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FILED

MAY 16 2014

ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **HEATHER LORRAINE RICE, L.AC.** **900 W. Broadway** **Anaheim, CA 92805** **Acupuncturist License number AC 8567,** Respondent.	Case No. 1A-2011-87 **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 (Board.)

2. On or about September 9, 2002, the Acupuncture Board issued Acupuncturist License Number AC 8567 to Heather Lorraine Rice, L.Ac. (Respondent). That Acupuncturist license was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2015, unless renewed.

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JURISDICTION

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

4. Section 652 of the Code states, in pertinent part:

"Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein.

". . ."

5. Section 4927, subdivision (d), of the Code states:

"'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, for the 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.

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

7. 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:

" . . ."

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

". . ."

8. 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."

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COST RECOVERY

9. 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."

Factual Summary

10. Patient J. E.[1], a 79 year old woman, was seen by Respondent on May 19, 2011, for lower back, hip and upper back pain. During this appointment Respondent inserted acupuncture needles into J. E.'s upper back with electro-stimulation applied. J. E. complained of pain during both the treatment and post treatment. After J. E. went home she called Respondent's office and spoke with Respondent. J. E. told Respondent that she was still experiencing pain in her upper back where Respondent had inserted the acupuncture needles. Respondent instructed J.

[1] The name of the patient is abbreviated to protect her privacy rights. The patient's name will be provided to Respondent upon written request for discovery.

E. to take prescription narcotic pain medication the patient had previously obtained from a physician.

11. The applicable standard of care requires that a licensed acupuncturist prescribe only 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. It is not within the scope of practice for an acupuncturist to direct a patient to take medication prescribed by a physician and to do so is an extreme deviation from the standard of care.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

12. Respondent is subject to disciplinary action under section 4955.2, subdivision (a) in that she was grossly negligent in her care and treatment of her patient, J. E.

The circumstances are as follows:

13. The standard of care requires that a licensed acupuncturist prescribe only 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.

14. Respondent's treatment of patient J. E. as set forth above in paragraphs 10-11 inclusive above, includes the following act which constitutes an extreme departure from the standard of care:

A. Respondent directed patient J. E. to take narcotic pain medication previously prescribed by a medical doctor; Respondent is not permitted to prescribe narcotic pain medication as a licensed acupuncturist.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

15. Respondent is subject to disciplinary action under section 4955 for unprofessional conduct. The circumstances are as follows:

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16. Complainant refers to and, by reference incorporates herein paragraphs 10-11 inclusive, above as though fully set forth here.

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 8567, issued to Heather Lorraine Rice;

2. Ordering her 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 her 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: MAY 16 2014

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

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