BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	Case No.: 1A-2010-195
	)	OAH No.: 2011060755
	)	
LI QING TU	)	
3535 ROSS AVENUE, SUITE 106	)	
SAN JOSE, CA 95124	)	
	)	
Acupuncture License No. AC 10225	)	
Respondent.	)	
	)	

DECISION AND ORDER

The attached Decision After Non-Adoption is hereby adopted by the California Acupuncture Board as its Decision in the above-entitled matter.

This Decision shall become effective on February 25, 2012.

IT IS SO ORDERED January 26, 2012.

Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: LI QING TU 3535 Ross Avenue, Suite 106 San Jose, CA 95124 Acupuncture License No. 10225 Respondent.	Case No. 1A-2010-195 OAH No. 2011060755

DECISION AFTER NON-ADOPTION

Administrative Law Judge Melissa G. Crowell, State of California, Office of Administrative Hearings, heard this matter in Oakland, California on August 31, 2011.

Complainant, Janelle Wedge, Executive Officer of the Acupuncture Board, Department of Consumer Affairs, State of California, was represented by Catherine E. Santillan, Senior Legal Analyst, California Department of Justice.

Respondent, Li Qing Tu represented herself and was present throughout the proceedings. Patrick NG provided English to Mandarin and Mandarin to English translation services.

The proposed decision of the Administrative Law Judge was submitted to the Board on September 27, 2011. After due consideration thereof, the Board declined to adopt said proposed decision, and thereafter on November 1, 2011issued a Notice of Non-Adoption of Proposed Decision.

Written argument having been received from Catherine E. Santillan, Senior Legal Analyst,and the entire record, including the transcript of said hearing, having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. On March 18, 2005, the Acupuncture Board of California issued Acupuncture License number10225 to respondent Li Qing Tu. The license was in full force and effect during all times relevant to this proceeding, and is current to October 31, 2012.

2. Respondent's address of record is 3535 Ross Avenue, Suite 106, San Jose, California.

3. On November 30, 2010, respondent was convicted in the Superior Court of California, County ofSanta Clara, on her plea of nolo contendere to a violation of Penal Code section 653.22,subdivision (a) (loitering to commit prostitution), a misdemeanor. Imposition of sentence was suspended and respondent was placed on informal court probation for two years with $570 in fines and fees.

4. The underlying events took place on December 18, 2008. San Jose Police Officer Ryan Chanparticipated in an undercover investigation of prostitution activity at Evergreen Acupuncture Center, respondent's acupuncture facility in San Jose. The investigation stemmed from an advertisement for Evergreen Acupuncture Center posted on Craig's List which the investigator found suggestive of soliciting customers for prostitution.

Chan went to Evergreen and requested a one-half hour massage. Respondent was the only employee in the office. Respondent agreed to perform the massage for $40, and was paid with recorded funds. Respondent took Chan to a back room that had a massage table, oils, and towels, but no acupuncture equipment. Based on his experience, Chan believed that the room was only used for massage. Following respondent's directions, Chan undressed and lay on the table covered by the towel. During the massage, respondent told Chan that she was an acupuncturist and owned the business. Because business was slow, she had sent all employees home. According to Chan, he asked for the cost of a "hand job," which is slang for manual stimulation of the penis. Respondent said she did not understand him but suggested he could do it himself. She then reached for his penis and he pulled away, asking for its cost. Respondent said he could give her a tip, and held up two fingers which he understood to mean $20. In his training and experience, the price is never verbalized but rather is set by the use of finger gestures. He nodded yes, and she reached toward him. Office Chan has no doubt that respondent understood he was asking for a sexual act.

Respondent's Evidence

5. Respondent graduated from medical school in China, and had been a physician of Westernmedicine in China. Respondent immigrated to the United States in 1997. Due to her language barrier, respondent initially worked as a nanny and as a caregiver to seniors. She studied acupuncture in her spare time, and in March 2005 respondent obtained her acupuncture license from the board. Respondent opened her business in 2006. Because of her language difficulties, she has not been able to obtain a great deal of business.

6. Respondent denies soliciting prostitution from Officer Chan. The criminal case was a terribleordeal for her and negatively impacted her business. She seeks vindication for what she perceives to be an assault on her character. She ultimately decided to accept a plea bargain for a reduced offense because she understood that it would not impact her acupuncture license. Had she known of the consequences to her license, she would not have accepted the plea bargain.

7. Respondent closed Evergreen in 2010, but has recently reopened it for business. She performsacupuncture, acupressure and massage services.

Costs

8. The board has incurred $2,790 in charges from the Department of Justice for the investigation andprosecution of this matter. This amount represents 23.25 hours of paralegal time at the rate of $120 per hour. In the absence of evidence to the contrary, these costs are found to be reasonable.

Legal Conclusions

1. Pursuant to Business and Professions Code section 4955, subdivision (b), and Business andProfessions Code section 4956, the board may discipline a licensee for unprofessional conduct, defined to include conviction of an offense which is substantially related to the qualifications, functions, or duties of an acupuncturist. Respondent's criminal conduct took place while she was licensed as an acupuncturist and in the place she conducted her acupuncture business. The offense is therefore substantially related to the qualifications, functions, or duties of an acupuncturist. Cause therefore exists to discipline respondent's license by reason of the matters set forth in Findings 3 and 4.

2. The highest priority of the board is protection of the public. (Bus. & Prof. Code, § 4928.1.) By way of respondent's plea and conviction, respondent is guilty of the crime of loitering to commit prostitution, which is a serious offense. Although this is respondent's first and only criminal offense, the seriousness of the crime is compounded by the fact that it occurred at respondent's acupuncture practice location.

3. Business and Professions Code section 4959 provides that a licensee found to have committedunprofessional conduct may be ordered to pay a sum not to exceed the reasonable costs of investigation and prosecution. By reason of the matters set forth in Finding 8, it is concluded that the reasonable costs of investigation and prosecution in this matter are $2,970.

ORDER

Acupuncture License No. 10225 issued to respondent Li Qing Tu is revoked. Respondent shall reimburse the Board for its costs of investigation and enforcement of this matter in the amount of $2,970.

DATED: January 26, 2012

ROBERT BREWER
President
Acupuncture Board