BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1A-2009-238 OAH No. 2010120213
JIAN LIN, L.AC. 6080 University Avenue San Diego, CA 92115	
Acupuncture License No. AC 6933	
Respondent.	

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on JUL 16 2011.

It is so ORDERED JUN 16 2011.

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

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
HEIDI R. WEISBAUM
Deputy Attorney General
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Attorneys for Complainant

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JIAN LIN, L.Ac.** 6080 University Avenue San Diego, CA 92115 Acupuncture License No. AC6933 Respondent.	Case No. 1A-2009-238 OAH No. 2010120213 **STIPULATED SURRENDER OF LICENSE AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture Board. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Heidi R. Weisbaum, Deputy Attorney General.

2. Jian Lin, L.Ac. (Respondent) is represented in this proceeding by attorney Eric K. Chen, Esq., whose address is 18725 East Gale Avenue, Suite 228, City of Industry, CA 91748.

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JURISDICTION

3. On or about January 19, 2000, the Acupuncture Board (Board) issued Acupuncture License No. AC6933 to Jian Lin, L.Ac. (Respondent). The Acupuncture License was in full force and effect at all relevant times, and will expire September 30, 2011, unless renewed.

4. On August 18, 2010, Accusation No. 1A-2009-238 was filed before the Board and is currently pending against Respondent. A true and correct copy of the Accusation and all other statutorily required documents were properly served on Respondent on August 18, 2010. Respondent timely filed his Notice of Defense contesting the Accusation. A true and correct copy of Accusation No. 1A-2009-238 is attached as Exhibit A and incorporated herein by reference.

PRIOR DISCIPLINARY HISTORY

5. On September 16, 2008, Accusation No. 1A-2007-166 was filed against Respondent. On August 14, 2009, the Board's Decision adopting a Stipulated Settlement and Disciplinary Order became effective, imposing discipline on Respondent's Acupuncture License No. AC6933. The discipline consisted of a revocation stayed, five years of probation and terms and conditions. True and correct copies of the Decision, Stipulation and Accusation are attached hereto as Exhibit B and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2009-238. Respondent also has carefully read, fully discussed with counsel, and understands the effects of this Stipulated Surrender of License and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 1A-2009-238. Respondent admits that cause exists for discipline and hereby surrenders his Acupuncture License No. AC6933 for the Board's formal acceptance.

10. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Acupuncture License without further process.

CONTINGENCY

11. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be submitted to the Board for its consideration in the above-entitled matter and, further that the Board shall have a reasonable period of time in which to consider and act on this Stipulated Surrender of License and Disciplinary Order after receiving it.

12. The parties agree that this Stipulated Surrender of License and Disciplinary Order shall be null and void and not binding upon the parties unless approved and adopted by the Board, except for this paragraph, which shall remain in full force and effect. Respondent fully understands and agrees that in deciding whether to approve and adopt this Stipulated Surrender of License and Disciplinary Order, the Board may receive oral and written communications from its staff and/or the Attorney General's Office. Communications pursuant to this paragraph shall not disqualify the Board, any member thereof, and/or any other person from future participation in this or any other matter affecting or involving Respondent. In the event the Board does not, in its discretion, approve and adopt this Stipulated Surrender of License and Disciplinary Order, with the exception of this paragraph, it shall not become effective, shall be of no evidentiary value whatsoever, and shall not be relied upon or introduced in any disciplinary action by either party hereto. Respondent further agrees that should this Stipulated Surrender of License and Disciplinary Order be rejected for any reason by the Board, Respondent will assert no claim that the Board, or any member thereof, was prejudiced by its/his/her review, discussion and/or

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consideration of this Stipulated Surrender of License and Disciplinary Order or of any matter or matters related hereto.

ADDITIONAL PROVISIONS

13. This Stipulated Settlement and Disciplinary Order is intended by the parties herein to be an integrated writing representing the complete, final and exclusive embodiment of the agreements of the parties in the above-entitled matter.

14. The parties agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures of the parties, may be used in lieu of original documents and signatures and, further, that facsimile copies shall have the same force and effect as originals.

15. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice to or opportunity to be heard by Respondent, issue and enter the following Disciplinary Order:

ORDER

IT IS HEREBY ORDERED that Acupuncture License No. AC6933, issued to Respondent Jian Lin, L.Ac, is surrendered and accepted by the Acupuncture Board.

16. The surrender of Respondent's Acupuncture License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

17. Respondent shall lose all rights and privileges as an acupuncturist in California as of the effective date of the Board's Decision and Order.

18. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

19. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in

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Accusation No. 1A-2009-238 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

20. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. 1A-2009-238 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

21. If Respondent petitions for reinstatement of his license, he shall pay the Board its costs of investigation and enforcement of this matter ~~and his prior matter (Accusation No. 1A-2007-166),~~ HW in the amount of ~~$6,040.00~~ $2,040.00 HW, prior to issuance of a new or reinstated license.

ACCEPTANCE

I have carefully read the above Stipulated Surrender of License and Disciplinary Order and have fully discussed it with my attorney, Eric K. Chen, Esq. I understand the stipulation and the effect it will have on my Acupuncture License No. AC6933. I enter into this Stipulated Surrender of License and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: 4-27-2011

JIAN LIN, L.Ac.
Respondent

I have read and fully discussed with my client, Respondent Jian Lin, L.Ac., the terms and conditions and other matters contained in this Stipulated Surrender of License and Disciplinary Order. I approve its form and content.

DATED: 5-6-11

ERIC K. CHEN, ESQ.
Attorney for Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

Dated: May 12, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General

HEIDI R. WEISBAUM
Deputy Attorney General
Attorneys for Complainant

Exhibit A

In the Matter of the Accusation Against: Jian Lin, L.Ac.
Accusation No. 1A-2009-238

FILED

AUG 18 2010

ACUPUNCTURE BOARD

EDMUND G. BROWN JR.
Attorney General of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
HEIDI R. WEISBAUM
Deputy Attorney General
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Attorneys for Complainant

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JIAN LIN, L.Ac.** 6080 University Avenue San Diego, CA 92115 Acupuncture License No. AC6933 Respondent.	Case No. 1A-2009-238 **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 January 19, 2000, the Acupuncture Board issued Acupuncture License Number AC6933 to Jian Lin, L.Ac. (Respondent). The Acupuncture License was in full force and effect at all relevant times and will expire on September 30, 2011, unless renewed.

PRIOR DISCIPLINARY HISTORY

3. On September 16, 2008, Accusation No. 1A-2007-166, was filed against Respondent. On August 14, 2009, a Stipulated Settlement and Disciplinary Order became effective that

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imposed discipline on Respondent's Acupuncture License No. AC6933, consisting of a revocation stayed, five years of probation and terms and conditions.

JURISDICTION

4. This Accusation is brought before the California Acupuncture Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

5. 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:

". . .

"(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

". . .."

6. 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:

". . .

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

"(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

". . .."

COST RECOVERY

7. 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

(Conviction of a Substantially Related Crime)

8. Respondent is subject to disciplinary action under Code section 4955, subdivision (b), in that he was convicted of a crime substantially related to the qualifications, functions or duties of an acupuncturist. The circumstances are as follows:

9. From or about June 16, 2004 to or about November 18, 2006, Respondent submitted fraudulent claims to the Medi-Cal program for acupuncture services that were not provided.

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10. On or about August 6, 2008, a felony criminal complaint entitled *People of the State of California v. Jian Lin*, Case No. CD216826, was filed in San Diego County Superior Court charging Respondent with one count of making a false claim for payment of a health care benefit in excess of $400, in violation of Penal Code section 550, subdivision (a)(6), and one count of grand theft in excess of $400, in violation of Penal Code section 487, subdivision (a).

11. On or about October 17, 2008, Respondent entered a guilty plea to a violation of Penal Code section 550, subdivision (a)(6) [making a false claim for payment of a health care benefit], which had been reduced to a misdemeanor, and was sentenced to one year of summary probation, restitution in the amount of $1700 to the Medi-Cal program, a restriction from participating in the Medi-Cal program while on probation, and other fines.

SECOND CAUSE FOR DISCIPLINE

(Fraudulent Act as an Acupuncturist)

12. Respondent is further subject to disciplinary action under Code section 4955.1, subdivision (b), in that he committed a fraudulent or dishonest act as an acupuncturist as set forth in paragraphs 9 through 11 above, which are incorporated herein by reference.

THIRD CAUSE FOR DISCIPLINE

(Dishonesty)

13. Respondent is further subject to disciplinary action under Code section 4955.1, subdivision (c), in that he committed dishonesty with respect to the qualifications, functions, or duties of an acupuncturist, as described below:

A. On or about August 12, 2009, Respondent signed the renewal application for his Acupuncture License No. AC6933, stating under penalty of perjury that the facts on the renewal form were true and correct.

B. On the renewal form, Respondent checked the "No" box to the question asking if he had been convicted of any crime, despite knowing he had been convicted of a crime in October 2008, as set forth in paragraph 11, above, and incorporated herein by reference.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged herein, and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking, suspending or imposing probationary conditions on Acupuncture License Number AC 6933, issued to Respondent Jian Lin, L.Ac.;

2. Ordering Respondent Jian Lin, L.Ac., to pay to the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and,

3. Taking such other and further action as deemed necessary and proper to protect the public.

DATED: AUG 18 2010

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

Exhibit B

In the Matter of the Accusation Against: Jian Lin, L.Ac.
Decision and Order, Stipulated Settlement and Disciplinary Order,
Accusation No. 1A-2007-166

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

In the Matter of the Accusation Against:	Case No. 1A-2007-166 OAH No. 2008100301
JIAN LIN, L.AC. 6080 University Avenue San Diego, CA 92115	
Acupuncture License No. AC 6933	
Respondent.	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on AUG 14 2009.

It is so ORDERED JUL 15 2009.

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

EDMUND G. BROWN JR., Attorney General
of the State of California
STEVEN V. ADLER
Supervising Deputy Attorney General
HEIDI R. WEISBAUM, State Bar No. 101489
Deputy Attorney General
110 West "A" Street, Suite 1100
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Attorneys for Complainant

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JIAN LIN, L.Ac. 6080 University Avenue San Diego, Ca 92115 Acupuncture License No. AC 6933 Respondent.	Case No. 1A-2007-166 OAH No. 2008100301 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Janelle Wedge (Complainant) is the Executive Officer of the Acupuncture Board and brought this action solely in her official capacity. She is represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Heidi R. Weisbaum, Deputy Attorney General.

2. Respondent JIAN LIN, L.Ac. (Respondent) is represented in this proceeding by attorney Eric K. Chen, whose address is 18725 East Gale Avenue, Suite 228 City of Industry, CA 91748.

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3. On or about January 19, 2000, the Acupuncture Board (Board) issued Acupuncture License No. AC 6933 to JIAN LIN, L.Ac.. The Acupuncture License was in full force and effect at all times relevant to the charges brought in Accusation No. 1A-2007-166 and will expire on September 30, 2009, unless renewed.

JURISDICTION

4. Accusation No. 1A-2007-166 was filed before the Acupuncture Board, Department of Consumer Affairs, State of California, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on September 16, 2008. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 1A-2007-166 is attached as Exhibit A and incorporated herein.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 1A-2007-166. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 1A-2007-166.

9. Respondent agrees that his Acupuncture License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

11. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Acupuncture License No. AC 6933 issued to Respondent JIAN LIN, L.Ac., is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. COURSEWORK - ETHICS Respondent shall take and successfully complete not less than 20 semester units or 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 three 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 Respondent.

2. COURSEWORK - HAZARDOUS WASTE CONTROL Respondent shall take and successfully complete not less than 20 semester units or 30 quarter units of coursework in the following area: Hazardous Waste Control. 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 three 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 Respondent.

3. COURSEWORK - PUBLIC SAFETY LAWS RELATING TO ACUPUNCTURE Respondent shall take and successfully complete a course regarding public safety laws relating to the practice of acupuncture. Classroom attendance must be specifically required. Course content shall be pertinent to the violation and all coursework must be completed within the first three 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 course for the Board's prior approval for meeting this requirement. All costs of the coursework shall be borne by Respondent.

4. REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING Respondent shall reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure compliance for the duration of the probation period.

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 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 to the Board its costs of investigation and enforcement in the amount of $ 4000.00.

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.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Eric K. Chen. I understand the stipulation and the effect it will have on my Acupuncture License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 4-27-09

JIAN LIN, L.Ac. (Respondent)
Respondent

I concur with this stipulated settlement.

DATED: 5-5-09

ERIC K. CHEN
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board.

DATED: May 11, 2009

EDMUND G. BROWN JR., Attorney General
of the State of California

STEVEN V. ADLER
Supervising Deputy Attorney General

HEIDI R. WEISBAUM
Deputy Attorney General

Attorneys for Complainant

EXHIBIT A

ACCUSATION NO. 1A-2007-166

EDMUND G. BROWN JR., Attorney General
of the State of California
THOMAS S. LAZAR
Supervising Deputy Attorney General
MARTIN W. HAGAN, State Bar No. 155553
Deputy Attorney General
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Telephone: (619) 645-2094
Facsimile: (619) 645-2061

Attorneys for Complainant

FILED

SEP 16 2008

ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JIAN LIN, L.Ac. 6080 University Avenue San Diego, CA 92115 Acupuncture License No. AC 6933 Respondent.	Case No. 1A-2007-166 **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 January 19, 2000, the Acupuncture Board issued Acupuncture License Number AC 6933 to JIAN LIN, L.Ac. (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.

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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. Title 16, Section 1399.456 of the California Code of Regulations ("CCR") states:

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

5. 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.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking

transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

". . . .

"(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

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

". . . .

"(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

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6. 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:

". . . ."

"(c) Committing any act involving dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist.

". . . ."

"(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

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

7. Title 16, Section 1399.451 of the California Code of Regulations states:

In treating a patient, an acupuncturist shall adhere to the following procedures:

". . . .

"(h) Needles shall be disposed of by placing them in a sealed, unbreakable container marked 'Hazardous Waste' and disposed of in accordance with state and local law."

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

(Unauthorized Use of the Title "Doctor" or "Dr.")

9. Respondent is subject to disciplinary action under section 4955, as defined by section 4955, subdivision (d), and Title 16, Section 1399.456 of the CCR, in that Respondent has used the title of "doctor" and "Dr." in, among other things, signs and business cards when he did not possess an earned doctorate degree which would permit him to use title of "doctor" and "Dr." as more particularly alleged hereinafter:

(a) Respondent is the owner and operator of "Dr. Lin's Acupuncture & Chinese Herbs Center" located at 6080 University Avenue in San Diego, California.

(b) On or about December 11, 2007, Special Agent J.S., from the California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed a search warrant at "Dr. Lin's Acupuncture & Chinese Herbs Center"in regards to a Medi-Cal fraud investigation. During this visit, Special Agent J.S. interviewed Respondent and Ms. Y.P.T., the "secretary" and part owner of "Dr. Lin's Acupuncture & Chinese Herbs Center." During this interview, Respondent admitted

he did not have a doctorate and that he was not considered a doctor in the United States. After Special Agent J.S. concluded his interviews of Respondent and Ms. Y.P.T., they were both advised that Respondent could no longer have "Dr." on his sign and could no longer refer to himself as a doctor to his patients. Respondent and Ms. Y.P.T. both acknowledged they understood.

(c) On or about July 7, 2008, Department of Consumer Affairs ("DCA") Senior Investigator D.C. did a premises inspection at Respondent's acupuncture business. Upon arriving at the premises, Senior Investigator D.C. observed a large sign over the door to Respondent's clinic which stated "Dr. Lin's Acupuncture and Chinese Herbs Center." After entering the premises, Senior Investigator D.C. saw business cards on the top of the counter in the receptionist area. He confiscated one of the business cards which also stated "Dr. Lin's Acupuncture and Chinese Herbs Center."

SECOND CAUSE FOR DISCIPLINE

(False or Misleading Advertising)

10. Respondent is further subject to disciplinary action under section 4955, as defined by sections 4955, subdivision (c), in that Respondent has engaged in false or misleading advertising by representing that he is a doctor or "Dr." when, in fact, he does not possess an earned doctorate degree which would permit him to use title of "doctor" and "Dr." as more particularly alleged hereinafter:

(a) Paragraph 9, above, is incorporated by reference and realleged as if fully set forth herein.

(b) Respondent has represented to patients that he is a doctor through, among other things, his sign and business cards which use the terminology of "Dr. Lin's Acupuncture and Chinese Herbs Center." The use of "Dr." is false because Respondent does not possess an earned doctorate degree which would permit him to use the title of "doctor" and "Dr." Moreover, Respondent's use of the terms "doctor" or "Dr." is misleading in that it conveys a level of expertise, specialization, and/or

possession of a medical degree or doctorate degree none of which is possessed by Respondent.

THIRD CAUSE FOR DISCIPLINE

(Dishonesty or Corruption)

11. Respondent is further subject to disciplinary action under section 4955.1, as defined by section 4955.1, subdivision (c), in that Respondent has committed an act or acts of dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist as more particularly alleged herein.

(a) Paragraphs 9 and 10, above, are incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Follow Infection Control Guidelines)

12 Respondent is further subject to disciplinary action under section 4955, as defined by section 4955, subdivisions (d) and (e) and Title 16, Section 1399.451, subdivision (h), of the CCR, in that Respondent failed to follow infection control guidelines thereby risking transmission of blood-borne infectious diseases as more particularly alleged hereinafter:

(a) On or about December 11, 2007, Special Agent J.S., from the California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed a search warrant at "Dr. Lin's Acupuncture & Chinese Herbs Center"in regards to a Medi-Cal fraud investigation. During this visit, Special Agent J.S. observed used acupuncture needles that were placed in unsealed plastic buckets under the patient beds and some of the acupuncture needles were on the carpet next to the containers.

(b) On or about July 7, 2008, Department of Consumer Affairs ("DCA") Senior Investigator D.C. did a premises inspection at Respondent's acupuncture business. During the premises inspection, Senior Investigator D.C. observed used acupuncture needles in two rooms that were being stored in unsecured half-gallon red plastic sharps containers which did not contain any tops.

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FIFTH CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicenced Practice of Acupuncture)

13 Respondent is subject to disciplinary action under section 4955, as defined by section 4955, subdivision (d), in that Respondent aided and abetted the unlicenced practice of acupuncture in having an unlicenced individual remove acupuncture needles from patients as more particularly alleged herein.

(a) On or about December 11, 2007, Special Agent J.S., from the California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed a search warrant at "Dr. Lin's Acupuncture & Chinese Herbs Center"in regards to a Medi-Cal fraud investigation. During this visit, Special Agent J.S. observed, Ms. Y.P.T., the part owner of "Dr. Lin's Acupuncture & Chinese Herbs Center," remove acupuncture needles from a patient. When Special Agent J.S. interviewed Ms. Y.P.T. she stated that she does not insert needles into patients but did occasionally take acupuncture needles out of patients if Respondent was busy. Ms. Y.P.T. is not a licensed acupuncturist.

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 Number AC 6933, issued to JIAN LIN, L.Ac.;

2. Ordering JIAN LIN, 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; and

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

DATED: SEP 16 2008

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

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