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FILED
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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: HONGWEI SUN 5460 Sunol Blvd #2 Pleasanton, CA 94566 Acupuncture License No. AC 8581 Respondent.	Case No. 1A-2012-31 **FIRST AMENDED ACCUSATION**

Complainant alleges:

PARTIES

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

2. On September 17, 2002, the Board issued Acupuncture License Number AC 8581 to Hongwei Sun (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2015, unless renewed.

JURISDICTION

3. This Accusation is brought before the 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 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 indirectly, 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 be limited to, any of the following:

"…"

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

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."

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8. California Code of Regulations, title 19, 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."

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."

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FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct and Unprofessional Conduct

Involving Adult Female Patient)

10. On or about May 2, 2012, J.K.[1], a psychologist, filed an on-line complaint with the Acupuncture Board. J.K. stated that her patient, N.S., a minor female, reported that Respondent had touched her inappropriately during an acupuncture treatment session. M.F., N.S.'s mother, also reported that Respondent had touched M.F. inappropriately during an acupuncture treatment session.

11. M.F. began treatment with Respondent on or about March 23, 2012 for, among other things, pain stemming from fibromyalgia, including pain in her neck and arms. She returned to Respondent for acupuncture treatment on or about March 26, 2012 and on or about April 9, 2012. During one of her treatment sessions, she told Respondent that she thought her daughter, N.S., who was experiencing pain similar to her own, would also benefit from acupuncture treatment. Respondent agreed to treat N.S.

Patient N.S.

12. On or about April 2, 2012, N.S. began treatment with Respondent for, among other things, pain stemming from fibromyalgia and endometriosis, including pain in her neck, shoulders, back and hips, and pain related to her menstrual period. During the treatment session, Respondent placed acupuncture needles in N.S.'s head, neck, legs and abdomen. N.S. had no complaints about the session.

13. On or about April 6, 2012, N.S. returned for a second treatment session with Respondent. Respondent placed acupuncture needles in her ankles, neck, back, forehead and chest.

14. N.S. was fifteen-years-old when she was treated by Respondent.

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[1] Patient and reporting witness names are abbreviated to protect privacy.

Patient M.F.

15. On or about April 9, 2012, M.F., unaware of the details of her daughter's recent treatment, returned to Respondent for acupuncture treatment. Since her clothing was loose fitting, she kept her clothing on during treatment. During the treatment session, Respondent pulled up M.F.'s skirt, spread her thighs apart, and pushed her panties to one side, exposing her vagina. Respondent then rubbed and pinched her outer vagina, and rubbed and pinched her clitoris. M.F. felt uncomfortable but did not say anything. Respondent then placed acupuncture needles and left the room for about forty five minutes before returning and removing the needles.

16. At no time during his treatment of M.F. did Respondent inform her of the reasons for exposing or contacting her vaginal area. Nor did Respondent obtain her consent to do so.

17. Startled by Respondent's conduct during this treatment session, M.F. became concerned about Respondent's treatment of her daughter. She asked N.S. about the details of her treatment sessions with Respondent, and N.S. described to her how Respondent had exposed and touched her vaginal area. Neither M.F nor N.S. ever returned to Respondent for further acupuncture treatment.

18. Respondent's actions as described in paragraphs 10 through 17 constitute sexual misconduct and unprofessional conduct, and establish cause to discipline his license pursuant to Code sections 726 and 4955.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

19. Paragraphs 10 through 18 are incorporated herein.

20. Respondent's actions are an extreme departure from the standard of care and constitute gross negligence in violation of code section 4955.2(a).

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts: Inadequate Recordkeeping)

21. Paragraphs 10 through 18 are incorporated herein.

22. Respondent's records for M.F. and N.S. failed to note the results of his examination of each patient. He made no notations regarding each patient's diagnosis, nor did he chart the progress of each patient as a result of the acupuncture treatment provided.

23. Respondent's failure to maintain adequate and accurate records for two patients over serial treatment sessions constitutes repeated negligence, in violation of Code sections 4955.2(b) and 4955.1(e) and California Code of Regulations, title 19, section 1399.453(e).

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 Number AC 8581, issued to Hongwei Sun;

2. Ordering Hongwei Sun 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: SEP 24 2015

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

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