BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No.: 1A-2010-75
	)	OAH No.: 2013060811
	)	
WILLIAM JAMES GOIT, L.AC.	)	
135 W. AVENIDA SANTIAGO	)	
SAN CLEMENTE, CA 92672-4228	)	
	)	
Acupuncture License No. AC 2716	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

The attached Proposed Decision and Order of the Administrative Law Judge is hereby adopted by the California Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective on MAY 07 2014.

IT IS SO ORDERED APR 07 2014.

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

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Respondent.	

PROPOSED DECISION

Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, heard this matter on December 17, 2013, in San Diego, California.

Deputy Attorney General Laurie Forcucci represented Complainant Janelle Wedge, Executive Officer of the Acupuncture Board (Board).

Ronald W. Chrislip, Attorney at Law, represented Respondent William James Goit, who was present.

The record closed on December 17, 2013.

FACTUAL FINDINGS

1. Complainant Janelle Wedge filed the Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board.

2. On July 15, 1986, the Board issued Acupuncturist License No. AC 2716 to Respondent William James Goit. It currently bears an expiration date of July 31, 2014.

3. On November 16, 2010, by Order of the Orange County Superior Court pursuant to Penal Code section 23, Respondent's acupuncture license was restricted, in that he was required to have a third-party chaperone present during any consultation, examination, or treatment of any female patient. Respondent stipulated to the entry of the Order.

4. The standard of proof applied in making the factual findings is clear and convincing evidence to a reasonable certainty.

Criminal conviction

5. On May 13, 2011, in the Orange County Superior Court, Respondent was convicted by his plea of guilty of a misdemeanor violation of Penal Code section 240, assault. Respondent was placed on three years' informal probation pursuant to terms and conditions that included paying fines, fees, and restitution, attending counseling sessions monthly for one year, and continuing to abide by the terms of the 2010 Order restricting his acupuncture license. A 60-day jail sentence was suspended.

6. Respondent's conviction followed his treatment of ST, a female patient. On April 21, 2010, ST saw Respondent for an acupuncture treatment that included a pressure massage. Following the appointment, ST complained to the Orange County Sheriff's Department that Respondent had touched her in a sexual and inappropriate manner. An investigation ensued.

7. On April 27, 2010, the Orange County District Attorney filed a criminal complaint against Respondent, charging him with one count of misdemeanor sexual battery in violation of Penal Code section 243.4, subdivision (e)(1). The complaint was subsequently amended to replace the sexual battery count with one count of assault.

April 21, 2010 incident and aftermath

8. Respondent testified that, prior to the events of April 21, he had known ST for approximately eight months. He had seen her regularly for treatments for a while, although there was a break of several months. ST's chief complaint that day was low back pain. Respondent placed needles into the appropriate places, and gave ST a massage. She told him she had some marks on her buttocks that she was concerned about, and asked him to look. He pulled her pants down and said "those are stretch marks." He acknowledged touching her buttocks. He testified that this is all that occurred, and denied any sexual interest in ST. Respondent contends that the allegation made by ST was false. He does believe that he crossed a professional boundary, however, by becoming too close to ST, listening to her too much, and by removing her pants. At the time, he explains, it "felt like I was helping her."

9. Respondent's version of the events is belied by his conversation with ST on April 22, 2010. ST telephoned Respondent at the request of the investigating officer, and the call was recorded. During the call, ST repeatedly asks Respondent why he touched her, whether it was sexual in nature, and other questions, and tells him she needs to know for her own sense of closure. Respondent's demeanor during the call, his tone of voice, the overall nature of the conversation, and many specific statements contradict the version of events he gave in his hearing testimony. For example, Respondent says: "I was out of hand," "I was just objectifying you. It's stupid," "It's the dumbest thing I've ever done," "I was acting

stupid," "I've always found you attractive," "I wasn't thinking rationally," and "I feel absolutely horrible." He also expresses concern as to what might happen to him personally and professionally, as a result of ST's complaint.

Respondent's credibility was also negatively impacted by his assertion on direct examination that this was the first and only complaint made against him as an acupuncturist. He was impeached by proof that in 2007 another patient had complained to police about a treatment session. Although the complaint was not substantiated, and ended at that point, it was still a complaint made by a patient. Respondent apologized for his error in not recounting this previous complaint in his testimony.

Psychological evaluation

10. During the pre-trial phase of the criminal case, Respondent agreed to submit to a psychosexual evaluation and examination. Veronica A. Thomas, Ph.D., a licensed clinical and forensic psychologist, undertook the evaluation, and issued a written report dated April 8, 2011. Dr. Thomas reviewed the investigation materials, took a sexual history, conducted a clinical interview, and administered and evaluated the results of a battery of tests.

Dr. Thomas's report is thorough, consistent with the record, and well-reasoned. Her opinions are persuasive. Her findings included the following:

> [Respondent] is a 53 year old Caucasian licensed acupuncturist, married with two grown children . . . . He is intelligent and psychiatrically stable. He denied any psychotic symptoms. He is not paranoid. He is intelligent and personable. He ascribes to an Eastern medical and science philosophy that involves the pursuit and exchange of energies between individuals to treat human medical problems. He has devoted his adult life to the study of Chi Kung and lives his personal life according to this philosophy. [¶] . . . [¶] Personality testing finds that [Respondent] functions generally very well, although he is feeling a lot of anxiety and underlying emotional turmoil at this time. Measuring his emotional and personality functions with the MMPI-2, he tests as gullible and somewhat naïve, . . . There is no finding of psychopathy or general criminality. There is no finding that he is predatory or otherwise oriented toward taking from others and his belief system is fixed and ego syntonic.
>
> In reviewing the police reports, victim interviews, covert call and interviews of [Respondent] with investigators, the charged action appears to be best described as a boundary violation wherein a professional became overly involved or enmeshed in the treatment process and blurred the boundary between his and the patient's needs. He took advantage of a client in an

> opportunistic manner. The sexual component is evident and the explanation of the thinking and philosophy behind the Chi Kung practice is explained in ways that suggest rationalization and justification on the part of [Respondent].

In sum, Dr. Thomas concluded that Respondent:

> represents a low risk of reoffending outside of the office setting. He does not represent a risk of sexual harm to minors of either sex. He does not require sex specific treatment. Professional counseling regarding the cognitive and psychological processes internal to himself that led to the current charged crime would contribute to further reducing the likelihood of subsequent actions on his part.

Respondent's evidence

11. Respondent testified that he employs the "balance method" of acupuncture. He ascribes to the Chinese medicine belief that all pain has an emotional component. He therefore talks a lot to his patients to help get to the root of why they are in pain. Respondent described himself as a very caring doctor, who cares tremendously about his patients.

12. Respondent has made significant changes to his practice since the incident. He no longer includes massage in his treatment, and has become more of a technician, despite his belief that treating emotional issues is essential. Respondent found it very difficult to practice with a chaperone as required by the Superior Court. His practice was reduced to "practically nothing," and he filed for bankruptcy.

Despite all of the difficulties, Respondent has attempted to stay positive. He saw Dr. Thomas for psychoanalysis for the required one year, then continued for another six months because he felt he was benefiting from the treatment. He also completed a boundaries course, which cost over $4,000. Respondent felt he learned a great deal from the course.

13. Jenny Denise Goit is Respondent's wife, and she testified on his behalf. They have been married for 29 years and have two adult children. Goit is a seventh grade teacher. She believes in Respondent and in his calling as a healer; she has referred many friends and family members to him. She has never doubted Respondent's character, and describes him as a faithful husband with "no sexual issues or problems."

14. Respondent presented three reference letters. Dan Knudson wrote on November 2, 2010, that he is a chiropractor with a professional relationship with Respondent. Knudson holds Respondent "in high regard both personally as well as professionally." Frank Domenichini, (a retired Orange County superior court judge), wrote a note describing Respondent as "a kind and considerate acupuncturist." The note is dated

November 15, 2010. In an undated letter, T. Hutton wrote that Respondent "is a true healer," and that his experience seeing Respondent "has been only positive."

Costs

15. It was certified that the Board incurred the following costs in connection with the investigation and prosecution of this Accusation:

Deputy Attorney General		
2009-2010	8.00 hours @ $170/hour	$1,360.00
2010-2011	51.25 hours @ $170/hour	$8,712.50
2011-2012	18.25 hours @ $170/hour	$3,102.50
2012-2013	12.75 hours @ $170/hour	$2,167.50
2013-2014	25.75 hours @ $170/hour	$4,377.50
	Total:	$20,500.00
Investigator		
2010-2011	22.50 hours @ $161/hour	$3,622.50[1]
	Grand Total:	$24,122.50

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 4955, the Board may discipline a licensee for unprofessional conduct. Unprofessional conduct includes "conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist . . . ." (Bus. & Prof. Code, § 4955, subd. (b).) Assault on a patient is a substantially related crime. Cause for disciplinary action against Respondent's license exists pursuant to Business and Professions Code section 4955, subdivision (b), by reason of the matters set forth in Findings 5 through 7.

2. Pursuant to Business and Professions Code section 4955, subdivision (i), unprofessional conduct includes "Any action or conduct that would have warranted the denial of the acupuncture license."[2] Respondent admitted that he committed assault on a

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[1] The investigator's cost declaration states the total as $4,427.50, which is incorrect.

[2] Causes for denial are not specifically referenced in the Acupuncture License Act (Bus. & Prof. Code, § 4925 et. seq.). Section 4938 contains requirements for licensure, however, and subdivision (d) requires that successful applicants not be "subject to denial pursuant to Division 1.5 (commencing with Section 475)." Business and Professions Code section 475, subdivision (a), lists causes for denial of a professional license. These include subdivision (a)(4): "Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license." Although

patient, which is conduct that would have warranted denial of licensure. In addition, the evidence established that Respondent touched his patient ST in an inappropriate and sexual manner, which is conduct that would have warranted denial. Cause for disciplinary action against Respondent's license exists pursuant to Business and Professions Code section 4955, subdivision (i), by reason of the matters set forth in Findings 5 through 9.

3. As cause for discipline has been established, the next area of inquiry is the degree of discipline that is appropriate to impose. Before the Board is an acupuncturist with over 30 years of practice, and a single criminal conviction for inappropriate conduct with a patient. Respondent crossed the line when he touched ST inappropriately. It was an act that was out of character for him; no similar acts were shown and the criminal process concluded with a plea to misdemeanor assault, not to a sexual offense. Nonetheless, his actions were serious and indefensible. Respondent clearly feels great remorse, but struggles in facing up to his conduct. Perhaps understandably, given the ramifications, he has been less than honest about what happened, and even asserted that he has had no other complaints in his practice. This was not true; there was a prior complaint. But when the totality of the evidence is examined, it appears that the analysis provided by psychologist Thomas comes closest to the mark: Respondent is not at risk to reoffend.

This is a very difficult case. Respondent's lack of candor regarding the incident is very troubling. But keeping in mind the Board's duty to protect the public, it is nonetheless concluded that the evidence supports a stayed revocation. The public interest will be sufficiently protected by a term of probation subject to appropriate conditions, including course work in ethics. And despite the prior evaluation and therapy sessions, the facts warrant further testing by a Board-authorized psychologist followed by counseling, if such is the recommendation. A term of suspension of practice, while recommended by the Board's guidelines, appears a punitive action and is not warranted.

Costs

4. Business and Professions Code section 4959, subdivision (a), provides that a licensee found to have committed unprofessional conduct may be ordered to pay the Board "a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case." The case of *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32 sets forth the factors to be considered when determining the amount of ordered costs. Those factors include whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct. Two of these factors militate in Respondent's favor. The case was based upon a criminal conviction and the Board called no witnesses. The total costs expended to bring the action were excessive given these facts. In addition, Respondent was

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the statutory scheme is somewhat confusing, it nonetheless appears clear that assault on a patient is conduct warranting denial of an acupuncture license.

credible in his assertion of financial difficulties and thus demonstrated reduced financial ability to pay. In addition, time spent regarding the Penal Code section 23 proceedings were included in the cost bill, and it is unclear whether such costs are recoverable in the administrative action. In view of this, it would be appropriate to reduce the cost recovery to $12,500.

ORDER

Acupuncturist License No. AC 2716 issued to Respondent William James Goit is revoked. However, revocation is stayed for a period of five years upon the following terms and conditions:

1. PSYCHOLOGICAL EVALUATION – Within 90 days of this decision and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a psychological evaluation (and psychological testing, if deemed necessary) by a Board appointed California licensed psychologist. The Board shall receive a current DSM-V diagnosis and a written report regarding Respondent's judgment and/or ability to function independently as an acupuncturist with safety to the public, and whatever other information the Board deems relevant to the case. Respondent shall execute a release authorizing the evaluator to release all information to the Board. The completed evaluation is the sole property of the Board. If the Board concludes from the results of the evaluation that Respondent is unable to practice independently and safely, he shall immediately cease practice and shall not resume practice until notified by the Board. If the Board concludes from the results of the evaluation that Respondent would benefit from ongoing psychotherapy, Respondent shall comply with the Board's directives in that regard. Respondent shall pay all costs associated with the psychological evaluation. Failure to pay costs will be considered a violation of the probation order.

2. COURSE WORK – Respondent shall take and successfully complete not less than 20 semester units or 30 quarter units of course work in the area of ethics. All course work shall be taken at the graduate level at a school approved by the Board. Classroom attendance must be specifically required. Course work must be completed within the first year of probation. The required course work shall be in addition to any continuing education courses that may be required for license renewal. Within 90 days of the effective date of this decision, Respondent shall submit a plan for the Board's prior approval for meeting the education requirement. All costs of the course work shall be borne by Respondent.

3. OBEY ALL LAWS – Respondent shall obey all federal, state, and local laws and all regulations governing the practice of acupuncture in California. A full

and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within 72 hours of occurrence.

4. QUARTERLY REPORTS – Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

5. SURVEILLANCE PROGRAM – Respondent shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with 1) victims or complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert examiners.

6. INTERVIEW WITH THE BOARD OR ITS DESIGNEE – Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

7. CHANGES OF EMPLOYMENT – Respondent shall notify the Board in writing, through the assigned probation surveillance compliance officer of any and all changes of employment, location, and address within 30 days of such change.

8. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE – In the event Respondent should leave California to reside or to practice outside the State, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

9. EMPLOYMENT AND SUPERVISION OF TRAINEES – Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

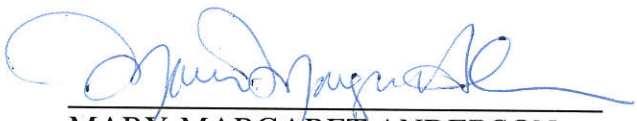
10. COST RECOVERY – Respondent shall pay to the Board its costs of investigation and prosecution in the amount of $12,500.

11. VIOLATION OF PROBATION – If Respondent violates probation in any respect, the Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while

there is an accusation or petition to revoke probation pending against Respondent.

12. COMPLETION OF PROBATION – Upon successful completion of probation, Respondent's license will be fully restored.

Dated: January 24, 2014



MARY-MARGARET ANDERSON
Administrative Law Judge
Office of Administrative Hearings