BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: HAI TEE YOUNG, Acupuncture License No. AC 652, Respondent.	Case No.: 1A-2010-172 OAH No.: 2014020655

DECISION

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 JUL 01 2015.

IT IS SO ORDERED JUN 01 2015.

ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By _____

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BEFORE THE
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In the Matter of the Accusation Against: HAI TEE YOUNG Acupuncture License No. AC 652, Respondent.	Case No. 1A-2010-172 OAH No. 2014020655

NOTICE AND ORDER CORRECTING PROPOSED DECISION

. On March 2, 2015, Administrative Law Judge Amy Yerkey issued a Proposed Decision in this matter. By letter dated March 25, 2015, Michael R. Santiago, Senior Staff Counsel, submitted a Request for Correction of the Proposed Decision on behalf of the Acupuncture Board pursuant to California Code of Regulations, title 1, section 1048. The Request for Correction correctly notes that Administrative Law Judge Amy Yerkey determined the reasonable costs payable to the Acupuncture Board were $14,131.25, but she failed to include any language regarding costs in the Order.

The Request for Correction was served on respondent, but not on counsel for complainant. No opposition was received from respondent. Counsel for complainant would have no reason to oppose the proposed correction, and any failure to serve the Request for Correction on counsel for complainant is deemed immaterial.

Administrative Law Judge Amy Yerkey no longer works for the Office of Administrative Hearings. Accordingly, the undersigned Presiding Administrative Law Judge is designated to review and decide the Request for Correction pursuant to California Code of Regulations, title 1, section 1048, subdivision (a)(6). In addition, the undersigned Presiding Administrative Law Judge notes that the caption in the Proposed Decision incorrectly identifies respondent's license number as "Acupuncture License No. AC 5634" instead of "Acupuncture License No. AC 652." This error may be corrected by the undersigned Presiding Administrative Law Judge pursuant to California Code of Regulations, title 1, section 1048, subdivision (c), in combination with subdivision (a)(6).

Good cause appearing therefor, the following order is issued:

1. The corrections are authorized by law.

2. The Proposed Decision is corrected so that respondent's license number in the caption is amended to read "Acupuncture License No. AC 652."

3. The Proposed Decision is corrected so that the Order in the Proposed Decision reads as follows:

> Acupuncture License number AC 652 issued to Respondent Hai Tee Young is revoked. Respondent Hai Tee Young shall pay to the Acupuncture Board its reasonable costs of investigation and enforcement in the amount of $14,131.25.

4. This Notice and Order Correcting Proposed Decision is made a part of the record in this matter.

5. The agency shall serve respondent with the original Proposed Decision and a copy of this Notice and Order Correcting Proposed Decision at the time it serves respondent with a copy of the Proposed Decision or the final decision in this matter, whichever is earlier.

DATE: April 27, 2015

SUSAN L. FORMAKER
Presiding Administrative Law Judge
Office of Administrative Hearings

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: HAI TEE YOUNG , Acupuncture License No. AC 5634, Respondent.	Case No. 1A-2010-172 OAH No. 2014020655

PROPOSED DECISION

Administrative Law Judge Amy Yerkey, State of California, Office of Administrative Hearings, heard this matter in Los Angeles, California, on December 15, 2014.

Wendy Widlus, Deputy Attorney General, represented Terri Thorfinnson (Complainant), Executive Officer of the Acupuncture Board (Board).

No appearance was made by or on behalf of respondent Hai Tee Young.

At the hearing, Complainant moved to amend the Amended Accusation to strike paragraphs 24 through 33. There being no objection, the motion was granted.

The record was held open for the Deputy Attorney General's costs declaration, which was submitted on January 26, 2015, and received into evidence as Exhibit 12. The matter was deemed submitted on January 30, 2015.

FACTUAL FINDINGS

Jurisdiction

1. On December 5, 1977, the Board issued acupuncture license AC 652 to Respondent. The license expired on December 31, 2014, and is currently in delinquent status.[1] The license has not been previously disciplined.

[1] The Board retains jurisdiction over the license despite its expired status.

2. Complainant, in her official capacity, filed and served on Respondent, by certified mail at his address of record with the Board, the requisite jurisdictional documents, including the Accusation. Thereafter, Complainant also served on Respondent an Amended Accusation.

3. Respondent failed to return Notice of Defense but the matter was deemed controverted by Order dated April 7, 2014. (Exhibit 3 at p. 87.)

4. A Notice of Administrative Hearing reflecting hearing dates of December 15 through 18, 2014, was served on Respondent at his last known address kept on file with the Board, by United States mail on November 3, 2014.

5. Findings 1 through 4 reflect that Respondent's failure to appear at the hearing constituted a default. The hearing proceeded as a default prove-up.

Violations

6. The Amended Accusation sets forth in detail the facts regarding Respondent's violations in his operation of Hai Tee Acupuncture Clinic, in Poway, California, at paragraph 21. The facts contained in this paragraph were established through the testimony of Michael Helms, Deputy Sheriff for San Diego County, and were not controverted. They are incorporated here by reference. In sum, Deputy Helms investigated Respondent's Hai Tee Acupuncture Clinic in August 2010, after he received complaints from neighboring businesses. Helms observed that the front of business indicated both acupuncture and massage services were offered. In San Diego, an acupuncture permit alone does not allow for full body massage, yet the business indicated that it offered massages. His interior inspection revealed a lack of acupuncture equipment. For example, there were no needles, disposals, autoclaves, signs with meridians or acupuncture points, no charts, and no official appointment books. He also observed luggage, food and bedding, as though someone was living there. (Exhibit 11.) Helms explained that living in a business in the City of Poway is specifically prohibited. He concluded that Hai Tee Acupuncture Clinic was offering services without a proper city license. Helms also confirmed that the Board had not issued a valid premise permit to Respondent to operate an acupuncture clinic at this location.

7. Helms also investigated Respondent's business entitled Acupuncture Massage, in Ramona, California. The Amended Accusation also sets forth the facts in paragraphs 22 and 23, which were established by Helms' testimony, and were not controverted. They are incorporated here by reference. Specifically, Helms investigated complaints that workers were providing massages without licenses. He went undercover and requested a massage. Helms observed very similar surroundings as in the Poway clinic. For example, there were no acupuncturists or patients present; there were no needles or other acupuncture equipment. In addition, he was offered a massage by an unlicensed person, Danna Xiong. Helms later verified that she did not have a valid masseuse license, and she was issued a citation.

8. Respondent's conduct of allowing an unlicensed masseuse to offer massage at his clinic constitutes unprofessional conduct.

Failure to Comply with a Board Order

9. In September 2014, the Board issued an order compelling Respondent to undergo a physical and mental examination, based on concerns about his mental and physical health. Complainant submitted voluminous correspondence from Respondent to the Board as evidence of his potentially impaired mental state. (Exhibit 10.) To date, Respondent has refused to comply with the Board's order and has not submitted to an examination.

10. The Board has incurred the following costs to investigate and prosecute this matter: $8,330 in Division of Investigation costs, and $19,932.50 in prosecution costs, for a total of $28,262.50.

11. Except as set forth in this Decision, all other allegations in the Amended Accusation lack merit or constitute surplusage.

LEGAL CONCLUSIONS

1. Complainant's amendment of the pleadings at the outset of the hearing removed the factual basis from the first and fourth causes of discipline. Thus, cause does not exist to establish that Respondent committed acts involving corruption or unprofessional conduct by virtue of aiding or abetting Penal code violations on his work premises.

2. Cause exists to discipline Respondent's license pursuant to Business and Professions Code section 4955, subdivision (i), in that he engaged in unprofessional conduct that warrants denial of an acupuncture license, by reason of factual finding numbers 6 through 9.

3. Cause exists to discipline Respondent's license for unprofessional conduct, pursuant to Business and Professions Code sections 4955, subdivision (j), and San Diego County Code section 21.102, because he permitted people working under his business permit to violate the law or a local ordinance, by reason of factual findings 7 and 8.

4. Cause exists to discipline Respondent's license pursuant to Business and Professions Code section 4961, in that he failed to register his place of practice with the Board, by reason of factual finding number 6.

5. Cause exists to discipline Respondent's license pursuant to Business and Professions Code section 821, in that he failed to comply with the Board's order to undergo a mental and physical examination, by reason of factual finding number 9.

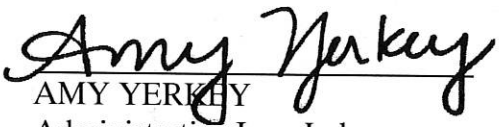
6. Cause exists to order Respondent to pay the Board's reasonable costs of investigation and prosecution, pursuant to Business and Professions Code section 4959, because Respondent engaged in acts that constitute cause to discipline his license, by reason of factual finding numbers 6 through 10 and legal conclusion numbers 2 through 5. Because two of the six causes for discipline were not established, and they related to a substantial part of the investigation, a reduction in costs is appropriate. Accordingly, the costs are reduced by fifty percent, to $14,131.25.

7. All evidence has been considered. Respondent permitted his license to be used for purposes other than acupuncture. He failed to obtain a permit from the Board. He violated local ordinances. He failed to appear for a mental and physical examination and correspondence to Board shows a potential mental defect. Given the violations, the concerns regarding Respondent's ability to practice safely, his failure to comply with the Board's order, and the lack of rehabilitation evidence, the following order is necessary for protection of the public.

ORDER

Acupuncture License number AC 652 issued to Respondent Hai Tee Young is revoked.

Dated: March 2, 2015



AMY YERKEY
Administrative Law Judge
Office of Administrative Hearings