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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **PAMELA MILLER, L.Ac.** **P.O. Box 7034** **Alhambra, CA 91802** **Acupuncturist License No. AC 3644** Respondent.	Case No. 1A-2013-4 **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 September 21, 1989, the Acupuncture Board issued Acupuncturist License Number AC 3644 to Pamela Miller, 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 June 30, 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 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, of the Code states, in pertinent part:

"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."

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, 'plant, animal, and mineral products' means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the

Health and Safety Code.

"(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 substances 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:

". . .

"(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.

". . ."

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:

". . .

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

9. Section 4955.2 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 any one of the following:

"(a) Gross negligence.

"(b) Repeated negligent acts.

"(c) Incompetence."

10. California Code of Regulations, title 16, section 1399.453, states:

"An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments."

COSTS

11. 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."

Facts

12. The California Acupuncture Board (Board) received a copy of a National Practitioner Data Bank[1] (NPDB) Adverse Action Report stating Respondent provided substandard or

[1] The National Practitioner Data Bank is a national databank, created by the Health Care Quality Improvement Act of 1986, that receives, stores, and disseminates records on the conduct and competence of medical

(continued...)

inadequate care to several patients within a 13 month interval. The Board initiated an investigation of the events underlying this report through the Department of Consumer Affairs, Division of Investigation (DOI). The DOI investigator interviewed two of Respondent's patients and Respondent regarding the events which occurred during their treatment.

Patient DD[2]

13. On or about September 13, 2010, Respondent provided acupuncture treatment to DD. DD stated Respondent failed to explain the treatment to her, and seemed irritated by DD's questions.

14. Respondent told DD her acupuncture treatment session would last for 20 minutes.

15. Respondent inserted acupuncture needles into DD's back, arms, legs, and feet while DD lay on the acupuncture table.

16. After inserting the acupuncture needles into DD Respondent left the treatment room and did not return to check on DD during any portion of her acupuncture treatment. There was no method for DD to contact Respondent from her treatment room during her treatment such as a chime, buzzer, or intercom.

17. After undergoing approximately 30 minutes of treatment, DD tried unsuccessfully to get Respondent's attention by screaming Respondent's name for approximately 10 minutes, but Respondent did not return to the room or communicate with DD in any way.

18. After failing to get Respondent's attention DD got off of the acupuncture table with the acupuncture needles still embedded in her body and walked outside the treatment room to look for Respondent.

19. DD located Respondent in another room, who was on the telephone discussing a telephone bill.

20. Respondent did not apologize to DD for leaving DD alone for over 30 minutes during

(…continued)
professionals. The databank stores information relating to medical malpractice payments made on behalf of health care practitioners; information relating to adverse actions taken against clinical privileges of physicians, osteopaths, or dentists; and information concerning actions by professional societies that adversely affect membership.

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

DD's acupuncture treatment.

21. Respondent's patient progress notes for DD do not mention that DD unsuccessfully struggled to get her attention by screaming her name for approximately 10 minutes.

22. Respondent's patient progress notes for DD do not mention that DD got off of the acupuncture table with acupuncture needles still inserted in her body and walked outside the treatment room to look for Respondent.

23. DD told the DOI investigator that although she did not sustain a physical injury, she believed she endured emotional distress because Respondent left her unattended throughout the entire treatment session.

24. DD told the DOI investigator she believed the behavior that Respondent exhibited during her treatment session was unprofessional.

25. During Respondent's interview with the DOI investigator Respondent admitted that after inserting the acupuncture needles into DD she did not see DD again until approximately 40 minutes later when she saw DD standing outside of the treatment room with the acupuncture needles still inserted in her body.

26. During Respondent's interview with the DOI investigator Respondent admitted she was not aware that DD was calling for her for approximately 10 minutes.

27. During Respondent's interview with the DOI investigator Respondent said she has worn a hearing aid for 20 years but is able to hear adequately to respond to patients.

Patient DC

28. On or about September 9, 2011, DC saw Respondent for the first time when she treated him for knee pain. Respondent provided acupuncture to DC by using both electrostimulation[3] as well as traditional acupuncture needles in his legs.

[3] Electrostimulation is defined as a form of acupuncture where a small electric current is passed between pairs of acupuncture needles. Electroacupuncture is quite similar to traditional acupuncture in that the same points are stimulated during treatment. As with traditional acupuncture, needles are inserted on specific points along the body. The needles are then attached to a device that generates continuous electric pulses using small clips. These devices are used to adjust the frequency and intensity of the impulse being delivered, depending on the condition being treated. Electroacupuncture uses two needles at a time so that the impulses can pass from one needle to the other. Several pairs of needles can be stimulated simultaneously, usually for no more than 30 minutes at a time.

29. After Respondent connected the electrostimulation machine to DC and inserted the acupuncture needles into his legs she left the treatment room. There was no method for DC to contact Respondent from his treatment room during his treatment such as a chime, buzzer, or intercom.

30. Ten minutes after Respondent left the treatment room DC began to feel pain and repeatedly yelled for Respondent but Respondent did not return to the room or communicate with DC in any way.

31. After Respondent failed to respond to DC's shouts DC disconnected himself from the electrostimulation machine and removed his acupuncture needles.

32. After DC disconnected himself from the electrostimulation machine and removed the acupuncture needles he walked around Respondent's empty office in an unsuccessful attempt to locate Respondent. Approximately 15 minutes from the beginning of his treatment DC left a note containing his copayment for Respondent and exited the office. DC subsequently filed a complaint about Respondent's behavior during his treatment.

33. During Respondent's interview with the DOI investigator Respondent admitted leaving DC alone in the treatment room during his treatment without checking on him at any time.

Standard of Care

34. The standard of care requires acupuncturists to exercise watchfulness and care by regularly checking patients while they are undergoing treatment.

35. The standard of care for an acupuncturist who leaves a patient unattended in a treatment room after insertion of acupuncture needles requires the acupuncturist to provide an uncomplicated, straightforward method for the patient to contact the acupuncturist during treatment such as a chime, buzzer, or intercom.

36. The standard of care requires the acupuncturist to remove acupuncture needles from the patient in a timely manner.

37. The standard of care requires the acupuncturist to examine a patient who removed their own acupuncture needles to ensure there are no broken needles lodged below the patient's

skin.

38. The standard of care requires an acupuncturist who uses an electrostimulation device during acupuncture treatment to have control over the voltage level utilized in order to avoid excessive stimulation to the patient.

39. The standard of care requires an acupuncturist who uses an electrostimulation device during acupuncture treatment to carefully monitor the frequency and intensity of the electrical stimulation to the patient throughout the patient's treatment session.

40. The standard of care requires an acupuncturist to maintain accurate and complete patient records which contain all significant information for each patient encounter.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

41. Respondent is subject to disciplinary action under 4955.2, subsection (a) in that she was grossly negligent in her care and treatment of DD and DC. The circumstances are as follows:

42. Respondent's care and treatment of patient DD as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of care:

A. Respondent failed to exercise watchfulness and care by regularly checking patient DD while she was undergoing acupuncture treatment.

B. Respondent failed to provide DD with an uncomplicated, straightforward method for DD to contact Respondent during her treatment.

C. Respondent failed to remove DD's acupuncture needles from her in a timely manner.

D. Respondent failed to examine DD after DD removed the acupuncture needles to ensure there were no broken needles lodged below DD's skin.

E. Respondent failed to maintain accurate and complete patient records which contained all significant information for DD's acupuncture treatment session.

43. Respondent's care and treatment of patient DC as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of care:

A. Respondent failed to exercise watchfulness and care by regularly checking patient DC while he was undergoing acupuncture treatment.

B. Respondent failed to provide DC with an uncomplicated, straightforward method for DC to contact Respondent during his treatment.

C. Respondent failed to maintain control over the voltage level on the electrostimulation device she utilized during DC's acupuncture treatment in order to avoid excessive stimulation to DC.

D. Respondent failed to carefully monitor the frequency and intensity of the electrical stimulation on the electrostimulation device she utilized during DC's acupuncture treatment throughout DC's treatment session.

E. Respondent failed to remove DC's acupuncture needles from him in a timely manner.

F. Respondent failed to examine DC after he removed the acupuncture needles to ensure there were no broken needles lodged below DC's skin.

44. Respondent's acts and/or omissions as set forth in paragraphs 13 through 43, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 4955.2, subdivision (a), of the Code. Therefore cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

45. Respondent is subject to disciplinary action under section 4955.2, subdivision (b) of the Code, in that she has committed repeated acts of negligence in the practice of acupuncture. The circumstances are as follows:

46. Complainant refers to, and by reference incorporates herein paragraphs 13 through 33, inclusive, above.

47. Respondent's care and treatment of patient DD as set forth above includes the following acts and/or omissions which constitute departures from the standard of care:

A. Respondent failed to exercise watchfulness and care by regularly checking patient DD while she was undergoing acupuncture treatment.

B. Respondent failed to provide DD with an uncomplicated, straightforward method for DD to contact Respondent during her treatment.

C. Respondent failed to remove DD's acupuncture needles from her in a timely manner.

D. Respondent failed to examine DD after DD removed the acupuncture needles to ensure there were no broken needles lodged below DD's skin.

E. Respondent failed to maintain accurate and complete patient records which contained all significant information for DD's acupuncture treatment session.

48. Respondent's care and treatment of patient DC as set forth above includes the following acts and/or omissions which constitute departures from the standard of care:

A. Respondent failed to exercise watchfulness and care by regularly checking patient DC while he was undergoing acupuncture treatment.

B. Respondent failed to provide DC with an uncomplicated, straightforward method for DC to contact Respondent during his treatment.

C. Respondent failed to maintain control over the voltage level on the electrostimulation device she utilized during DC's acupuncture treatment in order to avoid excessive stimulation to DC.

D. Respondent failed to carefully monitor the frequency and intensity of the electrical stimulation on the electrostimulation device she utilized during DC's acupuncture treatment throughout DC's treatment session.

E. Respondent failed to remove DC's acupuncture needles from him in a timely manner.

F. Respondent failed to examine DC after he removed the acupuncture needles to ensure there were no broken needles lodged below DC's skin.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

49. Respondent is subject to disciplinary action under section 4955, as defined by section 4955.1, subdivision (e), in that she failed to maintain adequate and accurate records relating to the services she provided to DD and DC. The circumstances are as follows:

50. Complainant refers to, and by reference incorporates herein paragraphs 13 through 40, inclusive, above.

51. Respondent committed unprofessional conduct by failing to maintain adequate and accurate records relating to the services she provided to DD and DC.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

52. Respondent is subject to disciplinary action under section 4955.1 subdivision (e) of the Code, and California Code of Regulations, title 16, section 1399.453, in that he committed unprofessional conduct in his care and treatment of DD and DC. The circumstances are as follows:

53. The facts and circumstances in paragraphs 13 through 51 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 3644, issued to Pamela Miller, L.Ac.;

2. Ordering Pamela Miller, 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 her 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: NOV 23 2015

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

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