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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **HSUAN-CHING STEVE LIU, L.Ac.** **4050 Temple City Blvd.** **Rosemead, CA 91770** **Acupuncturist License No. AC 2255,** Respondent.	Case No. 1A-2012-165 **ACCUSATION**

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 December 29, 1983, the Acupuncture Board issued Acupuncturist License Number AC 2255 to Hsuan-Ching Steve Liu, 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 October 31, 2016, unless renewed.

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 (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 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:

". . .

"(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

". . .

"(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.

". . ."

6. Section 4955.1 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 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.

". . ."

7. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals and includes the following:

"(a) Any drug that bears the legend:" Caution: federal law prohibits dispensing without prescription," Rx only," or words of similar import.

"(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a___," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to section 4006."

8. Section 4956 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter.

"The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

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

10. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

11. 21 United States Code sections 331 (b), 353 (b)(1) and 333 (a)(1), provide, in pertinent part, that it is a violation of federal law to sell a prescription drug which is sold in interstate commerce without a prescription from a practitioner licensed by law to administer such drug.

COSTS

12. 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

(Conviction of a Crime in 2008)

13. Respondent is subject to disciplinary action under Code section 4955, subdivision (b), in that he was convicted in United States District Court, Central District of California of violating 21 United States Code sections 331(b), 353(b)(1) and 333(a)(1) (Selling Prescription Drugs Without Valid Prescription), a crime which is substantially related to the qualifications, functions, and duties of an acupuncturist.

14. On or about May 21, 2008, in proceedings entitled *USA v. Liu, case number CR 08-117 JC*, then pending in the United States District Court for the Central District of California (Western Division-Los Angeles), Respondent was convicted of Count 1, a violation of 21 United States Code sections 331(b), 353(b)(1) and 333(a)(1), as a misdemeanor by his plea of guilty to the one-count Information.

15. On or about September 4, 2008, following Respondent's plea of guilty, the Court placed Respondent on two (2) years probation, under terms and condition which included that he perform 100 hours of community service, that he pay a $25.00 special assessment; and that he pay a total fine of $5,000 within seven (7) days of sentencing.

16. The facts underlying Respondent's plea of guilty to the single count Indictment are as follows:

17. Respondent operated the Golden Life Medical Group & Herbal and Acupuncture Center, a.k.a. Ten Jen Acupuncture Clinic and Herb Center, a.k.a. AA Medical Center a.k.a. Sinus Clinic, in Rosemead California. Respondent was not licensed by law to administer prescription drugs such as Viagra[1] and Propecia.[2]

18. On or about July 30, 2007, an undercover cooperative witness (UCW) working with the Department of Homeland Security and the Bureau of Immigration and Customs Enforcement (ICE) telephoned Respondent. The UCW told Respondent he was in China and asked Respondent if his cousin could pick up 15 bottles of Viagra and three bottles of Propecia for UCW. Respondent said it would not be a problem.

19. On or about September 4, 2007, an ICE undercover agent (UC) acting as the UCW's cousin called Respondent to discuss the price of the Viagra and Propecia. Respondent told the UC the purchase price and said the drugs would be available to be picked up on September 6, 2007.

20. On or about September 6, 2007, the UC called Respondent and ordered 15 bottles of Viagra and three bottles of Propecia. During that conversation Respondent instructed the UC to go to Respondent's clinic to obtain the drugs.

21. Later that day the UC went to the clinic and met Respondent. While the UC and Respondent were negotiating the purchase price for the drugs Respondent told the UC that if the UC went elsewhere for the drugs it would be more difficult to acquire them. Respondent

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[1] Viagra relaxes muscles found in the walls of blood vessels and increases blood flow to particular areas of the body and is used to treat erectile dysfunction (impotence) in men. Serious drug interactions can occur when certain medicines are used together with Viagra: heart disease or heart rhythm problems, coronary artery disease, recent heart attack, recent stroke, or congestive heart failure, angina, high or low blood pressure, liver or kidney disease, dialysis, blood cell disorders such as sickle cell anemia, multiple myeloma, or leukemia, retinitis pigmentosa, physical deformity of the penis, and avoidance of sexual intercourse for health reasons. Viagra can decrease blood flow to the optic nerve of the eye, causing sudden vision loss.

Viagra is also a dangerous drug within the meaning of Code section 4022.

[2] Propecia prevents the conversion of testosterone to dihydrotestosterone (DHT) in the body and is used for the treatment of male pattern hair loss. Propecia should not be used by women or children, and can cause birth defects if used by a pregnant woman.

Propecia is a dangerous drug within the meaning of Code section 4022.

ultimately sold the UC a total of six bottles of Viagra, containing 30 tablets each, and three bottles of Propecia.

22. At no time during any of his conversations with the UC did Respondent mention the necessity of having a prescription to obtain the drugs, nor did Respondent ask for, or receive a prescription for the drugs.

23. On or about October 1, 2007, the UC telephoned Respondent and ordered five bottles of Viagra.

24. On or about October 4, 2007, the UC went to Respondent's clinic to pick up the five bottles of Viagra he had ordered. Respondent told the UC that he only had four bottles of Viagra, and the UC would have to return for the additional bottle the following week. The UC purchased four bottles of Viagra from Respondent for $1,320.

25. Respondent told the UC that he must call at least two or three days in advance if interested in purchasing quantities of 50 to 100 bottles of Viagra.

26. The UC asked Respondent if he had medicine for cholesterol or high blood pressure for sale. Respondent said he had Lipitor[3] to use for cholesterol, Atenolol[4] to use for blood pressure, and other similar drugs.

27. The UC telephoned Respondent's clinic on or about October 10, 2007, and spoke to

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[3] Lipitor belongs to a group of drugs called "statins" and is used to treat high cholesterol, and to lower the risk of stroke, heart attack, or other heart complications in people with type 2 diabetes, coronary heart disease, or other risk factors. Lipitor should not be taken by pregnant or breast-feeding women, or by people with liver disease. Serious drug interactions can occur when certain medicines are used together with Lipitor.

Lipitor is a dangerous drug within the meaning of Code section 4022.

[4] Atenolol is in a group of drugs called beta-blockers which affect the heart and is used to treat angina, hypertension, and to treat or prevent heart attack. If undergoing surgery, it is necessary to inform the surgeon that atenolol is being used and it may be necessary to temporarily stop using atenolol. Atenolol can cause side effects that may impair thinking or reactions. If suffering from asthma, bronchitis, emphysema, diabetes, low blood pressure, heart problems, depression, liver or kidney disease, thyroid disorders, myasthenia gravis, pheochromocytoma, or problems with circulation special tests or a dose adjustment may be required to safely take Atenolol. Atenolol can cause harm to an unborn baby or a nursing baby.

Atenolol is a dangerous drug within the meaning of Code section 4022.

Respondent's secretary, who provided prices to purchase Lipitor and Atenolol in various strengths from Respondent. The UC told Respondent's secretary he wanted to purchase one bottle each of the drugs.

28. During a telephone conversation on or about October 11, 2007, Respondent told the UC to pick up the pills at his clinic on the following day.

29. The UC went to Respondent's clinic on or about October 12, 2007, and paid Respondent's secretary $415 to purchase one bottle of Lipitor and two bottles of Atenolol.

30. On or about October 30, 2007, ICE and Food and Drug Administration agents executed a search warrant at Respondent's clinic and seized various prescription medications which included:

412 bottles of Viagra,

31 bottles of Cialis,[5]

32 bottles of Levitra,[6]

37 vials of HGH,[7]

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[5] Cialis relaxes muscles found in the walls of blood vessels and increases blood flow to particular areas of the body and is used to treat erectile dysfunction (impotence) in men and symptoms of benign prostatic hypertrophy. Serious drug interactions can occur when certain medicines are used together with Viagra. To ensure against serious side effects a physician should be informed of the following medical conditions prior to prescribing Cialis; heart disease or heart rhythm problems, coronary artery disease, recent heart attack, recent stroke, or congestive heart failure, angina, high or low blood pressure, liver or kidney disease, dialysis, blood cell disorders such as sickle cell anemia, multiple myeloma, or leukemia, retinitis pigmentosa, physical deformity of the penis, and avoidance of sexual intercourse for health reasons. Cialis can decrease blood flow to the optic nerve of the eye, causing sudden vision loss.

Cialis is a dangerous drug within the meaning of Code section 4022.

[6] Levitra relaxes muscles found in the walls of blood vessels and increases blood flow to particular areas of the body used to treat erectile dysfunction (impotence) in men. Taking Levitra with certain other medicines can cause a sudden and serious decrease in blood pressure. Levitra should not be taken with Adempas or various nitrate drugs. To ensure against serious side effects a physician should be informed of the following medical conditions prior to prescribing Levitra: heart disease or heart rhythm problems, coronary artery disease, recent heart attack, a personal or family history of Long QT syndrome, recent stroke, or congestive heart failure, angina, high or low blood pressure, seizures, liver or kidney disease, dialysis, blood cell disorders such as sickle cell anemia, multiple myeloma, or leukemia, bleeding disorders such as hemophilia, stomach ulcers retinitis pigmentosa, physical deformity of the penis, and avoidance of sexual intercourse for health reasons. Levitra can decrease blood flow to the optic nerve of the eye, causing sudden vision loss.

Levitra is a dangerous drug within the meaning of Code section 4022.

24 bottles of Atenolol,

7 bottles of Propecia,

1 bottle of Amoxicillin[8], and

7 packs of Tamiflu[9].

31. Following execution of the search warrant the law enforcement agents interviewed Respondent who admitted he had a number of "customers" who had been purchasing prescription drugs from him for years.

32. During his interview with the law enforcement agents Respondent admitted that he had been selling Viagra since 2000.

33. During his interview with the law enforcement agents Respondent admitted that he sold 200 to 400 bottles of Viagra per month for $260 per bottle.

34. On or about June 17, 2008, the Federal probation officer interviewed Respondent at the United States Probation Office in the presence of his attorney and with the assistance of a Mandarin language interpreter for the Presentence Report and Sentence Recommendation.

35. During the Presentence interview Respondent said he met UCW, who he believed to

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(...continued)

[7] HGH (human growth hormone) is produced by the pituitary gland, spurs growth in children and adolescents, helps to regulate body composition, body fluids, muscle and bone growth, sugar and fat metabolism and heart function. The most common uses for HGH are not FDA approved including use with other performance-enhancing drugs such as anabolic steroids to attempt to build muscle and improve athletic performance, and for anti-aging therapy.

HGH is a dangerous drug within the meaning of Code section 4022.

[8] Amoxicillin is a penicillin antibiotic that fights bacteria and is used to treat many different types of infection. To ensure against serious side effects a physician should be informed of the following medical conditions prior to prescribing Amoxicillin; allergies to cephalosporins, asthma, liver or kidney disease, bleeding or blood clotting disorders, and mononucleosis.

Amoxicillin is a dangerous drug within the meaning of Code section 4022.

[9] Tamiflu is a viral neuro-aminidase inhibitor used to prevent influenza type A which should be used cautiously in patients with chronic cardiac or renal disease, elderly patients, pregnant or breast-feeding patients and children younger than one year old.

Tamiflu is a dangerous drug within the meaning of Code section 4022.

be a member of a Chinese "Black Mafia" group, several years before. When they met, UCW tried to sell Respondent counterfeit Viagra but Respondent declined to purchase it from him.

36. During the Presentence interview Respondent said when UCW called him from China and said his brother-in-law needed a few pieces of Viagra Respondent did not want to offend the "Black Mafia" and agreed to obtain the Viagra for UCW.

37. During the Presentence interview Respondent said he obtained the medications he sold to UCW from a medical doctor who works in his clinic.

38. During the Presentence interview Respondent admitted that he sold Viagra and Propecia to people other than UCW.

39. On or about April 22, 2014, Respondent wrote a letter regarding his above-described Federal conviction to the Board.

40. Respondent's letter to the Board omitted significant details from the facts supporting his Federal conviction for 21 United States Code sections 331(b), 353(b)(1) and 333(a)(1), (Selling Prescription Drugs Without Valid Prescription), the statements he made to the law enforcement agents who executed the search warrant at his clinic, and the statements he made to the Federal probation officer recorded in the Presentence Report and Sentence Recommendation relied upon by the Federal Court to sentence him.

41. In his letter to the Board Respondent states he obtained "some Viagra samples" from one of his associates who was a medical doctor to supply to UCW.

42. In his letter to the Board Respondent states after he supplied the Viagra samples to UCW ". . . several federal agents came to my office and searched the premises wherein they found no counterfeit items."

43. Respondent failed to disclose to the Board the facts and circumstances set forth in paragraphs 18 through 29 and 31 through 33 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 License Number AC 2255, issued to Hsuan-

Ching Steve Liu, L.Ac.;

2. Ordering Hsuan-Ching Steve Liu, L.Ac. 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: DEC 21 2015

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

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