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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **PILL HAN, L.AC.** **16613 Pear Blossom Court** **Whittier, CA 90603** **Acupuncturist No. AC 14493,** Respondent.	Case No. 1A-2012-45 **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, Department of Consumer Affairs.

2. On or about September 29, 2011, the Acupuncture Board issued Acupuncturist License Number AC 14493 to PILL HAN, 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 April 30, 2015, unless renewed.

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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 unless otherwise indicated.

4. Section 4928.1 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, subdivision (d), of the Code states:

" '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, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."

6. 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:

" (a) Gross negligence.

"(b) Repeated negligent acts.

". . ."

7. Section 4955 of the Code states, in pertinent 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:

" . . .

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

"..."

8. Section 4955.1 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 a fraudulent act including, but not be limited to, any of the following:

"...

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

9. 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

10. 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."

Factual Summary

11. Mr. K[1] was referred to Respondent who was working as an independent contractor performing acupuncture at a physical therapy clinic. Respondent treated both Mr. K and his wife, patient Mrs. K, who was suffering twitching of her right eye, at their home on seven occasions. On March 29, 2012, after the seven previous treatments did not correct Mrs. K's problem, Respondent inserted a needle under the Mrs. K's right eye and left it there for 30 minutes. During the 30 minute treatment Mrs. K complained her eye felt heavy, that something seemed to be wrong, but Respondent said the needle was appropriately placed, and instructed Mrs. K to keep her eyes closed for the 30 minute treatment. At the end of the treatment Respondent removed the needle and Mrs. K complained of discomfort and vision problems. Respondent said there was no damage to the eye because Respondent did not see any signs of bleeding in Mrs. K's eye. Respondent said any problem should resolve on its own in a short time.

12. On March 30, 2012, Mrs. K called Respondent and told her something was wrong with the eye Respondent treated the night before. Mrs. K told Respondent she was going to an eye doctor. Later that day Mrs. K saw a retinal specialist, who determined that the acupuncture needle had perforated Mrs. K's eye, which caused hemorrhaging and permanent loss of Mrs. K's right peripheral vision.

13. Respondent failed to keep records for any of Mrs. K's treatments. On April 1, 2012, Respondent called Mr. K and told him that she had filled out an application for malpractice

[1] The name of the patient and certain other witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

insurance and purchased a malpractice insurance policy in order to cover the injury to Mrs. K. Respondent asked Mr. K to change the date of Mrs. K's treatment and injury to April 2, 2012, so the injury to Mrs. K's eye would be covered under the insurance policy. Mr. K told Respondent that if he did what she requested and changed Mrs. K's eye treatment and injury date, it would make him an accomplice to insurance fraud, and refused to change the treatment date. Mr. K was unable thereafter to contact Respondent.

14. Mr. K filed a complaint about Respondent's treatment of Mrs. K with the Board, which opened an investigation with the Department of Investigations (DOI). Respondent was interviewed by a DOI investigator approximately ten months after Mrs. K's treatment. When questioned by the DOI Investigator Respondent said she did not always document her acupuncture treatments on patients. Respondent did not have any treatment records for Mrs. K. Respondent said she remembered that on March 29, 2012, she inserted the needle into Mrs. K's acupuncture point[2] SP3.[3] Based the Respondent's interview, the acupuncture point she utilized in treating the patient is actually S1, a point commonly used for eye conditions.

Respondent said the muscle spasms Mrs. K was experiencing may have caused the needle to go further into the eye, but she did not see any blood in the patient's eye.

Respondent acknowledged she asked Mr. K to change the date of Mrs. K's treatment to the day after she received her malpractice insurance.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

15. Respondent is subject to disciplinary action under 4955.2, subsection (a) in that she was grossly negligent in her care and treatment of her patient, Mrs. K. The circumstances are as follows:

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[2] Acupuncture points are locations on the body that are the focus of acupuncture, acupressure, sonopuncture and laser acupuncture treatment. Several hundred acupuncture points are considered to be located along meridians (connected points across the anatomy which affect a specific organ or other part of the body). The Traditional Chinese Medicine (TCM) theory for the selection of such points and their effectiveness is that they work by stimulating the meridian system to bring about relief by rebalancing yin, yang and qi (also spelled "chi" or "ki"). This theory is based on the paradigm of TCM and has no analogue in western medicine.

[3] SP3 is an acupuncture point located near the big toe. SP1 is the acupuncture point located directly below the pupil of the eye between the eyeball and the infraorbital ridge.

16. The standard of care when treating acupuncture patients requires the acupuncturist to complete an adequate examination of the patient, make a proper diagnosis, and use competent treatment protocols while following the principles, concepts and traditions of Asian medicine. An acupuncturist has the responsibility to ensure that the treatment provided is performed with proper technique and precaution to prevent unintended injury to the patient.

17. When providing treatment using an acupuncture point near the eye, the standard of care is for a practitioner to make certain the needle does not cause injury to the eye and surrounding tissues. The location of the acupuncture point near the eye and the surrounding soft tissues require the practitioner to be particularly cautious to prevent injury during the procedure. The initial point location needs to be exact in order to prevent injury.

18. The standard of care when utilizing S1 to avoid eye injury requires extra care in choosing the correct angle of the needle insertion, and not inserting the needle too deeply. Improper angle of insertion of the acupuncture needle or excessive depth of insertion can cause the needle to contact the eye.

19. The standard of care requires that the practitioner warn the patient to keep the eye still during the treatment in order to prevent any movement of the inserted needle. Patient difficulty in keeping the eye still for a prolonged period may require the practitioner to withdraw the needle earlier than might be done if the needle was inserted in a less delicate point. If the patient complains of pain or discomfort during the procedure the standard of care calls for adjusting the needle insertion, or removing the needle to prevent injury.

20. The standard of care also requires the practitioner to prepare adequate and accurate written records at the time of medical treatment.

21. Respondent's care and treatment of patient Mrs. K as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of practice:

A. Respondent's choice of the acupuncture point in which to insert the acupuncture needle into Mrs. K was inaccurate.

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B. Respondent's depth and angle of insertion of the acupuncture needle into Mrs. K's eye was inaccurate.

C. Respondent's speed of insertion of the acupuncture needle into Mrs. K's eye was incorrect.

D. Respondent's judgment to insert the acupuncture needle into Mrs. K's twitching eye was inadequate.

22. Respondent's acts and/or omissions as set forth in paragraphs 15 through 19, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 4955.2, subdivision (a), of the Code. Therefore cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

23. Respondent is subject to disciplinary action under section 4955.2, subdivision (b) of the Code, in that she has committed repeated acts of negligence in the practice of acupuncture. The circumstances are as follows:

24. Complainant refers to, and by reference incorporates herein paragraphs 15 through 19, inclusive, above.

THIRD CAUSE FOR DISCIPLINE

(Altering Records With Fraudulent Intent)

25. Respondent is subject to disciplinary action under section 4955.1, subdivisions (b), and(d) of the Code, for committing a fraudulent act. The circumstances are as follows:

26. Complainant refers to, and by reference incorporates herein, paragraphs 13 and 14 above.

FOURTH CAUSE FOR DISCIPLINE

(Failing to Maintain Adequate and Accurate Records)

27. Respondent is subject to disciplinary action under section 4955.1 subdivision (e) of the Code, and California Code of Regulations, title 16, section 1399.453, for unprofessional conduct. The circumstances are as follows:

28. Complainant refers to, and by reference incorporates herein, paragraphs 13, 14 and 20 above.

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 Number AC 14493, issued to Pill Han, L.Ac.

2. Ordering her 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 her to pay to the Acupuncture Board the costs of probation monitoring, and

4. Taking such other and further action as deemed necessary and proper.

DATED: FEB 24 2015

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

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