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ACUPUNCTURE BOARD

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

11 In the Matter of the Accusation Against:

Case No. 1A-2010-102

12 KAREN GAO, L.AC.
2100 East Katella Avenue, #342
13 Anaheim, California 92806

A C C U S A T I O N

14 Acupuncturist's License No. AC 8509,
15 Respondent.
16

17 Complainant alleges:

18 **PARTIES**

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

22 2. On or about July 3, 2002, the Board issued Acupuncturist's License Number AC 8509
23 to Karen Gao ("Respondent"). The Acupuncturist's License was in full force and effect at all
24 times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

25 **JURISDICTION**

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

1 4. Section 4955, subdivision (d) of the Code states:

2 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
3 license of any acupuncturist if he or she is guilty of unprofessional conduct.

4 "Unprofessional conduct shall include, but not be limited to, the following: . . .

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

8 5. Section 4955.1, subdivision (e) of the Code states:

9 "The board may deny, suspend, revoke, or impose probationary conditions upon the license
10 of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be
11 limited to, any of the following: . . .

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

14 6. California Code of Regulations, title 16, section 1399.453, states:

15 "An acupuncturist shall keep complete and accurate records on each patient who is given
16 acupuncture treatment, including but not limited to, treatments given and progress made as a
17 result of the acupuncture treatments"

18 7. Section 726 of the Code states:

19 "The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
20 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
21 licensed under this division, under any initiative act referred to in this division and under Chapter
22 17 (commencing with Section 9000) of Division 3.

23 "This section shall not apply to sexual contact between a physician and surgeon and his or
24 her spouse or person in an equivalent domestic relationship when that physician and surgeon
25 provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person
26 in an equivalent domestic relationship."

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28 ///

1 RECOVERY OF COSTS

2 8. Section 4959 of the Code states:

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

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

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

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

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

19 FIRST CAUSE FOR DISCIPLINE

20 (Sexual Relations with a Patient)

21 9. Respondent is subject to disciplinary action under Code section 4955, subdivision (d)
22 and 726 in that she had sexual relations with a patient. The circumstances are as follows:

23 10. From approximately December 11, 2009 to May 15, 2010, Respondent provided
24 acupuncture treatment to Patient P.M.¹ Patient P.M. sought treatment to stop smoking and
25 alleviate stress.

26 11. From approximately December 31, 2009 to May 1, 2010, Respondent had an ongoing
27

28 ¹ The initials of the patient's name are used to protect his right of privacy.

1 sexual relationship with Patient P.M. During that time period, Respondent engaged in sexual
2 acts, including but not limited to sexual intercourse, after treatment with Patient P.M. in her office
3 on multiple occasions.

4 SECOND CAUSE FOR DISCIPLINE

5 (Failure to Keep Adequate and Accurate Records)

6 12. Respondent is subject to disciplinary action under section 4955.1, subdivision (e) of
7 the Code and California Code of Regulations, title 16, section 1399.453 in that she failed to keep
8 complete and accurate records regarding her provision of acupuncture services to Patient P.M.
9 The circumstances are as follows:

10 13. The facts and allegations in Paragraphs 10 through 11, above, are incorporated by
11 reference and re-alleged as if fully set forth herein.

12 14. Respondent entered treatment notes in Patient P.M.'s medical records for treatment
13 that he received on May 1, 2010 and May 15, 2010. She did not chart treatment that she provided
14 to him on other dates, including but not limited to December 11, 2009, December 24, 2009, and
15 February 3, 2010. Credit card transactions for Patient P.M.'s treatment were processed to her
16 place of business, Euphora Acupuncture, on December 11, 2009, December 24, 2009, and
17 February 3, 2010.

18 15. In addition, Respondent failed to document a chronological account of Patient P.M.'s
19 medical history and illnesses. She did not collect, analyze, and document the clinical symptoms
20 and signs via the four diagnostic methods (a.k.a. the Four Examinations). And she did not
21 document subjective patient reporting, objective findings, diagnosis, prognosis, or a treatment
22 plan.

23 THIRD CAUSE FOR DISCIPLINE

24 (Violation of Acupuncture Licensure Act or Regulation)

25 16. Respondent is subject to disciplinary action under Code section 4955, subdivision (d)
26 in that she violated the terms of the Acupuncture Licensure Act, or a regulation adopted by the
27 Board pursuant to the Acupuncture Licensure Act. The circumstances are as follows:

28 17. The facts and allegations in Paragraphs 10 through 11 and 14 through 15, above, are

1 incorporated by reference and re-alleged as if fully set forth herein.

2 FOURTH CAUSE FOR DISCIPLINE

3 (Unprofessional Conduct)

4 18. Respondent is subject to disciplinary action under Code section 4955, subdivision (d)
5 in that she engaged in unprofessional conduct by breaching the rules or ethical code of conduct of
6 the profession of acupuncture, or by engaging in conduct unbecoming to an acupuncturist in good
7 standing in the profession and which demonstrates an unfitness to practice acupuncture.² The
8 circumstances are as follows:

9 19. The facts and allegations in Paragraphs 10 through 11 and 14 through 15, above, are
10 incorporated by reference and re-alleged as if fully set forth herein.

11 PRAYER

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

- 14 1. Revoking or suspending Acupuncturist's License Number AC 8509, issued to
15 Respondent;
- 16 2. Ordering Respondent to pay the Acupuncture Board the reasonable costs of the
17 investigation and enforcement of this case, pursuant to section 4959 of the Code;
- 18 3. Ordering Respondent, if placed on probation, to pay the Acupuncture Board the costs
19 of probation monitoring; and
- 20 4. Taking such other and further action as the Board deems necessary and proper.

21
22
23 DATED: 12/10/13


24 TERRI THORFINNSON
25 Executive Officer
26 Acupuncture Board
27 Department of Consumer Affairs
28 State of California
Complainant

² See *Shea v. Board of Medical Examiners* (1978) 81 Cal.App.3d 564, 575.