BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No.: 1A-2009-147
	OAH No.: 2013030760
JIAJIE WANG, L.AC.	
10728 RAMONA BLVD., #E	
EL MONTE, CA 91731	
Acupuncture License No. AC 5271	
Respondent.	

DECISION AND ORDER

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, State of California as its Decision in the above-entitled matter.

This Decision shall become effective on JUL 25 2014.

IT IS SO ORDERED JUN 25 2014.

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

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JIAJIE WANG, L.Ac., Acupuncture License No. AC 5271 Respondent.	Case No. 1A-2009-147 OAH No. 2013030760

PROPOSED DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, on October 30 and 31, 2013, and January 8, 2014, in Los Angeles.

Wendy Widlus and Klint McKay, Deputy Attorneys General, represented Complainant.

Michael Khouri, Attorney at Law, represented respondent Jiajie Wang, L.Ac.

Oral, documentary, and stipulated evidence was received. The record was held open for the parties to file written closing briefs by February 7, 2014, and reply briefs by February 21, 2014. The parties filed timely briefs. Complainant's closing brief and reply brief were marked, respectively, as Exhibits 36 and 37. Respondent's closing brief and reply brief were marked, respectively, as Exhibits I and J. The record was closed and the matter was submitted on February 21, 2014.

FACTUAL FINDINGS

1. On February 8, 2013, Terri Thorfinnson (Complainant) filed the Accusation in her official capacity as the Executive Officer of the California Acupuncture Board (Board).

2. On September 6, 1995, the Board issued acupuncture license number AC 5271 to Jiajie Wang (Respondent). The license was in full force and effect at all relevant times and will expire on April 30, 2014, unless renewed. The Board has no record of any prior discipline against Respondent's license.

3. At all relevant times, Respondent operated an acupuncture clinic called Happy Life Clinic, located at 10728 Ramona Boulevard, Suite E, in El Monte, California. That address is also Respondent's address of record for his acupuncture license.

4. The California Department of Health Care Services (DHCS) is the state agency responsible for administering the Medi-Cal program. A doctor must be approved by DHCS and issued a provider number in order to bill the Medi-Cal system for services provided to beneficiaries, who are patients eligible to receive Medi-Cal benefits. DHCS issues a beneficiary identification card (BIC) to such patient-beneficiaries, which includes a BIC number also used in the Medi-Cal billing process. Doctors who work in a group practice can be issued one group provider number, which is used by all of the doctors in the group for billing Medi-Cal. However, each doctor in the group must be individually vetted and approved by DHCS prior to issuance of a group provider number. Medi-Cal billing is done electronically. The state issues a pay warrant to the doctor-provider as payment or reimbursement for the services provided to the patient-beneficiary.

5. The California Department of Justice, Bureau of Medi-Cal Fraud (DOJ), is the state agency responsible for the enforcement and prosecution of matters involving Medi-Cal fraud. DHCS refers cases to DOJ for prosecution.

6. At all relevant times, Respondent was approved by DHCS as an individual Medi-Cal provider and was issued a provider number used for billing the Medi-Cal system for acupuncture services. Respondent's application to become a Medi-Cal provider was submitted to DHCS on or about May 1, 2001. The application indicated, among other things, that Respondent would be conducting business as Happy Life Clinic Corp. at the address of record for his acupuncture license. Along with the application, Respondent also signed a Medi-Cal Provider Agreement on May 1, 2001. By signing the Provider Agreement, Respondent agreed to abide by the terms set forth in that agreement, which includes a provision that a provider number cannot be assigned to another, the doctor-provider agrees not to commit fraud or abuse, and the doctor-provider will retain records for services provided to patient-beneficiaries for three years from the date of the service.

7. On May 26, 2011, in the Superior Court, County of Los Angeles, case number KA085268, Respondent was convicted on his plea of no contest to one count of violating Penal Code section 32 (accessory), and one count of violating Revenue and Taxation Code section 19701, subdivision (a) (failed to supply information on income tax return), both misdemeanors. Respondent was placed on summary probation for three years under terms and conditions including, but not limited to, that he pay restitution of $9,500 to the Medi-Cal program and $59,552 to the Franchise Tax Board. The other counts of the First Amended Information, which included felony charges for grand theft (Pen. Code, § 487, sub. (a)) and for presenting false Medi-Cal claims (Welf. & Inst. Code, § 14107, subd. (b)(1)), were dismissed pursuant to Respondent's plea agreement. No evidence was presented regarding whether Respondent has satisfied his obligation to pay the court-ordered restitution.

8. Respondent's conviction was related to the findings of investigations by DHCS and DOJ regarding his Medi-Cal billing. Evidence of those investigative findings, as well as the testimony of DOJ Special Agent Samuel Richardson and parts of Respondent's testimony, established that Respondent's conviction was for crimes which are substantially related to the qualifications, functions, and duties of a Board licensee.

9. In February 2006, DHCS commenced an investigation of Respondent's Medi-Cal billing for acupuncture services. DHCS records showed that Respondent was one of the top Medi-Cal billers for acupuncture in the San Gabriel Valley for the period January through June 2005. DHCS reviewed a 12-week sample of Respondent's Medi-Cal billing. During the 12-week period (December 2005 through February 2006), Respondent billed the Medi-Cal program for services to 3,036 patients. Assuming a seven-day work week, this meant that Respondent would have treated about 36 patients per day. DHCS, however, found no patients at Respondent's clinic when it made three separate on-site visits. DHCS interviewed 11 patients taken at random from the 12-week sample, and all 11 patients indicated to the DHCS investigator that they had never received acupuncture services or treatment from Respondent. In December 2007, DHCS referred the case to DOJ for possible enforcement and prosecution of Respondent for Medi-Cal fraud.

10. DOJ commenced its own investigation of Respondent's Medi-Cal billing. Samuel Richardson (Richardson) is a Special Agent Supervisor with DOJ who conducted the investigation. His resume established his training and qualifications to conduct DOJ's investigation of Respondent. (Exh. 8.) Special Agent Richardson used the information from DHCS to conduct his own investigation regarding the allegations of Respondent's Medi-Cal billing. Richardson testified credibly at this hearing regarding the findings and conclusions of his investigation.

11. Richardson obtained and reviewed records from DHCS and other state agencies regarding Respondent and Happy Life Clinic. Happy Life Clinic Corporation was an S-corporation formed by Respondent to operate his acupuncture clinic. Records from the Secretary of State's Office and Respondent's Medi-Cal provider application indicated that Respondent was the sole officer of the corporation, holding the titles of President and Secretary. Information from the Employment Development Department indicated that Respondent was the sole employee and medical director of the clinic. Richardson also obtained a Department of Motor Vehicles soundex photograph of Respondent, and reviewed Respondent's billing records from DHCS. Based on his review of the billing records, Richardson found, among other things, that Respondent billed Medi-Cal for 105 patients on a single day and that his billing decreased significantly in 2006, around the time of the DHCS investigation.

12. The DHCS complaint submitted to DOJ included a list of the 11 patients that were interviewed by the DHCS fraud investigator. In August 2008, Special Agent

Richardson interviewed nine of those patients.[1] Each of the nine patients told Richardson that they did not receive any acupuncture services, they never saw Respondent, and they had never seen or been at Respondent's clinic. Later, two of the patients, Y.W. and R.H., wrote to Richardson on October 9, 2008, indicating that they had received acupuncture treatment from Respondent but had forgotten about the treatments due to their age and health problems. (Exhs. 10, 15 & 19.) The findings of the DOJ investigation as to the sample of seven patients who indicated they had never been treated by Respondent is summarized as follows:

(A) Patients H.L. (husband) and H.C. (wife): Respondent billed Medi-Cal for 16 acupuncture treatments for H.C. and was paid $268.80. He also billed Medi-Cal for 44 acupuncture treatments for H.L. and was paid $660.17. All services billed were from approximately July 2004 through January 2006. (Exh. 14.)

(B) Patients S.L. (wife) and S.H. (husband): Respondent billed Medi-Cal for 42 acupuncture treatments for S.H. and was paid $627.73. He also billed Medi-Cal for 42 treatments for S.L. and was paid $627.73. All services were billed from approximately July 2004 through January 2006. (Exh. 13.)

(C) Patients Y.M. (husband) and H.L. (wife): Respondent billed Medi-Cal for 12 acupuncture treatments for Y.M. and was paid $173.78. He also billed Medi-Cal for 12 acupuncture treatments for H.L. and was paid $173.78. The services billed were from July through December 2005. (Exh. 12.)

(D) Patient T.L.: Respondent billed Medi-Cal for four acupuncture treatments for T.L. and was paid $69.52. The services billed were from April and May 2005. (Exh. 11.)

13. On October 1, 2008, Richardson and other DOJ special agents executed a search warrant at Happy Life Clinic. Respondent was present at the clinic during the search and agreed to speak with Richardson. Richardson did not see any patients during the search of the clinic. The purpose of the search was to locate medical files for 42 of Respondent's patients who were Medi-Cal beneficiaries. During the search, medical files for only six of the 42 beneficiaries were found at the clinic. Respondent told Richardson that he threw away patient files after two or three years and did not have a formal policy describing when disposal would occur. Respondent denied having files stored at any other location.

14. During the execution of the search warrant, Respondent agreed to answer questions from Richardson. Richardson interviewed Respondent using a Chinese interpreter over the speaker phone. Respondent explained that acupuncture treatments generally take 30

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[1] According to the information provided by DHCS to DOJ, one of the patients, Y.L., was deceased as of January 16, 2007. As for the other patient, R.L., the DHCS information indicated Medi-Cal was billed for 12 treatments for R.L. in 2005, but R.L. had indicated to DHCS he was only treated one time by Respondent. (Exh. 23, pp. 232-233)

to 90 minutes, and that he worked six days per week at the clinic. Respondent stated that, on a busy day, he could treat up to 20 patients. Respondent stated that no other acupuncturist worked at the clinic, but there was a part-time receptionist. Special Agent Richardson then showed Respondent a DHCS billing record indicating that Respondent billed Medi-Cal for 105 patients on a single day. Respondent explained that he had additional workers at the clinic but would not provide Richardson with the names of the workers or indicate where they came from or where they went.

15. On October 9, 2008, nine days after the execution of the search warrant at the clinic, Richardson received a letter from Respondent stating that he had records stored at another location at 502 North Valley Boulevard in San Gabriel, California. On December 15, 2008, Richardson went to the 502 North Valley Boulevard location. He found an acupuncture and massage therapy business. Richardson spoke to an acupuncturist who was present at the location. The acupuncturist told Richardson that Respondent did not work at the location and did not have files stored at the location. Richardson was allowed to tour the office space. He did not find any patient files belonging to Respondent.

16. In June 2009, Richardson contacted Outsource Medical Billing Inc., which was the biller of record for Respondent as a Medi-Cal provider. Richardson spoke to the co-owner, Ivy Chau. According to Chau, Outsource Medical Billing Inc. had not billed Medi-Cal for Respondent since July 2006, and Respondent was no longer a client of the company. The company did not have any paper billing records for Respondent, as its policy was to destroy billing records after one year.

17. Based on the findings of his investigation, and his education, training, and experience, Special Agent Richardson formed the opinion that Respondent engaged in Medi-Cal fraud by billing for acupuncture services that were not provided to patients. DHCS records showed that Respondent had a high amount of Medi-Cal billing for acupuncture services. The high amount of billing was out of proportion to the fact that Respondent was the sole officer of Happy Life Clinic Corporation and the sole employee of Happy Life Clinic. Seven of the patient-beneficiaries he interviewed denied knowing Respondent or receiving acupuncture services from him. Execution of the search warrant at Respondent's clinic yielded medical files for only six of 42 patient-beneficiaries. No patients were present at the clinic during the execution of the search warrant on October 1, 2008, and none were present when DHCS visited the clinic on three occasions during its 2006 investigation.

18. Respondent's testimony established that he allowed his provider number to be used by one or more doctors to submit billing claims to the Medi-Cal program. This would explain the inordinate number of patients and amount of billings made under Respondent's provider number during the periods investigated by DHCS and DOJ. Respondent forwarded the Medi-Cal payments he received to the other doctor or doctors after first deducting a "consultant fee." Respondent contends it was the billing by those other doctors that resulted in the false and fraudulent claims found by the DHCS and DOJ investigations. Respondent denies that he submitted billing to Medi-Cal for services or treatment not provided to patients.

19. Respondent engaged in fraudulent and dishonest conduct by allowing his provider number to be used by other doctors. Respondent's individual provider number was only to be used by him for billing Medi-Cal for services he performed. Respondent's conduct enabled other doctors, who were not vetted and approved by DHCS, to access the Medi-Cal system and receive payments to which they were not entitled. Respondent's conduct also resulted in the Medi-Cal system issuing payment for services that were not provided to patient-beneficiaries. Since the only function or purpose of the Medi-Cal provider number is to access the Medi-Cal system to obtain payment, Respondent knew, or reasonably should have known, that allowing other doctors to submit billing under his provider number was improper.

20. Respondent claims he was "duped" into giving his Medi-Cal provider number to other doctors by "Dr. Ho," who convinced him to join Dr. Ho's medical group and allow the group's doctors to use Respondent's provider number. According to Respondent, he agreed to join because he was "too trusting" and "too naïve," and his lack of English skills made him vulnerable to others (Dr. Ho) who were more fluent in English and appeared more knowledge about health care operations. Respondent's claim of being "duped" is not credible and establishes no defense. There is no documentation to corroborate Respondent's claim that he agreed to join a medical group with Dr. Ho and other doctors. He did not mention having any such agreement during his October 1, 2008 interview with Special Agent Richardson. Respondent's claim he was vulnerable and naïve was not credible, given his life experience and accomplishments. Respondent is 68 years old. He has been licensed in California as an acupuncturist since 1995. In 2000, he formed an S Corporation under California law to operate his acupuncture clinic. He became an approved Medi-Cal provider following submission of his provider application in May 2001. He holds a master's degree and Ph.D. He completed rigorous training and had extensive work experience in China related to acupuncture. He is involved in professional organizations related to acupuncture.

21. Respondent graduated from the Shanghai University of Traditional Chinese Medicine in 1970 after completing its six-year Advanced Postgraduate Program for Chinese and Western Integrative Medicine. He obtained a master's degree in oriental medicine from American Royal University in 1997. He received his Ph.D. in oriental medicine research advancement from American Global University in 1998.

22. Respondent has been a member of California Acupuncture Medical Association (CAMA) for 18 years, since 1996. For the past seven years, he has been the editor of the CAMA Journal. He is currently the Chief of Finance for CAMA, a position he has held for several years. In that position, Respondent is responsible for handling CAMA's money and finances.

23. Lorinda Liang, L.Ac., testified as a character witness for Respondent. She also wrote a letter dated July 25, 2013. Dr. Liang is an experienced acupuncturist, having been trained in China and licensed by the Board as an acupuncturist since 1981. Liang has known Respondent for 10 years. Dr. Liang and Respondent serve together as board members of CAMA, with Dr. Liang as the public relations director and Respondent as the finance

director. As finance director, Respondent is responsible for handling CAMA's finances. Dr. Liang testified that Respondent was selected to be the Finance Director by the other board members because of his honesty and trustworthiness. Dr. Liang's opinion is that Respondent is a successful and highly qualified acupuncturist. She has seen Respondent practice acupuncture for more than seven years. According to Dr. Liang, Respondent is a well-regarded clinician in the acupuncture community in San Gabriel. In all of her professional, financial, and clinical encounters with Respondent, Dr. Liang has "never known him to be anything other than completely honest and upstanding."

24. Dr. Liang's sentiments are echoed in a letter dated July 28, 2013, and signed by other CAMA board members. The letter describes Respondent as being a good role model for all CAMA members, and praises Respondent for his honesty, high ethical standards, and excellent medical skills. The letter also recognizes that "[Respondent] has also contributed his great efforts to the legislation for the acupuncture of the Chinese medicine in the United States. He took an active part in the hearings in support of the 2004 AB1493 Bill and the 2011 Bill of AB72, AB951 & AB 1452. In 2012, he made another two separate special trips to Sacramento in support of the continuation bill of the Acupuncture Board as well as SB628 & SB1488."

25. Steven Morris testified as a character witness for Respondent. He also prepared a letter dated July 28, 2013. Morris is paraplegic who is confined to a wheelchair. Respondent makes house visits to provide acupuncture treatment to Morris, and has done so for the past 10 years. Morris' opinion is that Respondent is an excellent acupuncturist. He has found that Respondent's treatments have restored sensation and muscle tone to an ever expanding portion of his torso, and have helped him to maintain his good health. Morris has found that Respondent charges him a reasonable amount for the treatments. In all of his dealings with Respondent, Morris has found Respondent "to be as decent and honorable a person as one is likely to meet."

26. Chris Zhao is another patient of Respondent's who testified at the hearing and wrote a character reference letter dated July 28, 2013. Zhao is a Mandarin-Chinese interpreter for the immigration court in Los Angeles, and an instructor at UCLA-Extension for its Chinese Legal Interpretation Certification Program. Zhao first met Respondent in 2000 when he was hired by CAMA to provide interpreter services. In 2006, Respondent hired Zhao to provide interpreter services for his divorce case, which lasted for six months to one year. During that time, Zhao became friends with Respondent. Zhao and Respondent have similar backgrounds. Both men are from China and came to the United States as asylum seekers. Zhao commends Respondent in his skills as an acupuncturist.

27. Respondent presented several character reference letters from other patients and another Board licensee (Dr. Lin Cheng Speer, L.Ac.), which generally praise Respondent's skills as an acupuncturist and his character for honesty and integrity. (Exh. 31 and Exhs. E & F.)

28. The Accusation includes a request for an order that Respondent pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959. No evidence was presented during the three days of hearing establishing the amount of investigative and enforcement costs incurred by the Board in this case. Complainant's counsel submitted a cost declaration with Complainant's closing brief. While the ALJ granted permission for the parties to file written closing briefs, no permission was granted to either party, and none was requested, for the submission of additional evidence.[2] Therefore, no costs will be awarded in this case.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4955, subdivision (b), provides that the Board may suspend or revoke, or impose probationary conditions upon, the license of any acupuncturist if he is guilty of "unprofessional conduct," which is defined to include a "[c]onviction of any crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof." Similarly, Business and Professions Code section 490, subdivision (a), provides in pertinent part that "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." Subdivision (c) provides in part: "A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere."

2. Cause exists to suspend or revoke Respondent's acupuncturist license, pursuant to Business and Professions Code sections 490 and 4955, subdivision (b), in that Respondent was convicted of violating Penal Code section 32 (accessory to crime) and Revenue and Taxation Code section 19701, subdivision (a) (failure to supply information on income tax return), which are crimes substantially related to the qualifications, functions and duties of a licensed acupuncturist, based on Factual Findings 2-19 and Legal Conclusions 3-4.

3. Respondent's crimes -- accessory and failing to provide required information on his 2005 S Corporation tax return -- are substantially related to the qualifications, functions and duties of licensee of the Board. Both crimes arose from Medi-Cal billing for acupuncture services, which were established by the evidence presented to be fraudulent and dishonest. (Factual Findings 8-19.) Respondent's crimes have, as their hallmark, a basic act of dishonesty. In this regard, the case of *Krain v. Medical Board* (1999) 71 Cal.App.4th 1416, 1424-1425, is instructive.

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[2] As noted in the preamble of this Proposed Decision, the record was held open for the parties to file written closing briefs by February 7, 2014. The closing briefs were limited to 15 pages. On February 7, 2014, OAH received a 29-page facsimile transmission from Complainant's counsel. (Exh. 36.) The first 11 pages of the transmission consisted of Complainant's closing brief. The remaining pages of the transmission consisted of a cost declaration (with attachments) by Complainant's counsel, and a proof of service that listed the closing brief but not the cost declaration.

4. In *Krain, supra,* 71 Cal.App.4th at 1424, the court had occasion to determine whether a dishonest act performed by a physician outside the context of the doctor-patient relationship, could form the basis for license discipline. In determining that the dishonest conduct was substantially related to the functions, duties or qualifications of a medical doctor, the court stated:

> Krain's conviction may properly form the basis of discipline only if it is 'substantially related to the qualifications, functions, or duties of a physician and surgeon ....' (§ 2236, subd. (a).) Whether such a relationship exists is a question of law 'for this court's independent determination. [Citations.]' (*Gromis v. Medical Board* (1992) 8 Cal.App.4th 589, 598.)
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> Krain contends that his conviction for solicitation of subornation of perjury does not bear a substantial relationship to his qualifications as a physician. Based on *Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461(*Windham*), we reject Krain's contention. In *Windham,* a physician was disciplined as a result of his conviction for tax fraud. In that case, the physician argued 'that while tax fraud may adversely reflect on his moral character, it is not the type of transgression which reflects on his professional qualifications, functions or duties.' (*Id.* at p. 470.) The Court of Appeal rejected this argument: 'First of all, we find it difficult to compartmentalize dishonesty in such a way that a person who is willing to cheat his government out of $65,000 in taxes may yet be considered honest in his dealings with his patients. In this connection, however, we should point out that today's doctor deals financially with the government-state, local and federal-in many ways that have nothing to do with his own personal tax obligation.... [¶] ... Above all, however, there is the relation between doctor and patient. It is unnecessary to describe the extent to which that particular relationship is based on utmost trust and confidence in the doctor's honesty and integrity.' (*Windham, supra,* 104 Cal.App.3d at p. 470.)
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> Krain's conviction for soliciting the subornation of perjury, like the tax fraud conviction at issue in *Windham,* involves dishonesty. We agree with the reasoning of *Windham:* the intentional solicitation to commit a crime which has as its hallmark an act of dishonesty cannot be divorced from the obligation of utmost honesty and integrity to the patients whom the physician counsels, as well as numerous third-party entities and payors who act on behalf of patients. (*Windham, supra,* 104 Cal.App.3d at p. 470; see also *Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305-306.) Krain's plea of guilty to solicitation of subornation of perjury is substantially related to his qualifications as a physician.

For purposes of imposition of discipline, there is no reason to treat a Board licensee any differently than a medical doctor, or any other healing arts licensee.

5. Business and Professions Code section 4955.1, subdivision (c), provides that the Board may suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he is guilty of committing a fraudulent act including, but not limited to, "[c]omitting any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist."

6. Cause exists to suspend or revoke Respondent's acupuncturist license, pursuant to Business and Professions Code section 4955.1, subdivision (c), in that Respondent committed fraudulent acts involving dishonesty with respect to the qualifications, functions, and duties of an acupuncturist, based on Factual Findings 2-19 and Legal Conclusions 3-4.

7. Business and Professions Code section 4959, subdivision (a), provides that 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 the board a sum not to exceed actual and reasonable costs of the investigation and prosecution of the case."

8. Cause does not exist to order Respondent to pay the Board any amount for the reasonable cost of investigation and prosecution of this case, pursuant to Business and Professions Code section 4959. No evidence was presented during the hearing upon which the ALJ could base an award of costs under section 4959. (Factual Finding 28.)

9. Administrative proceedings to revoke, suspend or impose discipline on a professional license are non-criminal and non-penal; they are not intended to punish the licensee, but rather to protect the public. (*Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 785-786.)

10. The Board publishes recommended disciplinary orders and guidelines that are designed to offer guidance on possible outcomes in license discipline cases such as this case. The guidelines are incorporated by reference in the Board's regulations at California Code of Regulations, title 16, section 1399.469. The introduction section of the guidelines acknowledge that some cases may necessitate a departure from the recommendations if justified. The guidelines state, generally, that if a respondent "is not capable of safe practice, [the Board] expects outright revocation of the license. This is particularly true in cases of patient sexual abuse or bodily harm. In less egregious cases, a stayed revocation with probation pursuant to the attached Penalty Guidelines would be expected." (Guidelines, p. 1.)

11. The Penalty Guidelines for conviction of a crime recommend a maximum penalty of revocation when there is a crime of violence or an economic crime resulting in substantial harm to patients. A minimum penalty is recommended when the conviction is for other crimes resulting in little or no harm to patients. The minimum penalty under such circumstances is five years of probation, a minimum of 30 days suspension, an ethics course, community service, imposition of standards terms and conditions, and restitution, if appropriate. The Penalty Guidelines for fraudulent or dishonest acts are similar, with a

maximum penalty of revocation for a dishonest or fraudulent act resulting in substantial harm to patients, and a minimum penalty of five years' probation for dishonest or fraudulent acts resulting in minimal harm to patients. (Guidelines, pp. 9 and 10.)

12. The circumstances of this case, in their entirety, justify a level of license discipline commensurate with the minimum recommended penalty. Respondent allowed his Medi-Cal provider number to be used by others, which resulted in fraudulent claims being submitted to the Medi-Cal system for payment of services that were not provided to patients. Respondent is responsible for those transactions. He knew, or should have known, his conduct was dishonest, fraudulent, and improper. In Respondent's favor, there was no harm to any patient as a result of his conduct. The amount of restitution that Respondent was ordered to pay Medi-Cal ($9,500) appears minimal, with the majority of the restitution amount to be paid to the Franchise Tax Board ($59,552). Respondent has no prior criminal history nor any history of prior discipline against his acupuncture license. He contributes positively to his profession through his active involvement as a Board member in CAMA, where his duties include managing the organization's finances. Respondent is generally well-regarded by his professional peers and patients. Public protection would be served by allowing Respondent to retain his license subject to a period of probation under proper terms and conditions, as set forth in the Order below. Pursuant to Legal Conclusion 8, no cost recovery shall be allowed pursuant to Paragraph 12 of the Order below.

ORDER

Acupuncture license number AC 5271, issued to Respondent Jiajie Wang, is hereby revoked; however, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions:

1. Actual Suspension

As part of the probation, respondent is suspended from the practice of acupuncture for thirty (30) days beginning with the effective date of this decision.

2. Billing Monitor

Within 90 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval, the name and qualifications of one or more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a billing monitor. Once approved, the monitor shall submit to the Board a plan by which Respondent's billing shall be monitored. The monitor's education and experience shall be in the same field of practice as that of the Respondent. The monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place and providing an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely fashion. Respondent shall provide access to the monitor of Respondent's fiscal and client records and shall be permitted to make

direct contact with patients. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request. Further, the monitor shall have no prior business, professional, personal or other relationship with Respondent.

Respondent shall notify all current and potential patients of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such notification shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, Respondent shall not practice until a new monitor has been approved by the Board. All costs of monitoring shall be borne by Respondent. Monitoring shall consist of at least one hour per week of individual face to face meetings.

3. Coursework

Respondent shall take and successfully complete not less than twenty (20) semester units or thirty (30) quarter units of coursework in the following area: ethics. All coursework shall be taken at the graduate level at a school approved by the Board. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first 3 years of probation. The required coursework must 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 educational requirements. All costs of the coursework shall be borne by the respondent.

4. Community Service

Within sixty (60) days of the effective date of this decision, Respondent shall submit to the Acupuncture Board for its prior approval a community service plan in which Respondent shall, within the first two years of probation, provide 100 hours of free, professional services under the auspices of a government agency or a non-profit corporation that is tax exempt under the Internal Revenue Code. Prior to engaging in this service, Respondent shall provide a copy of the decision in this matter to the manager, director or other person in charge of the organization where this service will be performed, and Respondent shall submit written proof of compliance to the Acupuncture Board within fifteen (15) days.

5. 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 the respondent to the Board in writing within seventy-two (72) hours of occurrence.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. Cost Recovery

Respondent shall pay the amount of zero dollars to the Board for its costs of investigation and enforcement in this case.

13. 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 stated. 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.

14. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

DATED: May 2, 2014

ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings