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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Amended Accusation Against: **MING FAN WONG, L.Ac.** **1226 S. Gladys Ave.** **San Gabriel, CA 91776** **Acupuncturist License No. AC 3517** Respondent.	Case No. 1A-2015-18 AMENDED **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about August 25, 1988, the Acupuncture Board issued Acupuncturist License Number AC 3517 to MING FAN WONG, 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. Respondent's license was delinquent from and between November 17, 2012 to October 7, 2014.

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JURISDICTION

3. This 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 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.

"(c) False or misleading advertising.

"(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.

". . .

"(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

". . ."

6. Section 4927, of the Code states:

"As used in this chapter, unless the context otherwise requires:

"...

"(d) '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, treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."

7. Section 4937 of the Code states, in pertinent part:

"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.

". . ."

8. Section 4955.1 of the Code 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 a fraudulent act including, but not be limited to, any of the following:

"(a) Securing a license by fraud or deceit.

"(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.

"(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

"(e) Failing to maintain adequate and accurate records relating to the provision of services

to their patients."

9. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken 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.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

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. Section 2052 of the Code states:

"(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

"(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

"(c) The remedy provided in this section shall not preclude any other remedy provided by law."

12. Section 651 of the Code states, in pertinent part:

"(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.

"(4) . . .

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

". . .

"(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.

". . .

"(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

"Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or

professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

". . ."

13. California Code of Regulations, title 16, section 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 Sections 4927 and 4937 of the code and which is the unlawful practice of medicine."

14. California Code of Regulations, title 16, section 1399.456, states:

"It is unprofessional conduct for an acupuncturist to use the title 'Doctor' or the abbreviation 'Dr.' in connection with the practice of acupuncture unless he or she possesses a license or certificate which authorizes such use or possesses an earned doctorate degree from an

accredited, approved or authorized educational institution as set forth under Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturist as set forth in Sections 4927 and 4937 of the Code.

"The use of the title 'Doctor' or the abbreviation 'Dr.' by an acupuncturist as authorized above without further indicating the type of license, certificate or degree which authorizes such use, constitutes unprofessional conduct."

15. California Penal Code section 242 states:

"A battery is any willful and unlawful use of force or violence upon the person of another."

16. California Penal Code section 243.25 states:

"When a battery is committed against the person of an elder or dependent adult as defined in section 368, with knowledge that he or she is an elder or a dependent adult, the offense shall be punishable by a fine not to exceed two thousand dollars ($2, 000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

17. California Penal Code section 368 states, in pertinent part:

"(g) As used in this section, 'elder' means any person who is 65 years of age or older."

COSTS

18. 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 2012)

19. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4955, subdivision (b), in that he was convicted of violating Code section 2052, subdivision (a), commonly known as practicing medicine without a license, and California Penal Code section 243.25, commonly known as battery on an elder, crimes which are substantially related to the qualifications, functions and duties of an acupuncturist. The circumstances are as follows:

20. On or about June 12, 2012, in proceedings entitled *People of the State of California v. Ming Fan Wong*, then pending in the Superior Court of California, case number GA 085448, after a plea of nolo contendere, Respondent was convicted of Count 1, a violation of Code section 2052, subdivision (a), as a felony, and Count 4, a violation of California Penal Code section 243.25, as a misdemeanor.

21. Following Respondent's plea of nolo contendere, the Court placed Respondent on three (3) years formal probation, and ordered him, inter alia, to serve one day in County jail, to obey all laws, to pay various fines, and not to practice medicine nor acupuncture without a license.

22. The facts underlying Respondent's convictions are:

23. On or about June 6, 2011, the Medical Board of California (MBC) received a complaint which alleged Respondent was practicing medicine, performing hemorrhoid surgeries, and was not licensed as a physician and surgeon.

24. MBC opened an investigation and determined that Respondent was not a licensed

physician and surgeon.

25. During the investigation MBC did verify that Respondent was a licensed acupuncturist.

26. On or about January 19, 2012, an MBC investigator, who read and spoke Chinese, went to Respondent's acupuncture clinic located at 1214 S. San Gabriel Boulevard, San Gabriel, California.

27. On the outside of Respondent's clinic the MBC investigator observed a large sign written in Chinese which said "Hemorrhoid Center," and another sign which stated "acupuncture" in Chinese characters.

28. When the investigator entered the location he noted Respondent's name in both English and Chinese in various places throughout the clinic. On the reception counter there was a sign with English and Chinese writing and a sign in sheet. The sign in sheet stated in Chinese "Please wait, doctor and nurse are currently giving treatment, please sign in first, thank you."

29. The investigator observed numerous brochures and signs in Chinese which stated Respondent is a medical doctor throughout the office.

30. The investigator observed a wash basin filled with bloodstained surgical tools in an open room marked "physical therapy room."

31. Respondent's assistant LC[1] told the investigator she had worked for Respondent as his part-time assistant for two years under the assumption he was a physician.

32. There were five people sitting in the lobby, one of whom told the investigator she was waiting to see "Dr. Wong" who was presently performing a hemorrhoid surgical procedure in one of the other clinic rooms.

33. When the investigator spoke to Respondent in Chinese and confirmed Respondent's identity Respondent stated he had just finished performing hemorrhoid surgery on a patient and the patient was still in his examination room.

34. The investigator went into the examination room and found PL, who was later

[1] The names of the patient and/or witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

determined to be 73 years old, lying on an examination table.

35. The MBC investigator searched Respondent's entire clinic and found no equipment commonly utilized to perform acupuncture. During his search the investigator found bloody hemorrhoids in a trash bag, as well as the surgical tools Respondent used to remove PL's hemorrhoids.

36. At San Gabriel Hospital later that evening PL said she saw the sign outside Respondent's clinic which said "hemorrhoids" and subsequently went into Respondent's clinic for the first time.

37. PL said she told Respondent, who she referred to as "doctor" throughout her description of what led up to the surgery Respondent performed that day, that she had hemorrhoids.

38. PL said Respondent asked her to undress and then examined her rectum. After Respondent examined PL he spent 30 minutes removing her hemorrhoids with what appeared to be scissors.

39. PL paid Respondent $200 in cash to operate on her to remove her hemorrhoids.

40. PL said she thought Respondent was a doctor because of the advertisements outside the clinic, the fact that Respondent's office looked like a doctor's office, and because Respondent was wearing a white lab coat.

41. PL said she would not have gone to Respondent for surgical removal of her hemorrhoids if she knew he was not a doctor.

42. On or about September 17, 2014, Respondent filed an application with the Board to renew his delinquent license to practice Acupuncture.

43. Question number 8 on the license renewal application form asked if the licensee had been convicted of any violation of law, other than traffic infractions not involving alcohol, dangerous drugs, or controlled substances, since the last renewal of his license.

44. Respondent checked the box next to the word "No" and signed his name on the form declaring the information he provided on the form was true and correct under penalty of perjury, despite the fact he had been convicted of both a felony and a misdemeanor on June 12, 2012.

SECOND CAUSE FOR DISCIPLINE

(False or Misleading advertising)

45. Respondent is subject to disciplinary action under section 4955, subdivision (c), and section 651, subdivisions (a) and (b)(1) of the Code, and California Code of Regulations, title 16, sections 1399.455 and 1399.456, in that he falsely advertised and represented that he was a licensed physician and surgeon. The circumstances are as follows:

46. The facts and circumstances in paragraphs 24 through 29 and 31 are incorporated by reference as if set forth in full herein.

THIRD CAUSE FOR DISCIPLINE

(Commission of Acts Involving Dishonesty or Corruption)

47. Respondent is subject to disciplinary action under section 4955.1, subdivision (c) of the Code, in that he falsely stated under penalty of perjury on his acupuncturist license renewal form that he had not been convicted of a crime or convicted of any violation of law, other than traffic infractions not involving alcohol, dangerous drugs, or controlled substances, since the last renewal of his license. The circumstances are as follows:

48. The facts and circumstances in paragraphs 20, and 42 through 44 are incorporated by reference as if set forth in full herein.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

49. Respondent is subject to disciplinary action under section 4955 of the Code in that he committed unprofessional conduct in that he falsely advertised and represented that he was a licensed physician and surgeon. The circumstances are as follows:

50. The facts and circumstances in paragraphs 20 through 48 are incorporated by reference as if set forth in full herein.

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 3517, issued to MING

FAN WONG, L.Ac.;

2. Ordering Ming Fan Wong, 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 28 2015

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

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