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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KENNETH S.K. WU, L.Ac.** **1808 South Meridian Avenue** **Alhambra, CA 91803** **Acupuncturist License No. AC5826,** Respondent.	Case No. 1A-2013-194 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity as the Acting Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about March 20, 1997, the Acupuncture Board issued Acupuncturist License Number AC5826 to Kenneth S.K. Wu, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2016, 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 4928.1 of the Code states:

"Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. Section 4927 of the Code states:

"As used in this chapter, unless the context otherwise requires:

"...

"(d) 'Acupuncture' means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."

6. Section 4937 of the Code states:

"An acupuncturist=s license authorizes the holder thereof:

" (a) To engage in the practice of acupuncture.

" (b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist=s license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

"(c) For purposes of this section, a 'magnet' means a mineral or metal that produces a magnetic field without the application of an electric current.

"(d) For purposes of this section, 'plant, animal, and mineral products' means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

"(e) For purposes of this section, 'dietary supplement' has the same meaning as defined in

subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substances listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code. "

7. Section 4955 of the Code states, in pertinent part:

"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.

". . .

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

". . ."

8. Section 4955.1 of the Code states, in pertinent part:

"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:

". . ."

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

9. 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."

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10. Section 726 of the Code state in pertinent part:

"(a) 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 or under any initiative act referred to in this division.

11. 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. "

COST RECOVERY

12. 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."

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FACTUAL SUMMARY

13. Patient EW[1] suffered from migraine headaches and vertigo. In 2013, EW began experiencing pain in both knees while training for a marathon. EW's friend and coworker, VT, referred her to Respondent for acupuncture treatments, telling EW Respondent was successfully treating VT's girlfriend for various complaints.

14. On or about October 30, 2013, EW had her first appointment with Respondent at Respondent's residential office. Respondent directed EW to lay down fully clothed on the acupuncture bed and inserted needles into her knees, stomach, face, and hands. EW's pants were rolled up, exposing her knees, and Respondent lifted EW's shirt to below her bra line, revealing her stomach.

15. After Respondent instituted the last acupuncture needle he stood over EW and watched her, which made EW feel uneasy. Respondent then said in Chinese, "You have very nice lips. A lot of men like those kinds of lips." EW did not respond to Respondent's comment. Respondent then left the room.

16. After several minutes Respondent returned to the room and removed the acupuncture needles from EW's body. Respondent told EW that she was suffering from Meniere's disease,[2] and was at risk of suffering facial paralysis. EW was frightened at the thought of not being able to move her face and therefore agreed to return to Respondent for additional treatments.

17. On or about November 6, 2013, EW returned to Respondent's residential office for her second acupuncture appointment. During this visit EW remained fully dressed while Respondent rolled up EW's pants to expose her knees and lifted her shirt to just underneath her bra line. Respondent inserted acupuncture needles into EW's knees, stomach, face, and hands.

18. After inserting the acupuncture needles Respondent again stood over EW and watched her, which made EW feel uneasy. Respondent leaned over EW and placed his hands on

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[1] The names of the patient and/or witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

[2] Meniere's disease is defined as a chronic disorder of the inner ear that causes episodes in which the patient feels a sensation of spinning (vertigo), fluctuating hearing loss, a progressive, ultimately permanent loss of hearing, ringing in the ear (tinnitus), and sometimes a feeling of fullness or pressure in the ear. Various treatments can help relieve symptoms and minimize the long-term impact on the patient's life.

the sides of her torso next to and then touching her breasts. When Respondent touched her breasts EW jumped, which caused the acupuncture needles to move. The movement resulted in extreme pain where the acupuncture needles were inserted and rendered EW immobile.

19. Respondent exited the room for several minutes, returned, and removed the acupuncture needles. At that time Respondent told EW she had mild paralysis on the right side of her face which would require additional treatment. EW was so upset by what Respondent told her about the facial paralysis she scheduled a third appointment with Respondent.

20. EW left Respondent's residential office feeling "weird." EW was not sure if Respondent touched her breasts as part of a legitimate acupuncture treatment or if he was touching her inappropriately.

21. On or about November 11, 2013, EW returned to Respondent's residential office for her third acupuncture appointment. During this visit EW remained fully dressed while Respondent rolled up EW's pants to expose her knees and lifted her shirt to just underneath her bra line. Respondent inserted acupuncture needles into EW's knees, stomach, face, and hands. After inserting the acupuncture needles Respondent again stood over EW and watched her.

22. Respondent suddenly leaned over EW and lifted her bra, completely exposing EW's breasts. Respondent grabbed each breast with one hand and began to squeeze each breast. EW was unable to move as a result of the pain from the acupuncture needles and began to panic. EW tried to remove Respondent's hands but the pain from the inserted acupuncture needles stopped her.

23. EW spoke to Respondent in Chinese, saying "You don't have to do that. I have a doctor and already had a mammogram." Respondent repeatedly squeezed EW's breasts and said, "You need to check all the time."

24. Respondent left EW's breasts exposed as he turned and retrieved her chart and began to write in it. EW felt embarrassed and wanted to cry.

25. Respondent removed the needles and scheduled another examination for EW for the following week. EW left Respondent's residential office as quickly as possible.

26. EW began to cry as she drove to work after her appointment with Respondent. EW

believed Respondent had not been examining her but has used a breast examination as an excuse to touch her breasts.

27. EW believed that Respondent tried to further shame her by leaving her breasts exposed as he wrote in her medical chart.

Standard of Care

28. It is a violation of the standard of care and unprofessional conduct for an acupuncturist to comment on the attractiveness of any part of a patient's anatomy.

29. It is a violation of the standard of care and unprofessional conduct for an acupuncturist to place his or her hands near a patient's breasts with no clinical reason to do so.

30. It is a violation of the standard of care, gross negligence, and unprofessional conduct for an acupuncturist to lift a patient's bra and expose the patient's breasts with no clinical reason to do so.

31. It is a violation of the standard of care, gross negligence, and unprofessional conduct for an acupuncturist to lift a patient's bra and squeeze the patient's breasts with no clinical reason to do so.

32. It is a violation of the standard of care, gross negligence, and unprofessional conduct for an acupuncturist to perform a legitimate medical breast examination without the patient's permission.

33. It is a violation of the standard of care, gross negligence, and unprofessional conduct for an acupuncturist to squeeze a patient's breasts while feigning the performance of a legitimate medical breast examination.

FIRST CAUSE FOR DISCIPLINE

(Sexual Abuse of a Patient)

34. Respondent is subject to disciplinary action under section 726 of the Code in that he committed acts of sexual misconduct with Patient EW during acupuncture treatment. The circumstances are as follows:

35. Complainant refers to, and by reference incorporates herein, paragraphs 18, 22, 23, and 24, inclusive, above.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

36. Respondent is subject to disciplinary action under 4955.2, subsection (a), in that he was grossly negligent in his care and treatment of EW. The circumstances are as follows:

37. The facts and circumstances alleged in paragraphs 13 through 33 are incorporated here as if fully set forth.

38. Respondent's care and treatment of patient EW as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of care:

A. Respondent lifted EW's bra and exposed the patient's breasts with no clinical reason to do so.

B. Respondent squeezed EW's breasts with no clinical reason to do so.

C. Respondent failed to obtain EW's permission to perform a breast examination.

D. Respondent squeezed EW's breasts while feigning the performance of a legitimate medical breast examination.

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

39. Respondent is subject to disciplinary action under section 4955.2, subdivision (b), of the Code, in that he has committed repeated acts of negligence in the practice of acupuncture. The circumstances are as follows:

40. The facts and circumstances in paragraphs 13 through 33 are incorporated by reference as if set forth in full herein.

41. Respondent's care and treatment of patient EW as set forth above includes the following acts and/or omissions which constitute departures from the standard of care:

A. Respondent lifted EW's bra and exposed the patient's breasts with no clinical reason to do so.

B. Respondent squeezed EW's breasts with no clinical reason to do so.

C. Respondent failed to obtain EW's permission to perform a breast examination.

D. Respondent squeezed EW's breasts while feigning the performance of a legitimate

medical breast examination.

FOURTH CAUSE FOR DISCIPLINE

(Inadequate and Inaccurate Recordkeeping)

42. Respondent is further subject to disciplinary action under section 4955.1, subdivision (e), of the Code and section 1399.453 of title 16 of the California Code of Regulations in that he failed to keep complete and accurate records regarding his care and treatment of patient EW.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

43. Respondent is subject to disciplinary action under section 4955.1 subdivision (e) of the Code, and California Code of Regulations, title 16, section 1399.453, in that he committed unprofessional conduct in his care and treatment of patient EW.

44. The facts and circumstances in paragraphs 13 through 42 are incorporated by reference as if set forth in full herein.

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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 Acupuncturist License Number AC5826, issued to Kenneth S.K. Wu, L.Ac.;

2. Ordering Kenneth S.K. Wu, L.Ac. 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. If placed on probation, ordering him to pay the Acupuncture Board the costs of probation monitoring; and;

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

DATED: JUN 07 2016

BENJAMIN BODEA
Acting Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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