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FILED

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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ALON MARCUS, L.Ac.** 400-29th Street, #419 Oakland, CA 94609 License No. AC 2345 Respondent.	Case No. 1A-2010-65 **ACCUSATION**

Complainant alleges:

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

2. On October 23, 1984, Alon Marcus, L.Ac. (Respondent) was issued License No. AC2345. At all relevant times, said license has been current and active and, unless renewed, will expire on November 30, 2014.

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JURISDICTION

3. This action was brought before the Acupuncture Board (Board) under the authority of the following laws and regulations:

4. Business and Professions Code §4955 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:

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

5. Business and Professions Code §4955.2 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."

6. California Code of Regulations, Title 16, §1399.451 provides, in pertinent part:

"(a) The acupuncturist's hands shall be brush-scrubbed with soap and warm water immediately before examining patients or handling acupuncture needles or other instruments.

". . . (f) Acupuncture shall not be performed using hypodermic needles."

COST RECOVERY

7. Business and Professions Code §4959(a) states:

"The board my 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."

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CAUSE FOR DISCIPLINARY ACTION

(Gross Negligence/Repeated Negligent Acts/Incompetence)

8. Respondent's license is subject to discipline and respondent is guilty of unprofessional conduct in violation of Respondent is guilty of unprofessional conduct and subject to disciplinary action under Business and Professions Code sections 4955(d) and/or 4955.2 and or 4955.2(a) and/or 4955.2(b) and/or 4955.2(c), as well as the regulations relating to the practice of acupuncture, in that Respondent was grossly negligent and/or committed repeated negligent acts and/or was incompetent in his patient care and treatment, including but not limited to the following:

A. On or about January 22, 2010, Patient C.G.[1] was referred to Respondent for treatment of severe shoulder pain. At that time, C.G. described her pain as ranging from 7 to 9 on a scaled of 10. On examination, Respondent noted tenderness at of the posterior shoulder at SI-11, 9, TW14. His assessment included 50 year old shoulder pain/inflammation. At that time, he administered trigger point injections of a homeopathic pain reliever, i.e.,Traumeel, 1 cc. The patient observed that he did not wash his hands or put on gloves before administering the treatment.

B. Patient C.G. returned on January 29, 2010, reporting that she had about a day of pain relief, but that overall her painful shoulder condition was unchanged. Continuing his diagnosis of 50 year old shoulder, respondent repeated the trigger point injections with Traumeel. As before, the patient observed that he neither washed his hands nor put on surgical gloves before administering the treatment.

C. Patient C.G. returned again on February 3, 2010 with the same complaints of severe shoulder pain despite the trigger point injections performed by Respondent and despite a cortisone injection that was done at Kaiser. Respondent noted complaints of pain on passive external rotation of the shoulder. At that time, he provided treatment with acupuncture needles, an electrical stimulator and local cupping over the posterior shoulder. When the patient

[1] Patient names are abbreviated to protect privacy.

complained that the treatment was very painful, Respondent advised her that she had a "low pain threshold.

D. On February 5, 2010, Patient C.G. reported that she had noted some improvement after the February 3 treatment and Respondent repeated the treatment with acupuncture needles. Again, the patient noted that he did not wash his hands or put on gloves before administering the treatment. He also performed a Gua sha skin scraping with huan hua oil.[2] The patient experience immediate and intense pain in response to the Gua sha treatment.

E. Patient C.G.'s shoulder condition became increasingly painful and she went to Kaiser where an MRI was performed. The patient was diagnosed with a tear of the supraspinatus, an abnormality and edema of the infraspinatus and myositis of the left shoulder. She was hospitalized, treated with surgery for a large shoulder abscess and discharged home with an antibiotic.

9. Respondent is guilty of unprofessional conduct and subject to disciplinary action under Business and Professions Code sections 4955(d) and/or 4955.2 and/or 4955.2(a) and/or 4955.2(b) and/or 4955.2(c) in that respondent was grossly negligent and/or committed repeated negligent acts and/or was incompetent in the practice of medicine, including but not limited to the following:

A. Respondent failed to follow standard practices regarding hand hygiene before performing treatments;

B. Respondent performed injections on Patient C.G.;

C. Respondent failed to consider the patient's sensitivity and low tolerance for pain before and/or during the administration of deep tissue massage.

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PRAYER

[2] Gua sha is a method of deep massage where an oil is used to lubricate the skin surface and a porcelain spoon is rubbed over the muscle or muscle groups to move Qi (a vital force) and increase circulation.

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged and that following the hearing the Board issue a decision:

1. Revoking or suspending License No. AC 2345 issued to Alon Marcus, L.Ac.;

2. Ordering Alon Marcus, L.Ac., to pay to the Board a sum in the amount of its costs of investigation and prosecution;

3. Ordering Alon Marcus, L.Ac., if placed on probation, to pay the costs of probation monitoring;

4. Taking such other and further action as may be deemed proper and appropriate.

DATED: APR 07 2014

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

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