BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No. 1A-2013-148
	)	
NAI QIANG GU, L.AC.	)	
5020 Butterfield Court	)	
Culver City, CA 92030	)	
	)	
Acupuncturist License No. AC 7224	)	
	)	
Respondent.	)	
	)	

DECISION AND ORDER

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

This Decision shall become effective on September 7, 2016.

It is so ORDERED August 8, 2016.

Hildegarde Aguinaldo, Board President
Acupuncture Board
Department of Consumer Affairs
State of California

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **NAI QIANG GU, L.Ac.** **5020 Butterfield Court** **Culver City, CA 92030** **Acupuncturist License No. AC 7224,** Respondent.	Case No. 1A-2013-148 **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. Ben Bodea ("Complainant") is the Acting Executive Officer of the Acupuncture Board. He brings this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Wendy Widlus, Deputy Attorney General.

2. Respondent Nai Qiang Gu, L.Ac. ("Respondent") is represented in this proceeding by attorney Daniel F. Stea, whose address is: 600 Corporate Pointe, Suite 1170, Culver City, CA 90230.

3. On or about March 20, 2000, the Acupuncture Board (Board) issued Acupuncturist License No. AC 7224 to Nai Qiang Gu, L.Ac. The Acupuncturist License was in full force and

effect at all times relevant to the charges brought in Accusation No. 1A-2013-148 and will expire on April 30, 2017, unless renewed.

JURISDICTION

4. Accusation No. 1A-2013-148 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on November 9, 2015. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1A-2013-148 is attached as Exhibit A 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-2013-148. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement 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 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.

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

CULPABILITY

9. Respondent understands that the charges and allegations in Accusation No. 1A-2013-148, if proven at a hearing, constitute cause for imposing discipline on his Acupuncturist License No. AC 7224.

10. For the purposes of resolving the Accusation without the expense and uncertainty of

further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation and that those charges constitute cause for discipline.

11. Respondent agrees that his Acupuncturist License is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Acupuncture Board. Respondent understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order shall have the same force and effect as the originals.

14. 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 Acupuncturist License No. AC 7224 issued to Respondent Nai Qiang Gu, 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. ACTUAL SUSPENSION As part of probation, Respondent is suspended from the practice of acupuncture for 60 days beginning with the effective date of this decision.

2. PRACTICE MONITOR Within 90 days of the effective date of this decision, Respondent shall submit to the Board for its prior approval, the name and qualifications of one or

more California licensed acupuncturists whose license is clear (no record of complaints) and current and who has agreed to serve as a practice monitor. Once approved, the monitor shall submit to the Board a plan by which Respondent's practice shall be monitored. The monitor's education and experience shall be in the same field of practice as that of the Respondent. The monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring has taken place and providing an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely fashion. The Respondent shall provide access to the monitor of Respondent's fiscal and client records and shall be permitted to make direct contact with patients. Further, the monitor shall have no prior business, professional, personal or other relationship with Respondent. Respondent shall execute a release authorizing the monitor to divulge any information that the Board may request.

Respondent shall notify all current and potential patients of any term or condition of probation which will affect their treatment or the confidentiality of their records (such as this condition which requires a practice monitor). Such notification shall be signed by each patient prior to continuing or commencing treatment.

If the monitor quits or is otherwise no longer available, Respondent shall not practice until a new monitor has been approved by the Board. All costs of monitoring shall be borne by the Respondent. Monitoring shall consist of at least one hour per week of individual face to face meetings.

3. 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.

4. COURSEWORK Respondent shall take and successfully complete not less than 8 hours of coursework in each area: herbal prescription and counseling, case management, drug/herb interaction, record keeping and ethics. The coursework shall be taken as 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 (3) years of probation. The required coursework must be in addition to any continuing education courses that may be

required for license renewal. Within ninety (90) days of the effective date of the Decision, respondent shall submit a plan for the Board's prior approval for meeting the educational requirement. All costs of the coursework shall be borne by the Respondent.

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 seventy-two (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. 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.

8. 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.

9. 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.

10. 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.

11. COST RECOVERY Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $ 9,262.40. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term. Cost recovery will not be tolled. Respondent understands

that failure to timely pay costs is a violation of probation, and submission of evidence demonstrating financial hardship does not preclude the Board from pursuing further disciplinary action. However, Respondent understands that providing evidence and supporting documentation of financial hardship may delay further disciplinary action. Consideration to financial hardship will not be given should Respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

12. 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.

13. COMPLETION OF PROBATION Upon successful completion of probation, Respondent's license will be fully restored.

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ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Daniel F. Stea. I understand the stipulation and the effect it will have on my Acupuncturist 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 Acupuncture Board.

DATED: May 19, 2016

NAI QIANG GU, L.Ac.
Respondent

I have read and fully discussed with Respondent Nai Qiang Gu, L.Ac. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: May 20, 2016

Daniel F. Stea
Attorney for Respondent

ENDORSEMENT

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

Dated: May 20, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

WENDY WIDLUS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 1A-2013-148

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FILED
NOV 09 2015
ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **NAI QIANG GU, L.Ac.** **5020 Butterfield Court** **Culver City, CA 92030** **Acupuncturist License No. AC 7224,** Respondent.	Case No. 1A-2013-148 **ACCUSATION**

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.

2. On or about March 2, 2000, the Acupuncture Board issued Acupuncturist License Number AC 7224 to Nai Qiang Gu, 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 April 30, 2017, 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 (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 4021 of the Code states:

"'Controlled substance' means any substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

8. Section 4022 of the Code states:

"'Dangerous drug' or 'dangerous device' means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: 'Caution: federal law prohibits dispensing without prescription,' 'Rx only,' or words of similar import.

"(b) Any device that bears the statement: 'Caution: federal law restricts this device to sale by or on the order of a _____,' 'Rx only,' or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

9. 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.

". . ."

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10. Section 4051 of the Code states, in pertinent part:

"(a) Except as otherwise provided in this chapter, it is unlawful for any person to manufacture, compound, furnish, sell, or dispense a dangerous drug or dangerous device, or to dispense or compound a prescription pursuant to Section 4040 of a prescriber unless he or she is a pharmacist under this chapter."

". . ."

11. 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.

". . ."

12. Section 4955.1 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:

". . .

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

13. 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."

14. California Code of Regulations, title 16, 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."

15. California Health and Safety Code section 110423.4 states:

"(a) This article shall not apply to a licensed health care practitioner practicing within his or her scope of practice who prescribes, dispenses, or both, herbs in the course of treatment of patients under the care of the licensed practitioner.

"(b) This article shall not apply to herbal products that are sold or distributed directly to a licensed health care practitioner when the herbal product is used solely for the purpose of the treatment of patients under the care of the practitioner."

16. California Health and Safety Code section 110760 states:

"It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any food that is misbranded."

17. California Health and Safety Code section 111355 states:

"(a) Any drug is misbranded unless its label bears, to the exclusion of any other nonproprietary name except the applicable, systematic chemical name or the chemical formula, all of the following information:

"(1) The established name of the drug, if any.

"(2) If it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, antipyrine, atropine, hyoscine, hyoscyamine, codeine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, barbituric acid, or any derivative or preparation of any substances contained therein.

Any drug or device is misbranded unless its labeling bears all of the following information:

"(a) Adequate directions for use.

"(b) Such adequate warnings against use in pathological conditions or by children where its use may be dangerous to health.

"(c) Adequate warning against unsafe dosage or methods or duration of administration or application.

"Warnings shall be in a manner and form as are necessary for the protection of users.

"If the department determines that any requirement of subdivision (a), as applied to any drug or device, is not necessary for the protection of the public health, the department may adopt regulations exempting the drug or device from these requirements.

"Any drug or device exempted under Section 502(f) of the federal act (21 U.S.C. Sec. 352(f)) is exempt from the requirement of this section. The department, however, may adopt any regulation including a drug or device within, or excluding a drug or device from the requirements of this section, whether or not the inclusion or exclusion of the drug or device is in accord with the federal act. "(3) For nonprescription drugs, the quantity or proportion of each active ingredient and the established name of each inactive ingredient in accordance with Sections 502(e)(1)(A)(ii) and (iii) of the federal act (21 U.S.C. 352(e)(1)(A)(ii) and (iii)).

"(b) The requirement for stating the quantity of the active ingredients of any drug, including the quantity or proportion of any alcohol, and also including, whether active or not, the quantity or proportion of any bromides, ether, chloroform, acetanilide, acetophenetidin, antipyrine, atropine, hyoscine, hyoscyamine, codeine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, barbituric acid, or any derivative or preparation of any substances contained therein, shall apply to all drugs, including prescription drugs and nonprescription drugs. However, the requirement for declaration of quantity shall not apply to nonprescription drugs that are also cosmetics, as defined in Section 201(i) of the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 321(i)) and that are labeled in compliance with federal labeling requirements concerning declaration of ingredients including active ingredients and also the quantity and proportion of any alcohol, except that the quantity or proportion of the following ingredients, whether active or not, shall be declared: bromides, ether, chloroform, acetanilide, acetophenetidin, antipyrine, atropine, hyoscine, hyoscyamine, codeine, arsenic, digitalis, digitalis

glycosides, mercury, ouabain, strophanthin, strychnine, barbituric acid, or any derivative or preparation of any substances contained therein. The department may exempt any nonprescription drug from the requirement of stating the quantity of the active ingredients, other than those specifically named in this subdivision, upon a showing by the applicant through evidence satisfactory to the department that the granting of the exemption will not endanger the public health. For any prescription drug the established name of the drug or ingredient, as the case may be, on the label and on any labeling on which a name for the drug or ingredient is used shall be printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for the drug or ingredient.

"The changes made in this section by Chapter 943 of the Statutes of 1978 shall not apply to any drug shipped by a manufacturer or packer to a retailer or wholesaler before January 1, 1980. Any such drugs so shipped shall comply with this section on and after January 1, 1981."

18. California Health and Safety Code section 111440 states:

"It is unlawful for any person to manufacture, sell, deliver, hold, or offer for sale any drug or device that is misbranded."

19. California Health and Safety Code section 111360 states:

"Any drug subject to Section 111470 is misbranded unless the manufacturer, packer, or distributor of the drug includes, in all advertisements and other descriptive matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug, a true statement of all of the following:

"(a) The established name, printed prominently and in a type at least half as large as that used for any proprietary name of the drug.

"(b) The formula showing quantitatively each ingredient of the drug to the extent required for labels under Section 111355.

"(c) The name and place of business of the manufacturer that produced the finished dosage form of the drug, as prescribed by regulations issued by the department. This subdivision applies only to advertisements or descriptive matter issued for drugs manufactured in finished dosage form on or after April 1, 1973.

"(d) Such other information, in brief summary relating to side effects, contraindications, and effectiveness as shall be required by regulations promulgated by the department.

"Regulations relating to side effects, contraindications, and effectiveness issued pursuant to Section 502(n) of the federal act (21 U.S.C. Sec. 352(n)) are the regulations establishing information requirements relating to side effects, contraindications and effectiveness in this state. The department may, by regulation, make other requirements relating to side effects, contraindications, and effectiveness whether or not in accordance with the regulations adopted under the federal act."

20. California Health and Safety Code section 111365 states:

"Any drug subject to Section 111470 is misbranded unless the established name of the prescription drug or prescription drug ingredient is printed on the label prominently and in type at least half as large as that used for the proprietary name or designation on the label, labeling, or advertising.

"The department may, by regulation, establish exemptions from the requirements of this section when compliance with this section is not considered necessary for the protection of health and safety."

21. California Health and Safety Code section 111470 states:

"The following drugs or devices, that are intended for use by man, shall be sold only upon a written prescription of a practitioner licensed by law to prescribe the drug or device, or upon an oral prescription of the licensee that is reduced promptly to writing and filed by the pharmacist, or by refilling the written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist:

"(a) A habit forming drug to which Section 111350 applies.

"(b) A drug or device that, because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug or device.

"(c) A drug or device for which adequate directions cannot be written for persons, who are

not practitioners licensed by law to prescribe the drug or device, for safe and effective self-medication or treatment by those persons, who are not practitioners licensed by law to prescribe the drug or device.

"(d) A drug or device that is limited by an effective application under Section 505 of the federal act (21 U.S.C. Sec. 355) or Section 111550 to use under the professional supervision of a practitioner licensed by law to administer the drug or device.

"If any prescription for the drug does not indicate the number of times it may be refilled, if any, the prescription may not be refilled unless the pharmacist obtains a new order from the practitioner."

22. California Health and Safety Code section 111375 states:

"Any drug or device is misbranded unless its labeling bears all of the following information:

"(a) Adequate directions for use.

"(b) Such adequate warnings against use in pathological conditions or by children where its use may be dangerous to health.

"(c) Adequate warning against unsafe dosage or methods or duration of administration or application.

"Warnings shall be in a manner and form as are necessary for the protection of users.

"If the department determines that any requirement of subdivision (a), as applied to any drug or device, is not necessary for the protection of the public health, the department may adopt regulations exempting the drug or device from these requirements.

"Any drug or device exempted under Section 502(f) of the federal act (21 U.S.C. Sec. 352(f)) is exempt from the requirement of this section. The department, however, may adopt any regulation including a drug or device within, or excluding a drug or device from the requirements of this section, whether or not the inclusion or exclusion of the drug or device is in accord with the federal act."

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COSTS

23. 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."

Facts

24. The California Acupuncture Board (Board) received a complaint from JB,[1] a student intern at Emperor's College, a Traditional Chinese Medicine school in Santa Monica, California, which stated that an Emperor's College instructor and acupuncturist named Nai Qiang Gu (Respondent) sold her "Chinese patents"[2] for her husband's insomnia which contained dangerous prescription medications. The Board initiated an investigation through the Department of Consumer Affairs, Division of Investigation (DOI).

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

[2] Much of Chinese herbalism as practiced in the U.S. is in the form of prescriptions of Chinese "patent medicines" which are the equivalent in China of over-the-counter medicines in the United States.

25. During JB's interview with the DOI investigator she stated the following: during a conversation with Respondent she mentioned her husband DC was suffering from insomnia. In response to Respondent's ensuing questions JB described her husband's symptoms whereupon Respondent stated he had herbs that would help her husband.

26. Respondent then sold JB pills enclosed in a container labeled solely in Chinese and instructed JB to give the pills to her husband.

27. Respondent did not create or maintain any records regarding his sale of pills to JB for DC.

28. DC took the pills for about four weeks and found that his insomnia was much improved. However, when DC went to have his annual exam his blood test results displayed elevated liver enzymes, indicative of a liver disorder, and he was diagnosed with acute toxic hepatitis.[3]

29. DC discontinued taking the pills JB purchased from Respondent and approximately three (3) weeks after he discontinued the pills his liver enzyme levels normalized.

30. JB mentioned to Respondent she had a rash on her finger. Following JB's comment about her rash Respondent sold her a small tube of cream labeled solely in Chinese and instructed her to apply it to the rash.

31. JB had the labels on the pill container and the tube of cream translated from Chinese to English. The writing on the pill container was translated as "Suan Zao Ren"[4] which contained L-tetrahydropalmatine,[5] a known hepatotoxin.[6]

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[3] Toxic hepatitis is defined as an inflammation of the liver in reaction to exposure to certain substances. Toxic hepatitis can be caused by alcohol, chemicals, drugs or nutritional supplements. In some cases, toxic hepatitis develops within hours or days of exposure to a toxin. In other cases, it may take months of regular use before signs and symptoms of toxic hepatitis appear. The symptoms of toxic hepatitis often go away when exposure to the toxin stops. However toxic hepatitis can permanently damage the liver, leading to irreversible scarring of liver tissue (cirrhosis) and in some cases to liver failure.

[4] Suan Zao Ren Tang (SZRT) has a long history of use as part of the traditional Chinese pharmacopoeia first documented in the classical Chinese text Jin Gui Yao Lue (Essential Prescriptions from the Golden Cabinet) circa 210 A.D. by Zhong-Jing Zhang. SZRT is a combination of five medicinal Chinese herbs as follows: Semen Zizyphi Spinosae (Suanzaoren), Sclerotium Poriae Cocos (Fuling), Radix Ligustici Chuanxiong (Chuanxiong), Rhizoma Anemarrhena (Zhimu), and Radix Glycyrrhizae (Gancao).

[5] L-tetrahydropalmatine is extracted from the Corydalis yanhusuo plant, a traditional Korean analgesic herb. This compound produces a variety of biological effects in the central nervous and immune systems. Tetrahydropalmatine was banned from importation into the United States by the US Food and Drug Administration

(continued...)

32. Translation of the Chinese writing on the cream container revealed that one of the cream's ingredients was Ketoconazole,[7] a prescription anti-fungal medication.

33. Respondent did not create or maintain any records regarding his sale of cream to JB.

34. MK, another Emperor's College student, was subsequently interviewed by the DOI investigator and stated the following: MK had both taken classes from Respondent, and had seen Respondent as a patient at the Emperors College medical clinic where Respondent provided acupuncture treatment to him.

35. Sometime between July 2011, and July 2012, outside of the Emperors College clinical setting, MK told Respondent he was having difficulty sleeping and asked if Respondent had anything that might help him.

36. In response to MK's question Respondent sold MK pills from a small bottle labeled solely in Chinese. Respondent told MK the pills were Yan Hu Suo.[8]

37. MK said he took the Yan Hu Suo pills several times and stopped because he did not like the after effects of the Yan Hu Suo pills.

38. MK confirmed Respondent did not document the sale of the Yan Hu Suo pills in MK's patient chart at Emperors College when Respondent sold him the pills outside of the Emperors College clinical setting.

39. The DOI investigator's subsequent review of MK's Emperors College clinic medical patient records confirmed Respondent did not enter a prescription for the Yan Hu Suo pills he sold to MK.

40. The DOI investigator interviewed Respondent who admitted the truth of JB and MK's

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(...continued)
in 1993 because it is hepatotoxic.

[6] Hepatotoxin is defined as an agent that damages the liver.

[7] Ketoconazole is a synthetic antifungal agent effective on a variety of fungi used to treat systemic and topical fungal infections. Ketoconazole is a synthetic medication, and is not classified as an herb.

[8] Yan Hu Suo is defined as a perennial herb, the root of which contains alkaloids (alkaloids are defined as any of a group of organic basic substances found in plants, many of which are pharmacologically active, e.g., atropine, caffeine, morphine, nicotine, quinine, and strychnine.) The herb is used for depression, mental disorders, and limb tremors, as a mild sedative and tranquilizer, as a hallucinogen, to lower blood pressure, and to relax spasms in the small intestine.

statements provided to the DOI investigator.

41. Respondent admitted the pills he sold to JB for DC were a concentrated form of Suan Zao Ren which is very popular in China.

42. Respondent admitted it is not proper protocol for a licensed acupuncturist to prescribe herbs without seeing and evaluating the patient and/or without documenting the patient's chart.

43. Respondent admitted it is not proper protocol for a licensed acupuncturist to dispense herbs to a patient without documenting the patient's chart to reflect dispensing herbs to the patient.

44. The DOI Investigator told Respondent one of the ingredients in the cream he sold to JB was Ketoconazole and Respondent did not recognize that Ketoconazole is a drug legally available by prescription only.

45. Respondent admitted he did not document MK's chart when he sold MK the Yan Hu Suo pills.

46. Respondent stated that he brought the herbal compounds he sold to JB and MK back with him from China.

47. Respondent admitted that he sold the herbal compounds he brought back from China to other students in the same manner he sold herbal compounds to JB and MK.

48. Respondent admitted he had been selling the herbal compounds he brought back from China in this manner for two (2) or three (3) years.

49. Respondent admitted he was unaware it was illegal in the United States to dispense the herbal compounds he brought back from China.

50. Respondent admitted that prior to speaking to the DOI investigator he did not think anything he was doing which formed the basis for the Board's investigation was wrong.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

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

52. Under the applicable standard of care a doctor-patient relationship is established when an acupuncturist recommends a treatment for a person's medical condition through a third-party which is followed by the person who has the medical condition.

53. The standard of care when treating acupuncture patients requires the acupuncturist to take a thorough history of the patient's complaint(s), complete an adequate examination of the patient, evaluate and determine a proper diagnosis for the patient's condition, use competent treatment protocols while following the principles, concepts and traditions of Asian medicine, and properly document the patient's chart.

54. The standard of care when treating acupuncture patients requires the acupuncturist to prepare adequate, accurate written records at the time of medical treatment which include documentation of the patient's complaints, objective findings from the acupuncturist's examination, treatment recommendations, records of herbs prescribed and/or dispensed, treatment results, and complications, if any, from the treatment.

55. The standard of practice requires an acupuncturist to practice acupuncture within the legally permissible scope of practice. An acupuncturist may legally provide and/or prescribe herbs which are not banned by the US Food and Drug Administration. Prescribing and/or providing drugs which are not within the legitimate scope of an acupuncturist's practice is an extreme departure from the standard of care.

56. The standard of care requires that an acupuncturist not prescribe drugs or medications which can legally only be prescribed by licensed physicians.

57. The standard of care requires that an acupuncturist not sell or offer for sale any misbranded drugs as defined by the relevant Health and Safety Code sections.

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

A. Respondent failed to take a thorough history of DC's complaint.

B. Respondent failed to perform an adequate examination of DC.

C. Respondent failed to make a proper diagnosis of DC's condition.

D. Respondent failed to utilize competent Asian medicine treatment protocols for DC.

E. Respondent failed to create and properly document any patient records for DC.

F. Respondent provided drugs to DC which were not within the legitimate scope of his acupuncture practice.

G. Respondent provided drugs which contained banned substances to DC resulting in serious illness to DC.

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

A. Respondent failed to take a thorough history of JB's complaint.

B. Respondent failed to perform an adequate examination of JB.

C. Respondent failed to make a proper diagnosis of JB's condition.

D. Respondent failed to utilize competent Asian medicine treatment protocols for JB.

E. Respondent failed to create and properly document any patient records for JB.

F. Respondent provided drugs to JB which were not within the legitimate scope of his acupuncture practice.

G. Respondent provided drugs which contained banned substances to JB.

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

A. Respondent failed to take a thorough history of MK's complaint.

B. Respondent failed to perform an adequate examination of MK.

C. Respondent failed to make a proper diagnosis of MK's condition.

D. Respondent failed to utilize competent Asian medicine treatment protocols for MK.

E. Respondent failed to create and properly document any patient records for MK.

61. Respondent's acts and/or omissions as set forth in paragraphs 24 through 49, inclusive, above, whether proven individually, jointly, or in any combination thereof, constitute gross negligence pursuant to section 4955.2, subdivision (a), of the Code, as more fully set forth in paragraphs 58,59 and 60. Therefore cause for discipline exists.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

62. 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:

63. Complainant refers to, and by reference incorporates herein paragraphs 24 through 49, inclusive, above.

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

A. Respondent failed to take a thorough history of DC's complaint.

B. Respondent failed to perform an adequate examination of DC.

C. Respondent failed to make a proper diagnosis of DC's condition.

D. Respondent failed to utilize competent Asian medicine treatment protocols for DC.

E. Respondent failed to create and properly document any patient records for DC.

F. Respondent provided drugs to DC which were not within the legitimate scope of his acupuncture practice.

G. Respondent provided drugs which contained banned substances to DC resulting in serious illness to DC.

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

A. Respondent failed to take a thorough history of JB's complaint.

B. Respondent failed to perform an adequate examination of JB.

C. Respondent failed to make a proper diagnosis of JB's condition.

D. Respondent failed to utilize competent Asian medicine treatment protocols for JB.

E. Respondent failed to create and properly document any patient records for JB.

F. Respondent provided drugs to JB which were not within the legitimate scope of his acupuncture practice.

G. Respondent provided drugs which contained banned substances to JB.

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

A. Respondent failed to take a thorough history of MK's complaint.

B. Respondent failed to perform an adequate examination of MK.

C. Respondent failed to make a proper diagnosis of MK's condition.

D. Respondent failed to utilize competent Asian medicine treatment protocols for MK.

E. Respondent failed to create and properly document any patient records for MK.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

67. Respondent is subject to disciplinary action under section 4955, as defined by section 4955.1, subdivision (e), in that he failed to maintain adequate and accurate records relating to the services he provided to DC, JB, and MK. The circumstances are as follows:

68. Complainant refers to, and by reference incorporates herein paragraphs 24 through 27, 30 through 33, and 34 through 38, inclusive, above.

69. Respondent committed unprofessional conduct by failing to maintain adequate and accurate records relating to the services he provided to DC, JB, and MK as follows:

A. Respondent failed to prepare and create adequate and accurate records of the history of DC's complaint.

B. Respondent failed to prepare and create adequate and accurate records of any physical examination for DC.

C. Respondent failed to prepare and create adequate and accurate records of his diagnosis for DC.

D. Respondent failed to prepare and create adequate and accurate records for the drugs he provided for DC.

E. Respondent failed to prepare and create adequate and accurate records of the history of JB's complaint.

F. Respondent failed to prepare and create adequate and accurate records of any physical examination for JB.

G. Respondent failed to prepare and create adequate and accurate records of his diagnosis for JB.

H. Respondent failed to prepare and create adequate and accurate records of any drugs he provided for JB.

I. Respondent failed to prepare and create adequate and accurate records of the history of MK's complaint.

J. Respondent failed to prepare and create adequate and accurate records of any physical examination for MK.

K. Respondent failed to prepare and create adequate and accurate records of his diagnosis for MK.

L. Respondent failed to prepare and create adequate and accurate records of any drugs he provided for MK.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

70. 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 DC, JB, and MK. The circumstances are as follows:

71. The facts and circumstances in paragraphs 24 through 66 are incorporated by reference as if set forth in full herein.

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 7224, issued to Nai Qiang Gu, L.Ac.;

2. Ordering Nai Qiang Gu, 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: NOV 09 2015

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

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