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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: **CHIN CHUAN LIANG, L.AC.** **9819 Las Tunas Dr.** **Temple City, CA 91780** **Acupuncturist License No. 2225,** Respondent.	Case No. 1A-2011-164 **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 December 29, 1983, the Acupuncture Board issued Acupuncturist License Number 2225 to CHIN CHUAN LIANG, 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 July 31, 2016, unless renewed.

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 4928.1, of the Code 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 4937 of the Code states:

"An acupuncturist's license authorizes the holder thereof:

"(a) To engage in the practice of acupuncture.

"(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

"(c) For purposes of this section, a 'magnet' means a mineral or metal that produces a magnetic field without the application of an electric current.

"(d) For purposes of this section, a 'magnet' means a mineral or metal that produces a magnetic field without the application of an electric current.

"(e) For purposes of this section, "dietary supplement" has the same meaning as defined in subsection(ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021

or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

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:

". . ."

"(c) False or misleading advertising.

"(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.

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

". . ."

9. Section 4955.2 of the Code 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.

"(c) Incompetence."

10. Section 651 of the Code states:

"(a) It is unlawful for any person licensed under this division or under any initiative act

referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A "public communication" as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

"(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

"(1) Contains a misrepresentation of fact.

"(2) Is likely to mislead or deceive because of a failure to disclose material facts.

"(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

". . .

". . .

". . .

"(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

"(6) Makes a claim either of professional superiority or of performing services in a superior manner, unless that claim is relevant to the service being performed and can be substantiated with objective scientific evidence.

"(7) Makes a scientific claim that cannot be substantiated by reliable, peer reviewed, published scientific studies.

"(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

". . .

". . .

"(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

"(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

"(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

"(h) Advertising by any person so licensed may include the following:

"(1) A statement of the name of the practitioner.

"(2) A statement of addresses and telephone numbers of the offices maintained by the practitioner.

"(3) A statement of office hours regularly maintained by the practitioner.

"(4) A statement of languages, other than English, fluently spoken by the practitioner or a person in the practitioner's office."

11. Section 17500 of the Code states:

"It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, or to make or disseminate or cause to be made or disseminated from this state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or

misleading, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that imprisonment and fine."

12. California Code of Regulations 1399.455 states:

"(a) A licensed acupuncturist may advertise the provision of any acupuncture services authorized to be provided by such licensure in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

"(b) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising which represents in any manner that the acupuncturist can cure any type of disease, condition or symptom.

"(c) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising of a practice, technique or procedure which is not within the scope of the practice of acupuncture as defined in Section 4927 and 4937 of the code and which is the unlawful practice of medicine."

COST RECOVERY

13. 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."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

14. Respondent is subject to disciplinary action under 4955.2, subsection (a), of the Code, in that he was grossly negligent in his care and treatment of three patients. The circumstances are as follows:

Patient 1

15. Patient 1 was five months pregnant when she developed a serious skin rash. Respondent told her he could treat the rash during a phone conversation and Patient 1 came to Respondent's office to obtain a diagnosis and treatment of her rash.

16. Respondent cut a sample of her hair, placed it on paper, and told Patient 1 to hold the paper. Patient 1 complied with Respondent's directions whereupon Respondent said Patient 1 was suffering from a virus which he could remove with his "invested equipment [sic]."

17. Respondent treated Patient 1 by directing her to hold a sample of her hair while she listened to music for 30 minutes. Following the 30 minutes, Respondent told Patient 1 that 60 percent of her virus was gone. Respondent charged Patient 1 $300 for this treatment.

18. Respondent told Patient 1 she must make another appointment with him to get rid of the remaining 40 percent of the virus.

19. When Patient 1 did not make a follow-up appointment Respondent called her home and told her she must have another treatment. Respondent told Patient 1 that her unborn baby was "under virus attack," and she might miscarry without his treatment.

20. Patient 1 refused to make an appointment and Respondent said "You are a bad mother, not care about your unborn baby, your body has too many virus."

Patient M.Z.

21. In April, 2010, M.Z.,[1] became ill, lost her sense of smell, and consequently made an appointment to see Respondent for treatment. At the appointment after M.Z. described her symptoms to Respondent, he cut pieces of her hair and placed three strands of hair into three separate packets labeled "A," "B" and "C".

22. Respondent then told M. Z. to press her tongue against the roof of her mouth, while holding two hair packets between her middle and index finger while she listened to music through headphones for approximately two minutes.

23. Respondent instructed M.Z. to repeat this procedure for three minutes while wearing sunglasses.

24. Respondent then told M.Z. to hold two hair packets while she pressed another finger against various tiny bottles labeled with names of different viruses. While M.Z. followed these instructions Respondent told her to pinch her right thumb and index finger together as he attempted to separate them. Respondent explained to M.Z. that he was checking her "DNA" and if he had a hard time separating her fingers it meant she had a virus.

25. Respondent then told M.Z. she had a virus which required medication and treatment.

26. When M.Z. refused Respondent's medication and treatment, Respondent told her ". . .the virus could spread to your heart or head."

Patient B.L.

27. In June, 2012, B.L., who was troubled with various allergies, made an appointment with Respondent. Respondent told B.L. he would utilize a DNA test to determine the source of his allergies.

[1] The name of the student is abbreviated to protect her privacy rights. The name will be provided to Respondent upon written request for discovery.

28. Respondent instructed B.L. to touch a book, an egg, and peanuts, with his left hand, and put his thumb and middle finger together while Respondent attempted to pull them apart. Respondent told B.L. if Respondent could separate his fingers, this meant he had been diagnosed as having an allergy.

29. Respondent wanted to charge B.L. additional money to perform another test which required B.L. to hold a cup, but B.L. refused this test.

30. Respondent told B.L. he required treatment which would cost $100 per treatment. Respondent did not perform any acupuncture and B.L. left Respondent's office without having any treatment.

Investigation

31. During the Board's investigation of this matter a Department of Consumer Affairs Division of Investigations Investigator interviewed Respondent. Respondent stated he practices acupuncture and uses oriental medical techniques to determine the cause(s) of a patient's illness.

32. Respondent stated he uses the B-Digital O-Ring test with his patients which he learned at an acupuncture seminar eight years ago.

33. Respondent stated the B-Digital O-Ring test involves cutting a patient's hair, having a patient listen to music, and having a patient hold their fingers together while he attempts to separate the fingers.

34. Respondent stated each of these actions allows him to utilize the B-Digital O-Ring test to diagnose his patients.

35. Respondent stated the diagnosis he makes through utilizing the B-Digital O-Ring test provides him with information to write prescriptions for Chinese herbs.

36. Respondent stated he charges $60 for the initial patient evaluation, and charges up to $300 for patient treatments.

37. Respondent stated he advertises his business in certain Chinese language newspapers.

38. During the interview, Respondent listened to a radio advertisement in Chinese from 2013, and confirmed this was his authorized advertisement.

39. Respondent was asked if the radio advertisement stated he was able to treat cancer

and he said, "No."

40. Respondent was asked if he had ever advertised the ability to treat cancer and he said, "No."

41. Respondent was asked if he had ever advertised the ability to cure cancer and he said, "No."

42. Respondent was asked if he had ever advertised a cure for cancer and he said, "No."

43. During the investigation, Respondent's printed Chinese advertisements were translated from Chinese to English. Respondent's printed advertisements state he is a "Doctor of Otolaryngology" whose treatment methods included removing a patient's DNA to determine the source of a virus.

44. Respondent's printed advertisements state he also offers patients ". . . a new method to treat allergy by combining DNA technique and TCM point. . . [sic]."

45. Respondent's radio advertisement was translated from Chinese to English. Respondent's radio advertisement introduces Respondent and states that by using a toothbrush, saliva and hair, the cause of illness can be found in a few minutes.

46. Respondent's radio advertisement states that Respondent uses the digital optics principal recognized by the medical community to examine DNA to determine the cause and treatment of illness.

47. Respondent's radio advertisement states Respondent has utilized the digital optics principal to treat innumerable autoimmune diseases.

48. Respondent's radio advertisement states that Respondent has utilized the digital optics principal to treat cancers.

49. The standard of care requires an acupuncturist to formulate a Traditional Chinese Medicine (TCM) diagnosis and treatment plan during the patient's initial intake interview. The acupuncturist must obtain a full medical history from the patient.

50. When treating a patient who suffers from allergies, the standard of care in TCM requires the acupuncturist to prepare a treatment plan which includes identifying specific acupuncture points and herbal prescriptions to treat the patient's allergies.

51. The standard of care also requires the acupuncturist to educate the patient about their condition and obtain the patient's consent to begin utilizing acupuncture needles during acupuncture treatment.

52. The standard of care requires an acupuncturist to practice legitimate TCM acupuncture techniques in which the acupuncturist has been trained.

53. The standard of care requires that an acupuncturist treat patients when the acupuncturist is equipped to do so. TCM does not train acupuncturists to identify viruses, nor does it equip them to do so.

54. Respondent failed to conform to the applicable standard of care for an acupuncturist in his care and treatment of his patients Patient 1, M.Z., and B.L. because he failed to perform a complete and accurate diagnosis utilizing TCM for his patients.

55. Respondent failed to conform to the applicable standard of care for an acupuncturist in his care and treatment of his patients Patient 1, M.Z., and B.L. because he failed to formulate a treatment plan which included the identification of specific acupuncture points and herbal prescriptions to treat the patients' conditions.

56. Respondent failed to conform to the applicable standard of care for an acupuncturist in his care and treatment of his patients Patient 1, M.Z., and B.L. because he failed to use the legitimate TCM acupuncture techniques in which he had been trained.

57. Respondent failed to conform to the applicable standard of care for an acupuncturist in his care and treatment of his patients Patient 1, M.Z., and B.L. because he claimed to be able to diagnose a virus, although as an acupuncturist he was not trained to identify or treat viruses.

58. Respondent's care and treatment of Patient 1 as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of practice:

A. Respondent's failure to carry out a Traditional Chinese Medicine diagnostic process during Patient 1's appointment.

B. Respondent's failure to take a medical history or followed the TCM diagnosis standard procedure of reading the pulse or tongue.

C. Respondent's statement to Patient 1 that he diagnosed her skin rash from her holding

a sample of her hair, which is not a TCM diagnosis standard practice.

D. Respondent's statement to Patient 1 that a treatment for her rash was to hold a piece of her hair in her hand while listening to music, which is not a TCM treatment.

59. Respondent's care and treatment of M.Z. as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of practice:

A. Respondent's failure to carry out a Traditional Chinese Medicine diagnostic process during M.Z.'s appointment.

B. Respondent's statement that he was able to diagnose a virus for the patient when he was neither trained nor equipped to do so.

C. Respondent's statement that he could diagnose M.Z.'s illness from a sample of her hair.

60. Respondent's care and treatment of B.L. as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of practice:

A. Respondent's failure to carry out a Traditional Chinese Medicine diagnostic process during Patient B.L.'s appointment.

B. Respondent's statement that he could diagnosis B.L.'s allergy by separating B.L.'s fingers.

61. The standard of care requires an acupuncturist to practice legitimate TCM acupuncture techniques in which the acupuncturist has been trained. Use of the O-Ring test is not a legitimate acupuncture technique and Respondent's use of the test constituted gross negligence.

62. The standard of care requires an acupuncturist to refrain from using false and misleading advertising. The use of false and misleading statements within an advertisement is outside the scope of legitimate acupuncture practice and Respondent's conduct in this regard constitutes gross negligence.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

63. Respondent is subject to disciplinary action under section 4955.2, subdivision (b), of the Code, in that he has committed repeated acts of negligence in the practice of acupuncture.

The circumstances are as follows:

64. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Fraudulent Conduct)

65. Respondent is subject to disciplinary action under section 4955.1, subdivisions (b) and (c), of the Code, for fraudulent acts. The circumstances are as follows:

66. The allegations of the First Cause for Discipline are incorporated herein by reference as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

67. Respondent is subject to disciplinary action under section 4955.2, subdivision (c), of the Code, for incompetence. The circumstances are as follows:

68. The allegations of the First Cause for Discipline are Incorporated herein by reference as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(False and Misleading Advertising)

69. Respondent is subject to disciplinary action under section 651, subdivision (a), (b), (e), (f), and (g), and section 17500 of the Code for false and misleading advertising. The circumstances are as follows:

70. The allegations of the First Cause for Discipline are Incorporated herein by reference as if fully set forth.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

71. Respondent is subject to disciplinary action under section 4955, subdivisions (c) and (i), of the Code, and section 1399.455 of the California Code of Regulations for unprofessional conduct. The circumstances are as follows:

72. The facts and allegations of set forth in paragraphs 14 through 70 are incorporated

herein by reference as if fully set forth.

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 2225, issued to Chin Chuan Liang, L.Ac.;

2. Ordering him 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 him 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: SEP 15 2015

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

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