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ACUPUNCTURE BOARD

7
8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1A-2009-187

11 **YU-TAI FU**
12 **3033 Clement Street**
13 **San Francisco, CA 94121**

A C C U S A T I O N

14 **Acupuncture License AC No. 8506**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about July 3, 2002, the Acupuncture Board issued Acupuncture License AC
22 Number 8506 to Yu-Tai Fu (Respondent). The Acupuncture License was in full force and effect
23 at all times relevant to the charges brought herein and will expire on October 31, 2011, unless
24 renewed.

25 **JURISDICTION**

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

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4. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct, and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3."

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:

"..."

"(d) Aiding or abetting in, or violating or conspiring in, directly or indirect, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter."

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 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."

7. 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

8. Section 4959 of the Code states:

1 "(a) The board may request the administrative law judge, under his or her
2 proposed decision in resolution of a disciplinary proceeding before the board, to
3 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
4 not to exceed actual and reasonable costs of the investigation and prosecution of the
5 case.

6 "(b) The costs to be assessed shall be fixed by the administrative law judge and
7 shall not in any event be increased by the board. When the board does not adopt a
8 proposed decision and remands the case to an administrative law judge, the
9 administrative law judge shall not increase the amount of any costs assessed in the
10 proposed decision.

11 "(c) When the payment directed in the board's order for payment of costs is not
12 made by the licensee, the board may enforce the order for payment in the superior
13 court in the county where the administrative hearing was held. This right of
14 enforcement shall be in addition to any other rights the board may have as to any
15 licensee directed to pay costs.

16 "(d) In any judicial action for the recovery of costs, proof of the board's
17 decision shall be conclusive proof of the validity of the order of payment and the
18 terms for payment.

19 "(e) All costs recovered under this section shall be considered a reimbursement
20 for costs incurred and shall be deposited in the Acupuncture Fund."

21 CAUSE FOR DISCIPLINE

22 (Sexual misconduct)

23 9. Respondent is subject to disciplinary action under code sections 726 in that he
24 committed acts of sexual misconduct with Patient A. during acupuncture treatment.

25 The circumstances are as follows:

26 10. Between March or April 2009 and October, 2009, Patient A., a 34 year old female,
27 went to Respondent's office for acupuncture treatment for low back pain. On October 2, 2009,
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1 Patient A. arrived at Respondent's office at approximately 5:00 p.m. She informed Respondent
2 that she had low back pain and a bad cold.

3 11. Patient A. was placed in a treatment room, and laid down on a treatment table.
4 Respondent told her to take off her blouse and she laid face down on the treatment table. He
5 placed needles in her and left the room.

6 12. Respondent re-entered the room, performed a cupping treatment, then left the room.
7 He returned to the room, and told Patient A. that he would perform qigong massage to help the
8 chi flow through her body. He informed her that her mid-section was hot and that her feet were
9 cold, and stated that qigong massage would unblock the blocked areas and let energy flow to
10 improve her health. He told her to remove her pants. Patient A. left her bra and panty on.
11 Respondent did not provide Patient A. with a towel or sheet to cover her body. Respondent
12 performed some massage with his elbow and during the massage, he asked the patient if she was
13 married, if she had a boyfriend, and if her boyfriend lived in the city. He did not ask her any
14 questions about her back pain, which was the reason she had sought treatment.

15 13. As Respondent talked, he began massaging her upper thigh area using his fingertips.
16 Respondent removed Patient A.'s panty, and told her that the energy was trapped and he need to
17 work in that area. Respondent continued using his fingertips to touch her in a rapid manner in the
18 top of her inner thigh and in her genital area. He began rubbing and pressing on her perineum.
19 Patient A. told him to stop and asked if he would focus on her back. Respondent repeated that her
20 feet were cold and her midsection was hot, and it was very necessary to open up these blocked
21 channels. He stated that she was very sick, and to feel healthy, she needed the energy to flow
22 throughout her body. He told her that the way to allow the energy to flow was to allow him to
23 massage the areas where the energy was blocked.

24 14. Respondent again began pressing his fingertips in a rapid motion in Patient A.'s
25 genital area. He began rubbing his fingertips in her vaginal area, and Patient A. said, "That's
26 enough." Respondent did not stop, and she repeated in a firm tone, "That's enough", and he
27 stopped. Patient A. informed Respondent that her back still hurt, and asked that he focus on her
28 back. She put her underwear back on and Respondent used his elbow to massage her back. As he

1 massaged her back, he told Patient A. that it was important for her chi to flow. He stated that heat
2 was trapped in her mid-section, and that she needed to open the channels of her body through
3 massage to become healthy and get over her cold. He told her that the massage had nothing to do
4 with whether she was male or female, and that it made no difference to him. He emphasized that
5 his treatment was for her health, and that he knew she was a "good girl". He stated that his
6 intentions were only to treat her for physical health. Respondent told Patient A. that he was
7 taking extra time with her because she had been referred by another acupuncturist who had been a
8 former student. Respondent asked Patient A. for a few more minutes of massage to unblock her
9 chi, and she agreed.

10 15. Patient A. laid back on the table, wearing her bra and panty. Respondent told her
11 that she had stopped him twice, and that when she was not relaxed, her chi stopped flowing. He
12 instructed her to close her eyes and not talk. Without saying anything to her, he pulled off her
13 underwear. Patient A. opened her eyes, and Respondent instructed her again to close her eyes and
14 not say anything. He began rapidly moving his fingertips in her genital area. He inserted his
15 fingers inside her vagina. Immediately upon realizing this, Patient A. told Respondent to stop and
16 said that she needed to leave.

17 16. Patient A. put her clothes on, and as she was walking out of his office, Respondent
18 told her repeatedly that she was a "good girl," that he did not like "bad girls," and that if someone
19 is a "bad girl" he does not see them anymore. He told Patient A. that she needed to see him for
20 another session. Respondent tried to hug her and told her, "American girls are the best!" As
21 Patient A. walked through the waiting room, she noticed that it was 9:15 p.m. and realized her
22 treatment session had lasted almost four hours.

23 17. Respondent's acts of removing Patient A.'s underwear without her consent,
24 repeatedly massaging Patient A.'s genital area and inserting his fingers in Patient A.'s vagina
25 constitutes sexual misconduct in violation of code section 726 and is cause to discipline his
26 license.

1 SECOND CAUSE FOR DISCIPLINE

2 (Gross negligence)

3 18. Paragraphs 10 through 16 are incorporated herein.

4 19. Respondent's acts of repeatedly massaging Patient A.'s genital area and inserting his
5 fingers in her vagina constitutes gross negligence in violation of code section 4955.2(a) and is
6 cause to discipline his license.

7 THIRD CAUSE FOR DISCIPLINE

8 (Repeated negligent acts)

9 20. Paragraphs 10 through 16 are incorporated herein.

10 21. Respondent's acts of repeatedly massaging Patient A.'s genital area and inserting his
11 fingers in her vagina constitutes repeated negligent acts in violation of code section 4955.2(b) and
12 is cause to discipline his license.

13 FOURTH CAUSE FOR DISCIPLINE

14 (Incompetence)

15 22. Paragraphs 10 through 16 are incorporated herein.

16 23. Respondent's acts of repeatedly massaging Patient A.'s genital area and inserting his
17 fingers in her vagina for treatment of back pain and a cold constitutes incompetence in violation
18 of code section 4955.2~~(b)~~ and is cause to discipline his license.

19 (c) vs

20 FIFTH CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct)

22 24. Paragraphs 10 through 16 are incorporated herein.

23 25. Respondent's acts of not providing a female patient with a towel or sheet during an
24 appointment, repeatedly massaging Patient A.'s genital area and inserting his fingers in her
25 vagina for treatment of back pain and a cold, asking questions about Patient A.'s marital status
26 and attempting to hug Patient A. constitutes unprofessional conduct in violation of code sections
27 4955(d) and 4955.1(c) and is cause to discipline his license.
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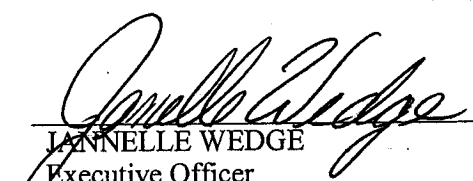
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PRAYER

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

1. Revoking or suspending Acupuncture License AC Number 8506, issued to Yu-Tai Fu;
2. Ordering Yu-Tai Fu 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. Taking such other and further action as deemed necessary and proper.

DATED: 8-17-11


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

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