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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: | Case No. 1A-2010-101 |
|---|---|
| **FENG-JIE YUAN, L.AC.**<br>**950 Calle Carillo**<br>**San Dimas, CA 91773**<br>**Acupuncture License No. AC 9078**<br><br>Respondent. | **ACCUSATION** |

Complainant alleges:

PARTIES

1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board (Board).

2. On or about April 1, 2003, the Board issued Acupuncturist License Number AC 9078 to Feng-Jie Yuan (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2012, unless renewed.

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.

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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.

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

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 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."

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."

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."

## FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

10. Respondent is subject to disciplinary action under Code section 4955.2, subdivision (a) in that he committed acts of gross negligence. The circumstances are as follows:

11. On or about May 4, 2008, Patient C.T.[1] saw Respondent for an evaluation of her back pain, and received an acupuncture treatment. Respondent prescribed Chinese herbs and advised the patient to get an MRI of her back. The patient saw Respondent for acupuncture treatments on May 6, 17, 20, and 24, 2008, and June 14 and 18, 2008.

12. The patient's back pain persisted, and she had difficulty standing and walking. Respondent agreed to provide an acupuncture treatment to Patient C.T. at her apartment. On November 15, 2008, Respondent came to the patient's apartment. Respondent told C.T. to take off her clothes, cover herself with a towel, and lay on her bed face down. Respondent lowered the towel exposing the patient's back, and then massaged and performed acupuncture on her shoulders and back for about an hour. After the treatment, Patient C.T. paid Respondent $50.00. Respondent hugged and kissed C.T., pulled her to the bed, and took off her clothes. The patient's mind went blank, fear overtook her body, and she was not able to speak. Respondent got undressed, got on top of the patient, and had sexual intercourse with her. Patient C.T. cried, but did not say anything to Respondent.

13. In late November or early December 2008, Patient C.T. called Respondent to confront him about the November 18, 2008 incident. Respondent came to the patient's home to talk to her. Respondent picked up C.T., kissed her, took off her clothes, and pushed her on to the bed. He undressed, got on top of her, and had sexual intercourse with her. The patient felt paralyzed and was overcome with fear.

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[1]The name of the patient is kept confidential to protect her privacy rights, and though known to respondent, will be revealed to him upon receipt of a timely request for discovery.

14. In January 2009, Respondent called Patient C.T., and said he wanted to speak to her about these incidents. Respondent came to the patient's home and had sexual intercourse with her again. Patient C.T. felt ashamed, and did not speak to anyone about these incidents. Respondent continued to have an sexual intercourse with CT through November 2009.

15. During the next several months, Respondent continued to treat Patient C.T. at her home. Respondent's records indicate he treated the patient on May 19, 2009; September 28 and 30, 2009; October 3, 5, 7, 9, 12, 14, and 28, 2009; and November 2 and 6, 2009. In November 2009, Respondent had sexual intercourse again with C.T. In January 2010, the patient sought counseling for depression, and told her therapist that Respondent had sexual relations with her.

16. Respondent did not perform and document in the records a complete history and physical examination of the patient, including orthopedic testing. There is no indication in the records that Respondent explained all proposed treatments to the patient. Respondent's records indicate that C.T.'s pain was progressively worse after her initial evaluation on May 4, 2008. The results of the patient's x-rays and MRI taken on June 10, 2008, were normal. There is no indication in the record that Respondent referred the patient for a medical evaluation. Respondent did not document in the follow-up visit records the patient's subjective complaints, his objective findings, his assessment of the treatments, the progress of the patient, and his treatment plans. There is no record of the patient's acupuncture treatment on November 15, 2008, at her home.

17. On or about March 11, 2011, during his interview with Medical Board Investigator Alexander, Respondent admitted the following facts. In 2008, he performed a physical examination of C.T. after church, and told her to see him at his clinic. Respondent treated C.T. with acupressure massage, acupuncture with electricity, and heating pads. He started a romantic relationship with the patient in November 2008. He treated the patient at her home, and had a sexual relationship with her. He ended the relationship with Patient C.T. in November 2009. In a written statement dated March 18, 2011, Respondent admitted that starting a relationship with a patient was wrong.

18. Respondent was grossly negligent in the care and treatment of Patient C.T. by the following acts or omissions, separately and together: (1) Respondent committed acts of sexual

abuse, misconduct or relations with Patient C.T. (2) He failed to perform and document in the records a complete history and physical examination of the patient, including orthopedic testing. (3) He failed to document in the records that he explained all proposed treatments to the patient. (4) He failed to refer the patient for a medical evaluation although the records indicated her pain was progressively worse after her initial evaluation. (5) He failed to document the patient's acupuncture treatment on November 15, 2008, at her home. (6) Respondent failed to document in the follow-up visit records the patient's subjective complaints, his objective findings, his assessment of the treatments, the progress of the patient, and his treatment plans.

SECOND CAUSE FOR DISCIPLINE

(Sexual Abuse, Misconduct or Relations with a Patient)

19. Respondent is subject to disciplinary action under Code section 726 in that he committed acts of sexual abuse, misconduct or relations with a patient. The facts and circumstances alleged in the First Cause for Discipline are incorporated as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

20. Respondent is subject to disciplinary action under Code section 4955.2, subdivision (b) in that he committed repeated negligent acts. The facts and circumstances alleged in the First Cause for Discipline are incorporated as if fully set forth.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

21. Respondent is subject to disciplinary action under Code section 4955.2, subdivision (c) in that he was incompetent in the care and treatment of patient C.T. The facts and circumstances alleged in the First Cause for Discipline are incorporated as if fully set forth.

FIFTH CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

22. Respondent is subject to disciplinary action under Code section 4955.1 in that he failed to maintain adequate and accurate records relating to the provision of services to Patient

C.T. The facts and circumstances alleged in the First Cause for Discipline are incorporated as if fully set forth.

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 9078 issued to Feng-Jie Yuan;

2. Ordering him 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 the Acupuncture Board the costs of probation monitoring; and

4 Taking such other and further action as deemed necessary and proper.

DATED: OCT 06 2011

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

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