

**BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Amended Accusation)	Case No.: 1A-2007-78
Against:)	OAH No.: 2010080916
)	
ALINA JUNG-AN CHA, L.AC.)	
11858 ROSECRANS AVE.)	
NORWALK, CA 90650)	
)	
Acupuncture License No. AC 5634)	
)	
Respondent.)	
_____)	

DECISION AND ORDER

The attached Proposed Decision and Order of the Administrative Law Judge is hereby adopted by the California Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective on JUL 14 2011.

IT IS SO ORDERED JUN 14 2011.



Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

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Respondent.)	
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PROPOSED DECISION

Amy C. Lahr, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California, on February 28, 2011.

Margaret Jaramilla Phe, Deputy Attorney General, represented Janelle Wedge (Complainant), Executive Officer of the Acupuncture Board (Board).

Jonathan K. Golden, Attorney at Law, represented Alina Cha (Respondent).

Oral and documentary evidence was received at the hearing. The matter was submitted for decision on February 28, 2011.

FACTUAL FINDINGS

1. Complainant filed the Accusation in her official capacity.
2. On February 20, 1997, the Board issued acupuncture license AC 5634 to Respondent. The license expires on July 31, 2012, unless renewed. The license has not been previously disciplined.
3. In January 2007, Respondent operated an acupuncture clinic by the name of "Golden Wellness." The establishment was located at 3560 La Cienega Boulevard, Unit E, in

Los Angeles, California. Respondent was Golden Wellness' owner and acupuncturist until April 2007, when the business closed.

January 2007 Incident

4. On January 4, 2007, Los Angeles Police Department Detective Michael Dickes (Dickes) went undercover to Respondent's business. Respondent greeted him, and Dickes told her that he wanted a massage, with "only the cute ones." He also stated that he wanted to "get crazy" and that it "better be good." Respondent acknowledged Dickes' request. Respondent did not require Dickes to fill out a medical intake form. No preliminary medical examination was performed.

5. Inside the treatment room, massage therapist Kim Soon (Soon), massaged Dickes in a sexual manner. She rubbed her breasts against his back, and reached under his shorts and fondled his genitals. She began to manually masturbate him and Dickes stopped her to inquire about these services. Based upon his conversations with Soon, Dickes understood that masturbation was included in the price of the massage. Dickes then told Soon that he wanted to use a condom. They argued over Dickes' insistence on using a condom, and then Soon ended the massage. Immediately thereafter, Respondent and Soon were arrested. Soon was charged with prostitution, in violation of Penal Code section 647; Respondent was charged with keeping a disorderly house, in violation of Penal Code section 316.

April 2007 Incident

6. On April 12, 2007, Los Angeles Police Department Vice Investigator Jimmy Yoo (Yoo) went undercover into Respondent's business. Yoo requested a massage, and paid Respondent. Respondent did not ask Yoo to complete a medical intake form or perform any medical evaluation. As established by Yoo's testimony, Respondent's facility did not resemble other legitimate acupuncture facilities. Yoo did not observe any needles or other acupuncture apparatus.

7. Yoo received a massage from Lanshu Liu (Liu), inside a massage room within Respondent's facility. Yoo opined that she was not a trained therapist, in part because of the way she touched him. Yoo spoke with Liu, and based on his conversation, Yoo learned that Liu would give him a "hand job" if he paid her additional money. Yoo ended the massage, and exited Respondent's facility. Thereafter, Respondent and Liu were arrested. Liu was charged with prostitution, in violation of Penal Code section 647, subdivision (b); Respondent was charged with failing to obtain a massage business permit, in violation of Los Angeles Municipal Code section 103.205, subdivision (b).

8. As a result of these incidents, a civil complaint for abatement and injunction was filed against Respondent. On August 7, 2008, in Los Angeles County Superior Court, case number BC371221, Respondent entered into a stipulated settlement with the People of the State

of California and the City of Los Angeles, in which Respondent agreed to not operate Golden Wellness, or any business at the facility location, among other terms and conditions.

9. By aiding and abetting the activities of her employees set forth in factual finding numbers 4 through 7, in the context of the purported practice of acupuncture, Respondent engaged in unprofessional conduct likely to endanger public health, safety, or welfare.

10. Respondent is 59 years old and divorced. She currently owns and operates an acupuncture business in Norwalk. She lives modestly as a result of losing her former practice in 2007. She has not had any contact with the police since April 2007. Respondent contended that she took steps to prevent illegal activities from occurring at her business, such as displaying a warning sign, giving verbal warnings to her employees, and installing devices to keep the massage room doors from closing tightly. However, when questioned about whether she properly screened her employees after the January 2007 incident, Respondent indicated that she did not. Respondent did not reasonably inquire about potential employees' backgrounds, thus demonstrating complicity in their subsequent actions. When questioned about her current practice, Respondent gave evasive answers about the services she provides to her current clients, and about her record keeping practices. With regard to the April 2007 incident, Respondent claimed that she possessed a proper massage permit; however, she did not introduce it as evidence. Respondent introduced photographs which depicted her former facility; all evidence was reviewed and considered. The evidence demonstrated that Respondent did not significantly mitigate or rehabilitate between the January 2007 and April 2007 incident; and from April 2007 to the present.

11. The following are the actual and reasonable costs of investigation and prosecution of the instant matter: \$6,168 in Division of Investigation costs, and \$12,045 in Attorney General charges, or a total of \$18,213.

LEGAL CONCLUSIONS

1. Cause exists to discipline Respondent's license pursuant to Business and Professions Code sections 4955, 4955.1 and 730, in that she engaged in unprofessional conduct likely to endanger public health, safety, or welfare, by reason of factual finding numbers 3 through 9.

2. Los Angeles Municipal Code section 103.205, subdivision (b) states that "No person shall engage in, promote, advertise, conduct, or carry on, in or upon any premises within the City of Los Angeles, the operation of a massage business without a permit duly issued by the Board pursuant to this subsection for each business location. This required permit shall be in addition to any business tax license required by ordinance."

The code further states, under the heading "EXEMPTIONS": This section shall not apply to the following classes of individuals, and no permit shall be required of such persons, while engaged in the performance of the duties of their respective professions: (i) Physicians,

3. Cause does not exist to discipline Respondent's license for unprofessional conduct by operating an unpermitted massage establishment, pursuant to Business and Professions Code sections 4955, 4955.1, 731 and Los Angeles Municipal Code section 103.205, subdivision (b), because the Los Angeles Municipal Code expressly exempts licensed acupuncturists from its provisions.

4. Cause exists to order Respondent to pay the Board's actual and reasonable costs of investigation and prosecution, in the amount of \$18,213, pursuant to Business and Professions Code section 4959, because Respondent engaged in acts that constitute cause to discipline her license, by reason of factual finding numbers 3 through 11 and legal conclusion number 1.

ORDER

Acupuncture License number AC 5634 issued to Respondent Alina Cha is revoked.

Dated: March 28, 2011


AMY C. LAHR
Administrative Law Judge
Office of Administrative Hearings