insurance since the acupuncture clinic was not in-network. During this first appointment, JB observed a verbal altercation between the Respondent's receptionist, AW, and a patient complaining about his bill.[2]

15. On or about Saturday September 14, 2013, JB returned to Respondent's clinic for follow-up treatment. According to Patient JB, the office was so busy that she waited for almost one hour after her scheduled appointment to be taken to a treatment room. JB also stated that the Respondent told her to pay $315 before the appointment because she was not an in-network provider. Patient JB told Respondent she could not afford that and Respondent offered her $50 treatments. There is no written agreement documenting the $50 treatments offered by Respondent. JB did not pay for any services on September 14, 2013.

16. In the treatment room, Respondent placed the needles and then left the patient in the room. The patient states that she was left alone in the room for so long (approximately two hours) that the lights automatically went off. At that point, the patient had to get off of the treatment table, half-dressed, and yell for the doctor. The receptionist, AW, came into the room, apologized, and removed the needles from the patient. JB said that AW told her she would not be charged for the visit. Patient JB scheduled a third appointment for September 18, 2013.

17. During an interview on November 18, 2014 with an investigator for the Department of Consumer Affairs on behalf of the Board, Respondent admitted that her receptionist, AW,[3] removed the patient's needles without Respondent's permission. Respondent could not explain how or why AW would have believed it was acceptable to remove the needles herself. Respondent hired AW from a Craigslist ad and she employed AW for approximately one month. Respondent denied that the patient waited two hours between checks with needles inserted.

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[2] According to AW, her boyfriend came to the office and the two of them got into a fight in front of JB. Respondent asked AW and her boyfriend to leave the office.

[3] During the interview, Respondent only remembered AW's first name; however, sometime later, Respondent was able to locate AW's full name and address.

Respondent did not terminate AW from her employment or discipline after learning that she removed the needles from Patient JB. According to Respondent, AW asked for an advance on her paycheck, which she agreed to, and then AW never returned to work.

18. On or about September 18, 2013, Patient JB called Respondent's office and rescheduled her appointment for September 25, 2013.

19. On or about September 25, 2013, Patient JB was a no-show for her appointment with Respondent. JB never returned to Respondent's clinic.

20. Respondent committed unprofessional conduct, and/or repeated negligent acts, based on the failure of providing adequate patient monitoring to a patient undergoing acupuncture treatment, failing to remove the needles personally from the patient, and not being physically present to complete the patient's acupuncture treatment.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct, Aiding and Abetting the Unlicensed Practice of Acupuncture)

21. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct], and/or 4955, subdivision (d) [aiding and abetting the unlicensed practice], and/or 4955.2, subdivision (b) [repeated negligent acts] based on allowing an unlicensed person to remove acupuncture needles from a patient, incorporating paragraphs 9 through 20 as if fully set forth below. The circumstances are as follows:

22. Respondent hired AW as a receptionist and she worked for Respondent in that capacity from August 28, 2013 to October 1, 2013. AW is not a licensed acupuncturist and has no formal acupuncture training. As part of AW's duties, she was required to check on patients when treatment timers went off and then notify Respondent. Respondent's office contained seven treatment beds in five treatment rooms. When AW first began working for Respondent, Respondent showed her how to remove acupuncture needles from patients and to apply cotton balls to the needle site areas to limit blood flow. AW did not know whether a timer going off meant the treatment was over or not so she notified Respondent. Respondent would then tell AW to remove the needles from the patients because she was usually with another patient. AW never removed acupuncture needles without first telling Respondent. AW placed the used needles in

the red bio-hazard bin as instructed by Respondent. AW estimated that she removed more than 200 needles from patients under the instruction of Respondent.

23. Respondent committed unprofessional conduct, and/or repeated negligent acts, and/or aided and abetted in the unlicensed practice of acupuncture based on allowing an unlicensed person to remove acupuncture needles from a patient.

FOURTH CAUSE FOR DISCIPLINE

(Fraudulent Billing)

24. Respondent is subject to disciplinary action under sections 4955 [unprofessional conduct] and/or 4955.2, subdivision (b) [repeated negligent acts], and/or 4955.1, subdivision (b) [fraud/dishonesty] in the care provided to Patient JB, incorporating paragraphs 9 through 23, as if fully set forth below. The circumstances are as follows:

25. On or about September 11, 2013, Patient JB paid $165 for her Respondent's services, which included $150 for the examination and $15 for herbs.

26. On or about September 28, 2013, Respondent billed Patient JB's insurance $680.00 based on services provided on September 11 and 14, 2013. Respondent billed $200 for an initial examination and two $90 charges for the acupuncture treatments for the September 11th visit. Respondent billed $120 for a normal examination and two $90 charges for the acupuncture treatments for the September 14th visit. Respondent did not inform the insurance company that the second treatment was not completed by Respondent and that it was not a normal visit, despite billing it as a normal visit. Respondent did not inform the insurance company that she did not personally complete the acupuncture treatment of Patient JB either.

27. On or about October 24, 2013, Patient JB's insurance company sent a reimbursement check for $315 to JB. Patient JB never sent the check to Respondent for payment for services.

28. In an undated letter to Patient JB's health insurance company, Respondent cancelled the insurance claim submitted for services on September 11 and 14, 2013.

29. On or about December 13, 2013, Patient JB wrote check number 1178 in the amount of $315 to Respondent for payment for services on September 11 and 14, 2013.

30. On or about August 12, 2014, Respondent hired a collection company to seek payment of $315 from Patient JB.

31. Respondent trained AW, as part of her duties as a receptionist, to bill insurance and patients for the care she provided. AW had no background in medical billing. AW learned from Respondent and another employee who left shortly after AW started how to handle the insurance billings. If a patient was paying out of pocket, they were charged between $90 to $110 per visit for a 30 minute treatment session. If the patient had insurance, Respondent told AW what Current Procedural Terminology (CPT) codes to use and how to bill the insurance company.

32. Respondent told AW to bill the insurance company regardless of what money was received from or billed to the patient. For example, if the patient received one 30 minute acupuncture treatment, Respondent had AW bill the insurance company for two fifteen minute treatments using separate CPT codes. Respondent also instructed AW to bill insurance companies for using different treatment tools, such as a heat lamp, electric stimulation, or therapeutic exercises. Additionally, Respondent instructed AW to bill insurance companies for the full cost of the treatment even when the patient pre-paid a reduced treatment fee based on a Groupon or Living Social discount or for providing a positive Yelp.com review.[4]

33. Respondent committed unprofessional conduct, and/or repeated negligent acts, and/or dishonesty based on billing JB's insurance company for a completed treatment on September 14, 2013, when, in fact, she did not complete the treatment since the receptionist removed the needles from the patient.

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[4] Respondent offered her patient's $25 off of their next treatment if they wrote a positive review of her practice on Yelp.com.

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 11443, issued to Wan He;

2. Ordering Wan He 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: DEC 09 2015

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

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **WAN HE** 4415 Norwalk Drive, Unit 21 San Jose, CA 95129 **Acupuncturist License No. AC 11443** Respondent.	Case No. 1A-2013-210 **SUPPLEMENTAL STATEMENT TO RESPONDENT** [Gov. Code §§ 11505, 11506, 11507]

TO RESPONDENT AND HER ATTORNEY:

Enclosed is a copy of the First Amended Accusation that has been filed with the Acupuncture Board of the Department of Consumer Affairs (Board), pursuant to section 11507 of the Government Code, and which is hereby served on you.

You previously filed a Notice of Defense with the Acupuncture Board, pursuant to sections 11505 and 11506 of the Business and Professions Code, thereby requesting an administrative hearing to present your defense to the charges and allegations in the Accusation. Section 11507 of the Government Code states that you are not entitled to file a further pleading in response to the First Amended Accusation unless the agency in its discretion so orders. All new charges

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contained in the First Amended Accusation are deemed controverted, and any objections to the First Amended Accusation may be made orally and shall be noted in the record.

Dated: November 19, 2015

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
Supervising Deputy Attorney General

EMILY L. BRINKMAN
Deputy Attorney General
Attorneys for Complainant

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **WAN HE** 4415 Norwalk Drive, Unit 21 San Jose, CA 95129 **Acupuncturist License No. AC 11443** Respondent.	Case No. 1A-2013-210 **REQUEST FOR DISCOVERY**

TO RESPONDENT:

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

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

1. Provide the names and addresses of witnesses to the extent known to the Respondent, including, but not limited to, those intended to be called to testify at the hearing, and

2. Provide an opportunity for the Complainant to inspect and make a copy of any of the following in the possession or custody or under control of the Respondent:

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 persons;

c. Statements of witnesses then proposed to be called by the Respondent 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 Respondent now proposes to offer in evidence;

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

f. Investigative reports made by or on behalf of the Respondent 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 Request for Discovery, "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.

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 15 days after service of the Amended 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: November 19, 2015

KAMALA D. HARRIS
Attorney General of California
JOSE R. GUERRERO
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EMILY L. BRINKMAN
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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.

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