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FILED

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ACUPUNCTURE BOARD

8 **BEFORE THE**
9 **ACUPUNCTURE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:
12 **KEGANG DAI, L.Ac.**
13 404 E. Las Tunas Drive, #108
14 San Gabriel, CA 91776
15 Licensed Acupuncturist AC 4254,
16 Respondent.

Case No. 1A-2008-130

ACCUSATION

17
18
19 Complainant alleges:

20 PARTIES

21 1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as
22 the Executive Officer of the Acupuncture Board (Board).

23 2. On or about September 15, 1992, the Board issued license number AC 4254 to
24 Kegang Dai (Respondent). That license expired on January 31, 2010, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board under the authority of the following
27 provisions of the Business and Professions Code.

1 4. Section 4955, subdivision (b) of the Code provides that the Board may deny, suspend,
2 or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is
3 guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to
4 conviction of a crime substantially related to the qualifications, functions, or duties of an
5 acupuncturist, the record of conviction being conclusive evidence thereof.

6 5. Section 4956 of the Code states:

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

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

17 COST RECOVERY

18 6. Section 4959 of the Code states:

19 "(a) The board may request the administrative law judge, under his or her
20 proposed decision in resolution of a disciplinary proceeding before the board, to
21 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
22 not to exceed actual and reasonable costs of the investigation and prosecution of the
23 case.

24 "(b) The costs to be assessed shall be fixed by the administrative law judge and
25 shall not in any event be increased by the board. When the board does not adopt a
26 proposed decision and remands the case to an administrative law judge, the
27 administrative law judge shall not increase the amount of any costs assessed in the
28 proposed decision.

1 (c) When the payment directed in the board's order for payment of costs is not
2 made by the licensee, the board may enforce the order for payment in the superior
3 court in the county where the administrative hearing was held. This right of
4 enforcement shall be in addition to any other rights the board may have as to any
5 licensee directed to pay costs.

6 (d) In any judicial action for the recovery of costs, proof of the board's
7 decision shall be conclusive proof of the validity of the order of payment and the
8 terms for payment.

9 (e) All costs recovered under this section shall be considered a reimbursement
10 for costs incurred and shall be deposited in the Acupuncture Fund."

11 7. Section 726 of the Code states:

12 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
13 or customer constitutes unprofessional conduct and grounds for disciplinary action for any
14 person licensed under this division, under any initiative act referred to in this division and under
15 Chapter 17 (commencing with Section 9000) of Division 3.

16 "This section shall not apply to sexual contact between a physician and surgeon and his or
17 her spouse or person in an equivalent domestic relationship when that physician and surgeon
18 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
19 in an equivalent domestic relationship."

20 FIRST CAUSE FOR DISCIPLINE
21 (Conviction of a Crime)

22 8. Respondent is subject to disciplinary action under Business and Professions Code
23 sections 4955 and 4956, in that he was convicted of crimes substantially related to the
24 qualifications, functions or duties of an acupuncturist.

25 9. On September 3, 2009, in proceedings entitled *People of the State of California v.*
26 *Kegang Dai*, case number 8AH05228 in Los Angeles Superior Court, Respondent was convicted
27 upon his plea of nolo contendere to the crime of sexual battery under California Penal Code
28 section 243.4(e)(1), a misdemeanor, as charged in Count 1 of the complaint against him.

1 10. The facts and circumstances of this offense was alleged and found to be that, "[o]n or
2 about October 2, 2008, [the Respondent] did willfully and unlawfully touch an intimate part of
3 [patient "E.K."], against the will and for the purpose of sexual arousal, sexual gratification and
4 sexual abuse." The Court found that there was a factual basis for the plea and accepted the plea.

5 11. On October 20, 2009, Respondent was placed on summary probation for thirty-six
6 months on terms and conditions among which were terms requiring that he register as a sex
7 offender under Penal Code section 290, that he not treat any female patients, that he not use the
8 title "Dr." in his practice, and that he make restitution to the victim.

9 SECOND CAUSE FOR DISCIPLINE
10 (Sexual Misconduct with a Patient)

11 12. Respondent is subject to further disciplinary action under Business and Professions
12 Code section 726 in that he did engage in acts of sexual abuse, misconduct, or relations with a
13 patient. The circumstances are as follows

14 13. The facts set forth above in paragraphs 9 through 11 are set forth as if fully set forth
15 at this point.

16 14. During the period between on or about January 10, 2008 to on or about October 2,
17 2008, Respondent provided acupuncture care to an adult female patient, "E.K" at his office in San
18 Gabriel, California.

19 15. On October 2, 2008, during an office visit, Respondent improperly touched patient
20 E.K.'s breast in a sexual manner. This act of sexual misconduct resulted in the prosecution and
21 conviction set forth in the First Cause for Discipline.

1 PRAYER

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

- 4 1. Revoking or suspending the license number AC 4254, issued to Kegang Dai;
5 2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation
6 and enforcement of this case, pursuant to Business and Professions Code section 4959; and
7 3. Taking such other and further action as deemed necessary and proper.

8 DATED: JUN 09 2010

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10 JANELLE WEDGE
11 Executive Officer
12 Acupuncture Board
13 Department of Consumer Affairs
14 State of California
15 Complainant

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