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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JONATHAN HWAKAN WU, L.AC.** **1718 Colorado Blvd., Ste. 105** **Los Angeles, CA 90041** **Acupuncturist License No. AC 6971,** Respondent.	Case No. 1A-2010-189 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board).

2. On or about January 19, 2000, the Board issued Acupuncturist License Number AC 6971 to JONATHAN HWAKAN 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, 2015, 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. 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:

"(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

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

"(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.

"(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

"(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

"(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.

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

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"(k) The abandonment of a patient by the licentiate without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

"(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."

5. 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."

COST RECOVERY

6. 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

(Repeated Negligent Acts)

7. Respondent is subject to disciplinary action under section 4955.2, subsection (b) of the Code in that he committed repeated negligent acts in the care and treatment of patient S.M.[1] The circumstances are as follows:

8. Patient, S.M, a then 30-year-old-female, had an initial patient visit with Respondent on or about March 31, 2009. S.M. presented with chronic back, neck and arm pain associated with a work-related injury for which she took SOMA and Darvocet. S.M. was referred to Respondent by her orthopedic surgeon for acupuncture treatment to relieve her pain. Besides her injury, S.M. presented in good health and had no history of respiratory problems. During this visit, Respondent administered acupuncture treatment to S.M. without complaints.

8. On or about April 6, 2009, S.M. returned to Respondent's office for acupuncture treatment. Respondent administered acupuncture treatment at the following points: GB-20, GB-21, Bai Lao, SI-12, SI-13, and UB-10. Due to close proximity to the lung the GB-21 point is a potentially dangerous point, and SI-12 and SI-13 are well-known dangerous points, to all acupuncturists providing treatment. The standard of practice for treatment at such points close to the lung is to employ insertion of short needles.[2] The use of long needles[3] increases the risk for miscalculating depth of insertion and pneumothorax (collapsed lung). Respondent inserted long, 1.5 inch needles at these points instead of short needles.

9. The standard of care for insertion to the point GB-21 is to use the technique known as the pinching method.[4] Use of the pinching method at GB-21 greatly reduces risk of

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[1] The names of patients are kept confidential to protect their privacy, but will be revealed to Respondent upon his written request for discovery.

[2] Short needles are defined as 0.5 to 1 inch needles.

[3] Long needles are defined as 1.5 to 4 inch needles, which are best used for fleshy areas.

[4] The pinching method requires that the practitioner pinches up the trapezius muscle at the GB-21 (continued...)

pneumothorax. Respondent failed to employ this method when he administered acupuncture at the GB-21 point.

10. As Respondent inserted the last two needles, patient S.M. felt an intense, sharp pain. After insertion of all the needles, Respondent left the treatment room and did not return until about 15 minutes later. S.M. then complained to Respondent of intense pain where Respondent had inserted the last two needles. Respondent adjusted the two needles, then left the room again for several minutes. When he returned, S.M. again complained that she was still experiencing intense pain. Respondent then removed the two needles and began massaging the area with his elbow. S.M. reported that the pain became more intense with the massage, and asked Respondent to stop massaging the area. Respondent then removed the rest of the needles and left the room for several minutes. During this time S.M. began to experience difficulty breathing and worsening pain.

11. After Respondent returned to the treatment room, S.M. complained of difficulty breathing and worsening pain. Respondent informed S.M. that he might have punctured her lung and insisted on driving S.M. to the hospital, instead of calling 911 at S.M.'s request. During the ride to the hospital, Respondent repeatedly urged S.M. to withhold the fact that her symptoms were attributed to the acupuncture treatments that Respondent had administered. The hospital later diagnosed S.M. with pneumothorax.

12. In his Board interview, Respondent explained that he had performed the same treatments on other patients with no problems and was unsure as to how or why the treatment may have caused pneumothorax.

13. Respondent committed repeated negligent acts and/ or omissions in the care and treatment of patient S.M. as follows:

A. By failing to use short needles for insertions close to the lung when he administered acupuncture to S.M;

(...continued)
using the thumb and index finger. The needle is then carefully inserted into the muscle and the muscle is released.

B. By failing to employ the pinching method when he inserted the needle to the GB-21 point;

C. By failing to observe the patient for 30 minutes following needle insertion, in accordance with practice standards and despite reports from the patient of symptoms of severe pain and difficulty breathing; and

D. By repeatedly attempting to conceal the fact that his acupuncture treatment caused the patient's injury, a deception which could have delayed the emergency room's diagnosis of pneumothorax.

SECOND CAUSE FOR DISCIPLINE

(Incompetence)

14. Respondent is subject to disciplinary action under section 4955.2, subsection (c), of the Code in that he exhibited incompetence in the care and treatment of patient S.M. The circumstances are as follows:

15. The facts and circumstances described in paragraphs 7 through 12 are incorporated herein as if set forth in full.

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 AC 6971, issued to JONATHAN HWAKAN WU, L.Ac.;

2. Ordering Jonathan Hwakan 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 to the Acupuncture Board the costs of probation monitoring; and

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

DATED: FEB 19 2015

TERRI THORFINNSON
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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