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ACUPUNCTURE BOARD

7
8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. 1A-2010-195

11 **LI QING TU**
12 **3535 Ross Avenue Suite 106**
13 **San Jose CA 95124**

A C C U S A T I O N

14 **Acupuncture License No. 10225**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about March 18, 2005, the Acupuncture Board issued Acupuncture License
22 Number 10225 to Li Qing Tu (Respondent). The Acupuncture License was in full force and
23 effect at all times relevant to the charges brought herein and will expire on October 31, 2012,
24 unless renewed.

25 **JURISDICTION**

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

1 4. Section 4955 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 "..."

6 "(b) Conviction of a crime substantially related to the qualifications, functions,
7 or duties of an acupuncturist, the record of conviction being conclusive evidence
8 thereof.

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

12 5. Section 4956 of the Code states:

13 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
14 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
15 is deemed to be a conviction within the meaning of this chapter.

16 "The board may order a license suspended or revoked, or may deny a license, or may
17 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
18 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
19 suspending the imposition of sentence irrespective of a subsequent order under the provisions of
20 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to
21 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
22 complaint, information, or indictment."

23 6. Section 4959 of the Code states:

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

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

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

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

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

16 CAUSE FOR DISCIPLINE

17 (Substantially-related conviction)

18 7. Respondent is subject to disciplinary action under code sections 4955(b) and 4956
19 [substantially-related conviction] in that she was convicted of violating Penal Code section
20 653.22(a), loitering to commit prostitution. The circumstances are as follows:

21 8. On or about December 18, 2008, San Jose Police Officers conducted an undercover
22 investigation at Evergreen Acupuncture Center in San Jose, California, based on information that
23 acts of prostitution and illegal massage were occurring at the business.

24 9. San Jose Vice Officer M. Chan located an advertisement at a computer website for
25 "super sweet young masseuse with relaxation massage" at the Evergreen Acupuncture Center
26 dated September 30, 2008. Based on his training and experience, he was aware that this website
27 was a known area for prostitutes to place advertisements for prospective customers to solicit and
28 engage in illicit activity. On December 18, 2008, at approximately 1:00 p.m., he entered

1 Evergreen Acupuncture Center in an undercover capacity. He noted that the signage on the front
2 of the business stated that it was an "acupuncture center." When he entered, he observed an
3 Asian female sitting behind a medical office window. He told her that he had seen the ad online
4 about a "young masseuse" and asked if he needed an appointment for a half hour massage. The
5 woman replied that no appointment was necessary and that he could get a massage "right now."
6 She did not ask him if he had any medical condition, nor did she give him any paperwork to
7 complete. Officer Chan saw several darkened rooms with massage tables. He left the business
8 and took a business card which stated "Evergreen Acupuncture Center, Li Qing Tu, Lac, O.M.D."

9 10. Officer Chan did a business records check for the address and found that the owner
10 was Respondent. At approximately 2:45 p.m., Officer R. Chan went to Evergreen Acupuncture
11 Center in an undercover capacity. He did not see a listing of services, in violation of the San Jose
12 Municipal Code. He was greeted by an Asian female, later identified as Respondent. She was
13 not wearing a city-issued massage identification. She approached the officer and asked what
14 services he wanted. He asked for a half hour massage. Respondent led him to a room and told
15 him to pay her \$40.00, which the officer did, using pre-recorded Vice funds. Respondent directed
16 the officer to undress and lie on the massage table. Respondent stated that she was an
17 acupuncturist. She did not ask him any questions about his health, nor did she perform any
18 physical examination.

19 11. In the room, Officer Chan observed a massage table, white towels, heater, lotions and
20 oils. There were no acupuncture needles. Based on his training and experience, the business was
21 set up for massage only. The officer laid on the massage table and covered his buttocks area with
22 a white towel. Respondent returned to the room, moved the white towel and began massaging the
23 officer's upper and lower body. She told the officer that she was the owner and had sent her
24 employee home because business was slow. During the massage, the officer asked Respondent
25 how much for a "hand job", street terminology for manual stimulation of the penis. Respondent
26 answered that she did not understand, but that he could do it himself. She then attempted to reach
27 for his groin area. Officer Chan pulled away. He again asked her how much it would cost for a
28 "hand job." Respondent shook her head and asked him to give her a tip. When he asked how

1 much she wanted, she motioned two fingers. Based on his training and experience, he believed
2 that she was referring to \$20.00. In his training and experience, prostitutes do not discuss money
3 aloud to avoid criminal implication. When he said "OK," she again reached for his groin area.
4 He believed that this was an act of furtherance towards solicitation of prostitution. As an
5 undercover officer, in his experience, payment for the extra services occurs after the massage is
6 completed.

7 12. San Jose Police Department Vice Unit Officers Brasil, Scanlan and M. Chan then
8 entered the front door of the business. They observed that Respondent was the only employee in
9 the business. There were no acupuncture supplies readily available in any of the three massage
10 rooms. Respondent was unable to provide any type of records of clients that had visited her
11 business. The officers noticed that the business was set up for massage only, not an acupuncture
12 or medical establishment. Respondent was taken into custody. Officer Chan positively identified
13 Respondent by her California Driver's License photograph. Respondent was issued a Notice to
14 Appear and cited for violating Penal Code section 647(b), solicitation for prostitution. She was
15 also mailed an administrative citation for violating the San Jose Municipal Code for the following
16 violations:

17 6.44.260b : massage client shall not be given a massage unless genitals are covered

18 6.44.390A: identification required and displayed

19 6.44.230a: records of massage services

20 6.44.220: listing of services

21 6.44.110: massage therapy license required

22 6.44.100: massage ownership/management license required

23 6.44.090: massage business permit required

24 13. On or about May 15, 2010, Respondent's Motion to Dismiss the criminal complaint
25 charging Respondent with violating Penal Code section 647(b) was granted. On November 30,
26 2010, the criminal complaint was amended and count 2, a violation of Penal Code section
27 653.22(a), loitering to commit prostitution, was charged. Penal Code section 647(b) was
28 dismissed in view of Respondent's plea of nolo contendere to Penal Code section 653.22(a).

1 14. On November 30, 2010, Respondent was convicted of a misdemeanor violation of
2 Penal Code section 653.22(a). She was sentenced to two years court probation and ordered to pay
3 fines.

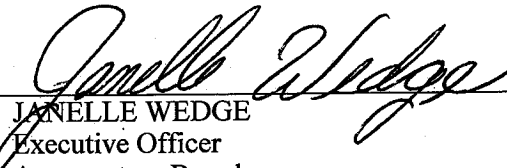
4 15. Therefore, Respondent's license is subject to discipline based on her substantially-
5 related conviction in violation of code sections 4955(b) and 4956.

6 PRAYER

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

- 9 1. Revoking or suspending Acupuncture License Number 10225, issued to Li Qing Tu;
10 2. Ordering Li Qing Tu to pay to the Acupuncture Board the reasonable costs of the
11 investigation and enforcement of this case, pursuant to Business and Professions Code section
12 4959;
- 13 3. Taking such other and further action as deemed necessary and proper.

14 DATED: **APR 15 2011**

15 
16 JANELLE WEDGE
17 Executive Officer
18 Acupuncture Board
19 Department of Consumer Affairs
20 State of California
21 Complainant

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