BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:  

JIAN LIN, L.Ac.
6080 University Avenue
San Diego, CA 92115
Acupuncture License No. AC 6933

Respondent.

Complainant alleges:

PARTIES

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

2. On or about January 19, 2000, the Acupuncture Board issued Acupuncture License Number AC 6933 to JIAN LIN, L.Ac. (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2009, unless renewed.
JURISDICTION

3. This Accusation is brought before the Acupuncture Board (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. Title 16, Section 1399.456 of the California Code of Regulations ("CCR") states:

"It is unprofessional conduct for an acupuncturist to use the title 'Doctor' or the abbreviation 'Dr.' in connection with the practice of acupuncture unless he or she possesses a license or certificate which authorizes such use or possesses an earned doctorate degree from an accredited, approved or authorized educational institution as set forth under Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturist as set forth in Sections 4927 and 4937 of the Code.

The use of the title 'Doctor' or the abbreviation 'Dr.' by an acupuncturist as authorized above without further indicating the type of license, certificate or degree which authorizes such use, constitutes unprofessional conduct."

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:"

"...."

"(c) False or misleading advertising.

"(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.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking
transmission of blood-borne infectious diseases from licensee to patient, from patient
to patient, and from patient to licensee. In administering this subdivision, the board
shall consider referencing the standards, regulations, and guidelines of the State
Department of Health Services developed pursuant to Section 1250.11 of the Health
and Safety Code and the standards, regulations, and guidelines pursuant to the
California Occupational Safety and Health Act of 1973 (Part 1 (commencing with
Section 6300) of Division 5 of the Labor Code) for preventing the transmission of
HIV, hepatitis B, and other blood-borne pathogens in health care settings. As
necessary, the board shall consult with the Medical Board of California, the
California Board of Podiatric Medicine, the Dental Board of California, the Board
of Registered Nursing, and the Board of Vocational Nursing and Psychiatric
Technicians, to encourage appropriate consistency in the implementation of this
subdivision.

"The board shall seek to ensure that licensees are informed of the
responsibility of licensees and others to follow infection control guidelines, and of
the most recent scientifically recognized safeguards for minimizing the risk of
transmission of blood-borne infectious diseases.

"..."

"(h) Disciplinary action taken by any public agency for any act
substantially related to the qualifications, functions, or duties of an acupuncturist or
any professional health care licensee.

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

"...

"(l) the failure to notify the board of the use of any false, assumed, or
fictitious name other than the name under which he or she is licensed as an individual
to practice acupuncture."
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:

"..."

"(c) Committing any act involving dishonesty or corruption with respect to the
qualifications, functions, or duties of an acupuncturist.

"..."

"(d) Altering or modifying the medical record of any person, with
fraudulent intent, or creating any false medical record.

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

7. Title 16, Section 1399.451 of the California Code of Regulations states:

In treating a patient, an acupuncturist shall adhere to the following
procedures:

"...

"(h) Needles shall be disposed of by placing them in a sealed, unbreakable
container marked ‘Hazardous Waste’ and disposed of in accordance with state and
local law."

**COST RECOVERY**

8. 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**

**(Unauthorized Use of the Title “Doctor” or “Dr.”)**

9. Respondent is subject to disciplinary action under section 4955, as defined
by section 4955, subdivision (d), and Title 16, Section 1399.456 of the CCR, in that Respondent has
used the title of “doctor” and “Dr.” in, among other things, signs and business cards when he did not
possess an earned doctorate degree which would permit him to use title of “doctor” and “Dr.” as
more particularly alleged hereinafter:

(a) Respondent is the owner and operator of “Dr. Lin’s Acupuncture &
Chinese Herbs Center” located at 6080 University Avenue in San Diego, California.

(b) On or about December 11, 2007, Special Agent J.S., from the
California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed
a search warrant at “Dr. Lin’s Acupuncture & Chinese Herbs Center” in regards to a
Medi-Cal fraud investigation. During this visit, Special Agent J.S. interviewed
Respondent and Ms. Y.P.T., the “secretary” and part owner of “Dr. Lin’s
Acupuncture & Chinese Herbs Center.” During this interview, Respondent admitted
he did not have a doctorate and that he was not considered a doctor in the United States. After Special Agent J.S. concluded his interviews of Respondent and Ms. Y.P.T., they were both advised that Respondent could no longer have “Dr.” on his sign and could no longer refer to himself as a doctor to his patients. Respondent and Ms. Y.P.T. both acknowledged they understood.

(c) On or about July 7, 2008, Department of Consumer Affairs (“DCA”) Senior Investigator D.C. did a premises inspection at Respondent’s acupuncture business. Upon arriving at the premises, Senior Investigator D.C. observed a large sign over the door to Respondent’s clinic which stated “Dr. Lin’s Acupuncture and Chinese Herbs Center.” After entering the premises, Senior Investigator D.C. saw business cards on the top of the counter in the receptionist area. He confiscated one of the business cards which also stated “Dr. Lin’s Acupuncture and Chinese Herbs Center.”

SECOND CAUSE FOR DISCIPLINE

(False or Misleading Advertising)

10. Respondent is further subject to disciplinary action under section 4955, as defined by sections 4955, subdivision (c), in that Respondent has engaged in false or misleading advertising by representing that he is a doctor or “Dr.” when, in fact, he does not possess an earned doctorate degree which would permit him to use title of “doctor” and “Dr.” as more particularly alleged hereinafter:

(a) Paragraph 9, above, is incorporated by reference and realleged as if fully set forth herein.

(b) Respondent has represented to patients that he is a doctor through, among other things, his sign and business cards which use the terminology of “Dr. Lin’s Acupuncture and Chinese Herbs Center.” The use of “Dr.” is false because Respondent does not possess an earned doctorate degree which would permit him to use the title of “doctor” and “Dr.” Moreover, Respondent’s use of the terms “doctor” or “Dr.” is misleading in that it conveys a level of expertise, specialization, and/or
possession of a medical degree or doctorate degree none of which is possessed by Respondent.

THIRD CAUSE FOR DISCIPLINE
(Dishonesty or Corruption)

11. Respondent is further subject to disciplinary action under section 4955.1, as defined by section 4955.1, subdivision (c), in that Respondent has committed an act or acts of dishonesty or corruption with respect to the qualifications, functions, or duties of an acupuncturist as more particularly alleged herein.

(a) Paragraphs 9 and 10, above, are incorporated by reference and realleged as if fully set forth herein.

FOURTH CAUSE FOR DISCIPLINE
(Failure to Follow Infection Control Guidelines)

12 Respondent is further subject to disciplinary action under section 4955, as defined by section 4955, subdivisions (d) and (e) and Title 16, Section 1399.451, subdivision (h), of the CCR, in that Respondent failed to follow infection control guidelines thereby risking transmission of blood-borne infectious diseases as more particularly alleged hereinafter:

(a) On or about December 11, 2007, Special Agent J.S., from the California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed a search warrant at “Dr. Lin’s Acupuncture & Chinese Herbs Center” in regards to a Medi-Cal fraud investigation. During this visit, Special Agent J.S. observed used acupuncture needles that were placed in unsealed plastic buckets under the patient beds and some of the acupuncture needles were on the carpet next to the containers.

(b) On or about July 7, 2008, Department of Consumer Affairs (“DCA”) Senior Investigator D.C. did a premises inspection at Respondent’s acupuncture business. During the premises inspection, Senior Investigator D.C. observed used acupuncture needles in two rooms that were being stored in unsecured half-gallon red plastic sharps containers which did not contain any tops.

///
FIFTH CAUSE FOR DISCIPLINE

(Aiding and Abetting the Unlicenced Practice of Acupuncture)

13 Respondent is subject to disciplinary action under section 4955, as defined by section 4955, subdivision (d), in that Respondent aided and abetted the unlicenced practice of acupuncture in having an unlicenced individual remove acupuncture needles from patients as more particularly alleged herein.

(a) On or about December 11, 2007, Special Agent J.S., from the California Depart of Justice, Bureau of Medi-Cal Fraud and Elder Abuse, executed a search warrant at “Dr. Lin’s Acupuncture & Chinese Herbs Center” in regards to a Medi-Cal fraud investigation. During this visit, Special Agent J.S. observed, Ms. Y.P.T., the part owner of “Dr. Lin’s Acupuncture & Chinese Herbs Center,” remove acupuncture needles from a patient. When Special Agent J.S. interviewed Ms. Y.P.T. she stated that she does not insert needles into patients but did occasionally take acupuncture needles out of patients if Respondent was busy. Ms. Y.P.T. is not a licensed acupuncturist.

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 Number AC 6933, issued to JIAN LIN, L.Ac.;

2. Ordering JIAN LIN, L.Ac., to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and

///
///
///
///
///

8
3. Taking such other and further action as deemed necessary and proper.

DATED: SEP 16 2008

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