EDMUND G. BROWN JR.
Attorney General of California
JOSE R. GUERRERO
State Bar No. 97276
Supervising Deputy Attorney General
CATHERINE E. SANTILLAN
Senior Legal Analyst
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5579
Facsimile: (415) 703-5480
Attorneys for Complainant

FILED

OCT 12 2011

ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **GUO ZHI WAN** **711 Commercial Street** **San Francisco, CA 94108** **Acupuncture License No. AC 5326** Respondent.	Board Case No. 1A-2008-65 **ACCUSATION**

Complainant alleges:

PARTIES

1. Janelle Wedge (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 July 11, 1996, the Acupuncture Board issued Acupuncture License No. AC 5326 to Guo Zhi Wan (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2012, 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 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:

...

"(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.

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:

"..."

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

CALIFORNIA CODE OF REGULATIONS

6. California Code of Regulations, title 19, 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."

7. California Code of Regulations (hereinafter "CCR"), title 19, section 1399.456, states:

"It is unprofessional conduct for an acupuncturist to use the title ADoctor@ or the abbreviation ADr.@ 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 ADoctor@ or the abbreviation ADr.@ by an acupuncturist as authorized above without further indicating the type of license, certificate or degree which authorizes such use, constitutes unprofessional conduct."

COST RECOVERY

8. 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

(Unprofessional Conduct: Failing to maintain adequate medical records)

9. Respondent and his wife, Dong Mei Li, Acupuncture License number 5809, owned two acupuncture clinics. One clinic is located in San Francisco, California, and the second clinic is located in El Cerrito, California. On or about August through November 2007, Respondent provided acupuncture care and treatment to Patient X.M. and his wife Patient Y.H.[1] at Respondent's acupuncture clinic in El Cerrito, California. Respondent provided approximately nineteen acupuncture treatment sessions to each patient.

10. Respondent did not document acupuncture care and treatment he provided to Patient X.M. on four dates in 2007: August 20, August 27, September 26 and November 3.

11. Respondent did not document acupuncture care and treatment he provided to Patient X.M. on five dates in 2007: August 25, September 14 and 25, October 13 and November 2.

12. Therefore, Respondent's license is subject to disciplinary action for unprofessional conduct in violation of code sections 4955(d), 4955.1(e) [failure to maintain adequate medical records] and CCR 1399.453 [record keeping.]

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Mis-use of the title "Doctor")

13. On or about January 2010, Respondent's business card and brochure identified him as "Dr." Wan, Guo Zhi, L.Ac. and the brochure identified Respondent as a "physician."

14. Respondent's license is subject to disciplinary action for unprofessional conduct in violation of code sections 4955(c) [false or misleading advertising] and CCR section 1399.456 [mis-use of "doctor"] in that Respondent's use of the abbreviation "Dr." and the title "physician" in connection with the practice of acupuncture was misleading to the public since Respondent's acupuncture license did not authorize such use.

---

[1] Initials are used to protect patient privacy. Patient names will be provided upon a request for discovery.

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 Acupuncture License no. Number AC 5326, issued to Guo Zhi Wan;

2. Ordering Guo Zhi Wan to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959, and if placed on probation, the costs of probation monitoring;

3. Taking such other and further action as deemed necessary and proper.

DATED: OCT 12 2011

JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

SF2010201974
20333927.doc