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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: SUBHASH RAMCHANDRA GHARMALKAR, L.Ac. 1530 Baker Street, #G Costa Mesa, California 92626-3572 Acupuncturist's License No. AC 4473, Respondent.	Case No. 1A-2011-97 **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 August 6, 1993, the Acupuncture Board issued Acupuncunturist's License Number AC 4473 to Subhash Ramchandra Gharmalkar L.Ac. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

JURISDICTION

3. This Accusation is brought before the Acupuncture Board (Board), under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 4955 of the Code states:

"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.

"(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.

5. 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."

6. 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."

7. 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."

8. Section 726 of the Code states:

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

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

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

9. Respondent is subject to disciplinary action under section 726 of the Code in that he committed acts of sexual misconduct with patient H.W. The circumstances are as follows:

A. Patient H.W. went to see Respondent for alternative treatments for Hashimoto's Disease[1] and thyroid cysts.

B. She consulted with him on November 10, 2010, but no treatment was performed because she told him she was frightened ("petrified") of needles and could not afford the treatment.

C. She then started treatment with him subsequent to November, 2010. The first time something inappropriate occurred was on May 18, 2011. She received acupuncture treatment, but after Respondent took out the needles he massaged her back and went below her waist into her shorts. H.W. was in the room alone with Respondent; there was no chaperone.

D. The second incident occurred on May 25, 2011, and again, H.W. went alone and there was no chaperone in the exam room. Respondent used a hand to lift up the patient's jeans and then reached into her pants and massaged her buttocks, going underneath her underwear, touching her skin to skin.

[1] Hashimoto's Disease is is a condition in which your immune system attacks your thyroid, a small gland at the base of the neck. Over time, thyroid damage can cause hormone levels to be too low and causes functions of the body to slow down, such as heart rate, brain function, and the rate your body turns food into energy.

E. The third inappropriate incident occurred on her next visit. H.W. went alone and there was no chaperone in the exam room. When Respondent pulled her pants down, he did it so hard that her body actually lifted off the table. He put his hand into her pants, groping her buttocks. Respondent's hands reached down as far as her thighs. H.W. told him, "No". Then Respondent cupped her breast and massaged it, and H.W. said, "that doesn't feel right," and "I'm not okay with that." H.W. left the office upset and confused and immediately phoned her mother to tell her what happened.

F. H.W. had one more appointment with Respondent. She brought her mother with her. According to H.W., Respondent seemed irritated that the mother was in the room. He asked her to wait outside in the lobby, but H.W. insisted that she stay. Not surprisingly, he did not do any sort of massage. During many of these visits with Respondent cracked her neck. During this particular visit Respondent did adjust H.W.'s neck, and her mother was startled by the crack she heard.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

10. By reason of the facts and circumstances alleged above in the First Cause for Discipline, Respondent is subject to disciplinary action under section 4955.2, subdivision (a) of the Code for gross negligence.

THIRD CAUSE FOR DISCIPLINE

(Inadequate Record Keeping)

11. Respondent is subject to disciplinary action under section 4955.1, subdivision (e) of the Code in that he failed to include a differential diagnosis to support the treatment protocol pertaining to massaging specific areas of the patient.

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 Acupuncunturist's License Number AC 4473, issued to Subhash Ramchandra Gharmalkar, L.Ac.

2. Ordering Respondent 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. Taking such other and further action as deemed necessary and proper.

DATED: APR 25 2014

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

Complainant

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