BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No.: 1A-2011-45
	)	OAH No.: 2013060374
DOO TAEK LIM, L.AC.	)	
1234 S. WESTERN AVENUE	)	
LOS ANGELES, CA 90006	)	
	)	
Acupuncture License No. AC 2189	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective on NOV 14 2014.

IT IS SO ORDERED OCT 15 2014.

Michael Shi, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

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In the Matter of the Accusation Against:	
DOO TAEK LIM, L.Ac.	Case No. 1A-2011-45
Acupuncture License Number AC 2189,	OAH No. 2013060374
Respondent.	

PROPOSED DECISION

This matter came on regularly for hearing on July 28, 2014, in Los Angeles, California, before H. Stuart Waxman, Administrative Law Judge, Office of Administrative Hearings, State of California.

Wendy Widlus, Deputy Attorney General, represented Complainant, Terri Thorfinnson (Complainant), Executive Officer of the Acupuncture Board (Board).

No appearance was made by or on behalf of Respondent, Doo Taek Lim (Respondent) despite his having been properly served with notice of the date, time and location of the hearing.

Documentary evidence was received. The record was held open to and including August 12, 2014, for Complainant to submit a certified translation of pages AB 062 and AB 063 from Korean into English. On August 5, 2014, the Office of Administrative Hearings received documents from Complainant's counsel which included a translation of page AB 062, but not AB 063. The documents were accompanied by an e-mail from Complainant's counsel to the translator indicating that she was forwarding to him a "single page" for his translation. The Administrative Law Judge ordered the record reopened to and including August 19, 2014, for Complainant to comply with the original order by providing certified translations of both pages. On August 19, 2014, the Office of Administrative Hearings received from Complainant the certified translations which were marked and admitted as Complainant's Exhibit 11. The record was closed on August 19, 2014, and the matter was submitted for decision.

FACTUAL FINDINGS

1. On December 29, 1983, the Acupuncture Board issued Acupuncture license number AC 2189 to Respondent. The license expired on May 31, 2014 and has not been renewed. The Board maintains jurisdiction over this matter pursuant to Business and Professions Code section 118, subdivision (b).

2. On December 8, 1992, the Board issued a Decision After Nonadoption of an administrative law judge's proposed decision. In its Decision, the Board revoked Respondent's acupuncture license, stayed the revocation, and placed Respondent on probation for a period of five years under various terms and conditions. The decision was based on a finding of unprofessional conduct arising out of gross negligence and incompetence. The Decision After Nonadoption became effective on January 7, 1993. Respondent was granted early termination of probation, effective September 13, 1996.

3. On January 17, 2011, patient Ray Yi (Yi or Patient) telephoned Respondent after hearing Respondent speak on a radio show concerning skin rashes. Yi informed Respondent that he had developed a skin rash with extreme itching. Yi mentioned to Respondent that the condition was exacerbated by the stress he was experiencing. Respondent informed Yi that his problem was "lots of stress and lots of fever in the heart, small intestines, lung and large intestines." (Exhibit 11.) He prescribed a formula of herbal medication to Yi which he sent to him for a fee of $150 plus $12 shipping. According to Respondent, he sent Yi a 15-day supply. (*Ibid.*) According to Yi, it was a 10-day supply. (Exhibit 7, AB 056.) That discrepancy is not determinative in this action.

4. Yi telephoned Respondent again on February 18, 2011. According to Respondent, Yi stated that his condition had improved with the medication but then returned. (Exhibit 11.) According to Yi, he informed Respondent that the medication had not had any effect. (Exhibit 7, AB 056.) No finding need be made on that issue because, in any event, Respondent prescribed another 10-day regimen of the same medications he had originally prescribed.

5. On a date not disclosed by the evidence, but after Yi had taken the herbal medication for the 10-day period, Yi telephoned Respondent again and stated that the medication still had not been effective in curing his symptoms. Respondent told Yi that he would not see immediate results with the medications he had prescribed, and he instructed Yi to continue to take them for another 30 days. Yi declined to do so. Instead, he sought treatment from another health care provider who prescribed alternate medications, and he quickly recovered.

6. On August 15, 2011, Lance S. Lee, D.C., L.Ac., issued an expert witness report regarding Respondent's care and treatment of Yi. Dr. Lee wrote in part:

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The Patient's records submitted by the Attorney[1] include a patient information page (page 1) and an herbal prescription page (page 2 which has been translated) with the chief complaint (pruritus of the skin) and the name of a formula (Return of Spring Cool the Diaphragm Powder) written down by hand. As the name implies, the formula has a cooling effect and is commonly used in inflammatory conditions that match the differentiation pattern for which the formula is used. In addition to the handwritten formula, at the bottom portion of the page there is a table in printed form containing the dosages and names of different herbs, which when combined together constitute a generally tonifying formula. The herbs in the table do not match the herbs used in the handwritten formula. It is uncertain which set of herbs had been prescribed for the Patient.

It was interesting to note that the patient information page had a paragraph at the bottom with a place for the Patient to sign and date to authorize the Acupuncturist and other employeed [*sic*] physicians to provide services to the Patient. In this case, the Patient's signature and date were missing since the Patient did not present to the office in person.

Recommended Standard of Care Within the Acupuncture Profession

The standard of care within the acupuncture profession in providing care to the general public calls for an adequate examination of the patient, making proper diagnosis, and competently providing treatment while following the principles, concepts and traditions of Asian medicine.

An acupuncturist usually examines a patient by asking pertinent questions about symptoms, assessing the patient's physical condition by inspecting the quality of the pulse and tongue characteristics, and by observing other important clinical manifestations of the patient.
In addition, the standard of care for a licensed acupuncturist encompasses the ability to provide basic medical care and assessment, such as taking vital signs, performing basic physical examinations, identifying signs and symptoms of possible side-effects of treatment provided, and managing cases where a referral to another medical professional is in order.

[¶] . . . [¶]

As there are a number of differentiation patterns and diagnoses that can be made for itchiness of the skin, it may be a difficult [*sic*] to properly diagnose a

[1] In his report, Dr. Lee makes several references to a letter and records submitted by an attorney who was then representing Respondent. The attorney's letter was not included in the evidence submitted in this administrative action.

skin condition, even after a careful evaluation. Therefore, diagnosing the condition without actually examining a patient in person is even more difficult.

As noted previously, the evaluation, diagnosis, and treatment protocol used for a particular patient and for a particular condition can vary from practitioner to practitioner. However, an adequate evaluation/examination, diagnosis based on the principles and theories of Asian medicine, and a proper treatment protocol based on the evaluation and the diagnosis are the main requirements in the standard of care.

In term[s] of standard of care in record keeping, acupunturists are required "to maintain adequate and accurate records relating to the provision of serves [*sic*] to their patients."[2] Adequate and accurate patient records may include chief complaints, findings from the examination of the patient, assessment of the patient's condition, and treatments provided.

Departure from the Standard of Care

Business and Professions (B & P) Code 4955.2(b) – Repeated negligent acts

Based on the allegations made in the complaint by the Patient and the description of the events that took place in this case by Mr. Lim's attorney—that the Acupuncturist diagnosed the condition of the Patient as stress-related skin disorder through telephone conversations and prescribed herbal medicine without actually examining the Patient—it is my opinion that Mr. Lim's failure to perform an adequate examination of the Patient prior to prescribing herbal therapy constitutes a **negligent act** because the Acupuncturist has failed to fully assess the presenting condition of the Patient-whether the condition is Yang/Yin in nature, heat/cold, excess/deficient, exterior/interior, any associated imbalances in essential elements of the body and disharmony of the body's organs—all of which will lead to a differentiation pattern for the Patient and determine the proper herbal treatment to be provided. Although Mr. Lim may have asked many detailed questions during the telephone conversations to satisfy the need for an adequate evaluation of the Patient's condition, such information is simply not found in the patient records.

Even though the Attorney argues in the response letter that the Patient failed to give "any opportunity to examine his person" by not vising [*sic*] the Acupuncturist's office, it is my opinion that this failure does not relieve the duty of the Acupuncturist as a primary health provider to perform an adequate evaluation prior to providing herbal treatment.

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[2]Acupuncture Board. *Laws and Regulations Relating to the Practice of Acupuncture* (2007), Page 8. [This is actually footnote iii in the text.]

"Pruritus of the skin" as noted in the patient records is a symptom and cannot be considered to be a proper diagnosis or differentiation pattern according to Asian medicine. Prescribing herbal therapy without a proper differentiation pattern and which is based solely on one symptom, in my opinion constitutes a **negligent act** because of the possibility of causing unwanted side-effects or worsening of the symptom as alleged by the patient in this case. In addition, as described above, there is uncertainty as to which set of herbs had been prescribed to the Patient.

In my opinion, the Acupuncturist had additional opportunities to more fully assess the Patient's condition by inviting him to come to the Acupuncturist's office. The first chance was at the time the Patient called after taking the first 10-days of herbal therapy and reported no improvement in his condition. The second chance was at the time the Patient called after taking the second 10-days['] worth of herbs and reported that his symptoms had become worse. Instead of inviting the Patient to come to the office for an evaluation, the Acupuncturist instead recommended additional 30-days [*sic*] of herbal therapy.

B & P Code 4955.1(e) – Inadequate Record Keeping

In the patient records, there were no notes or references to the contents of the telephone conversations with the Patient that led the Acupuncturist to make a "diagnosis" of a skin condition caused by stress and to rule out other possible causes of the itchy skin. The Patient may have described additional aspects of his condition and the Acupuncturist may have asked questions about the onset of the symptom, the exact areas of itchiness, any presence of skin eruptions, any previous allergies, infections or medications, etc. However, only a symptom "pruritus of the skin" and two possible herbal prescriptions were found in the records.

Mr. Lim's failure to keep adequate and accurate patient record—including any descriptions of the symptoms by the Patient that led him to diagnose a stress-related skin disorder and prescribe herbal therapy, and the uncertainty as to which set of herbs had been prescribed to the Patient—would constitute **negligence** on the part of Mr. Lim. Many of the details about the interactions between the Patient and the Acupuncturist that were included in the Attorney's response letter and the reasons for prescribing the herbs were not found in the patient records.

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In conclusion, I have found the following instances of departure from [the] standard of care by Mr. Doo Taek Lim:

> Repeated negligent acts by failing to perform an adequate examination of a patient before prescribing herbal therapy, by prescribing herbal therapy without a proper diagnosis, and by failing to keep adequate and accurate patient records.

(Exhibit 7, AB 70 through AB 74.) (Emphasis in text.)

7. The Board incurred costs, including attorney fees, in the total sum of $7,650, in connection with the investigation and prosecution of this action. Those costs are just and reasonable.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's acupuncture license pursuant to Business and Professions Code section 4955.2, subdivision (b), for repeated negligent acts, as set forth in Findings 3, 4, 5, and 6.

2. Cause exists to discipline Respondent's acupuncture license pursuant to Business and Professions Code section 4955.1, subdivision (e), and California Code of Regulations, title 19, section 1399.453, for inadequate record keeping, as set forth in Findings 3, 4, 5, and 6.

3. Cause exists to order Respondent to pay the costs claimed under section 125.3, as set forth in Finding 7.

4. Respondent committed repeated negligent acts when he treated a patient by telephone on two occasions and recommended treatment which the patient rejected on a third. By doing so, he failed to properly examine and diagnose the patient. In addition, he failed to keep adequate notes of the telephone conversations with the patient. Respondent's prior license discipline, based on gross negligence and incompetence, serves as an aggravating factor. No evidence was offered to show mitigation, extenuation, or rehabilitation. Accordingly, the public health, safety, welfare and interest can be adequately protected only by the revocation of Respondent's acupuncture license.

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ORDER

1. Acupuncture license number AC 2189, issued to Respondent, Doo Taek Lim, is revoked.

2. Respondent shall pay to the Acupuncture Board its costs of investigation and enforcement in the amount of $7,650 within 90 days of the effective date of this Decision.

Dated: August 27, 2014

H. STUART WAXMAN
Administrative Law Judge
Office of Administrative Hearings