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FILED
FEB 12 2016
ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **ZONG LIANG JIANG, L.Ac.** **209 Park Paseo Lane, Apt. D** **Los Angeles, CA 90033** **Acupuncturist License Number AC 11661,** Respondent.	Case No. 1A-2014-49 **ACCUSATION**

Complainant alleges:

PARTIES

1. Terri Thorfinnson (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 March 9, 2007, the Acupuncture Board issued Acupuncturist License Number AC 11661 to ZONG LIANG JIANG, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2016, 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. Section 4928.1 of the Code states:

"Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. Section 4927 of the Code states, in pertinent part:

". . .

"(d) 'Acupuncture' means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."

6. Section 4955 of the Code states, in pertinent part:

"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.

". . ."

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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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."

Facts

9. Patient PT[1] saw Respondent for three (3) acupuncture visits, the last visit occurring on or about December 18, 2010. Respondent, who spoke very limited English, performed acupuncture on patients at chiropractor KL's office, and asked chiropractor KL to translate for him and his patients.

10. On or about December 18, 2010, Respondent inserted seven (7) acupuncture needles into PT's shoulder, neck, and upper back. When Respondent inserted the 1.5 inch acupuncture

[1] The names of the patients and/or witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

needle into PT's back, PT experienced tremendous pain, jumped and yelled and then beseeched Respondent to remove the needle.

11. Respondent did not appear to understand PT's entreaty, said "Good pain. . ." and then vigorously stimulated the needle whose insertion had caused such great pain to PT.

12. After vigorously stimulating the acupuncture needle, Respondent dropped a heavy cotton blanket over PT on top of all of the needles he had inserted, and left the room.

13. After Respondent dropped the blanket over the needles and left the room PT felt severe chest pain, experienced trouble breathing, and was unable to move. PT yelled for Respondent so that Respondent would return and remove the acupuncture needles.

14. PT continued to yell for Respondent who did not return to PT's room for approximately five (5) minutes. Respondent returned and did not appear to understand what PT told him about the severity of the pain he was experiencing. PT also made faces and pointed at the needles in an attempt to communicate to Respondent that he was in excruciating pain. Respondent reacted to PT's expressions of pain by repeatedly saying "It's good, it's good."

15. PT realized Respondent did not understand what he was saying about being in intense pain and pled over and over again with Respondent to get KL.

16. Approximately five (5) to 10 minutes after Respondent returned to PT's room, Respondent left the room and returned with KL who looked at PT and told Respondent to remove the needles he had inserted into PT.

17. PT's wife arrived to pick him up while KL was examining PT and KL told PT's wife to immediately take PT to the hospital. PT and his wife left Respondent's office and arrived at the hospital emergency room approximately 10 minutes later.

18. Hospital X-rays revealed PT had a significant right-side tension pneumothorax.[2] PT

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[2] A pneumothorax is a collapsed lung which occurs when air leaks in to the space between the lungs and the chest wall, pushes on the outside of the lung and causes a collapse. Pneumothoraces are classified as spontaneous or traumatic. A spontaneous pneumothorax occurs without trauma.

A traumatic pneumothorax is caused by an injury that tears the lung and allows air to enter the pleural space causing the lung to collapse. In a tension pneumothorax air enters the pleural cavity and is trapped there during expiration so the air pressure within the thorax mounts higher than atmospheric pressure and compresses the lung, which may displace the mediastinum (the space in the chest between the pleural sacs of the lungs that contains all the tissues and organs of the chest except the lungs and pleurae) and its structures (including the lung) toward the

(continued...)

was admitted into the hospital, underwent chest tube placement,[3] and remained hospitalized for seven (7) days until chest X-rays showed no further evidence of the pneumothorax.

Standard of Care

19. The upper back contains numerous potentially dangerous points located close to the lungs. Traditional Chinese Medicine[4]literature contraindicates the use of points close to the lungs for deep puncture. Four of the points Respondent chose to use on PT are documented in medical literature as potentially dangerous due to their close proximity to the lungs. The standard of care requires an acupuncturist who selects and uses potentially dangerous points to employ additional safeguards to avoid an unnecessary risk that a patient will suffer a pneumothorax.

20. Acupuncturists have great flexibility in choosing one or more treatment methods to avoid the possibility using acupuncture points which are dangerous to the patient and risk the possibility of causing a potentially life threatening condition such as a pneumothorax. The standard of care requires an acupuncturist to consider if the benefits of using potentially dangerous points outweigh the risks.

21. Respondent's choice to use potentially dangerous points when treating PT rather than using a different treatment method is an extreme departure from the standard of care.

22. Acupuncture points[5] include potentially dangerous points such as those located near

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(...continued)
opposite side, and cause cardiopulmonary impairment.

A tension pneumothorax is the most serious type of pneumothorax because it may affect the heart's ability to pump blood, and unless reversed may progress to death.

[3] A chest tube (or intercostal drain) is the most definitive initial treatment of a pneumothorax. The use of a chest tube is required in cases of tension pneumothorax. The tube is connected to a one-way valve system that allows air to escape, but not to re-enter, the chest. The tube is typically inserted in an area under the axilla (armpit) called the "safe triangle", where damage to internal organs can be avoided. The tube is left in place until no air is seen to escape from it for a period of time, and X-rays confirm the re-expansion of the lung.

[4] Traditional Chinese medicine (TCM) is an ancient holistic system of health and healing, based on the notion of harmony and balance, and employing the ideas of moderation and prevention. TCM is a complete system of health care with its own unique theories of anatomy, health, and treatment. It uses acupuncture, herbal medicine, massage, and exercise, focuses on stimulating the body's natural curative powers, and emphasizes diet and prevention.

[5] Acupuncture points involve the use of sharp, thin needles that are inserted in the body at very specific points on the surface of the body, located on a line of energy flow meridian, at which an acupuncture needle can be inserted to produce a beneficial effect.

an important organ, nerve, or artery. The standard of care requires an acupuncturist to exercise special care when needling[6] such a point.

23. The vigorous stimulation of a needle placed in a potentially dangerous point by an acupuncturist after a patient expresses pain upon initial needle insertion is an extreme violation of the standard of care.

24. Respondent's vigorous stimulation of the needle he placed into PT's back after PT expressed great pain after the needle's insertion is an extreme violation of the standard of care.

25. Respondent's careless act of dropping a heavy cotton blanket on top of acupuncture needles he previously inserted into potentially dangerous points located close to PT's lungs resulted in pushing the needles deeper into PT in multiple directions which created random insertion angles and is an extreme departure from the standard of care.

26. Respondent's careless act of dropping a heavy cotton blanket on top of acupuncture needles he previously inserted into potentially dangerous points located close to PT's lungs resulted in pushing the needles deeper into PT which caused PT's pneumothorax, and is an extreme departure from the standard of care.

27. Acupuncture needle length and the angle of the needle's insertion primarily determines the safety of acupuncture treatment. The standard of care requires that the needles be as short as possible as use of a longer needle poses an unnecessary risk of miscalculating the depth of insertion. The standard of care requires when choosing the length of the acupuncture needle the acupuncturist consider the patient's age and constitution, the condition being treated, and the location of the acupuncture point.

28. The standard of care requires that the acupuncturist follow basic safety protocols for

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[6] There are several types of acupuncture needles. The needles used for acupuncture are different from the hypodermic needles. Acupuncture needles have a solid shaft unlike hypodermic needles which have a hollow shaft to inject medicines. Acupuncture needles have a doweled end, unlike the hypodermic needles which have a cutting end and therefore cause far less tissue damage or bruising when inserted as compared to hypodermic needles.

In ancient China, nine (9) different types of acupuncture needle were used. Today, the most commonly used needle is the metal filiform (thread-like) needle made from stainless steel. Acupuncture needles come in different gauges (diameter) and lengths to be used on the different areas of the body where they are to be inserted. As the needles penetrate the skin, hygiene is considered important. Most modern acupuncturists use disposable, pre-sterilized single use needle packs meant to be thrown away after each client.

needle insertion near internal organs which include the selection of a needle of correct needle size. Use of a ½ inch needle as opposed to a 1.5 inch needle allows an acupuncturist to control the depth of insertion if a patient moves. A cough or sneeze can also change the original position of the needle and if a patient moves an arm for any reason the scapula[7] will move which can affect the position of the needle. If the patient is left alone and moves, the needle can change direction and/or penetrate deeper than the original puncture depth and cause a pneumothorax.

29. Respondent's choice to use a 1.5 inch needle instead of a ½ inch needle put PT at risk of incurring a pneumothorax and was an extreme departure from the standard of care.

30. The standard of care for needle insertion near internal organs requires the acupuncturist to utilize proper needle technique, such as needling in an acutely oblique direction over boney skeletal structures and lifting the muscle away from the chest wall.

31. Respondent's failure to insert needles into PT without utilizing proper needle technique put PT at risk of incurring pneumothoraces and was an extreme departure from the standard of care.

32. The standard of care requires the acupuncturist to verify the correct depth and angle of insertion of every point selected for treatment before placing a needle in a potentially dangerous area of the patient's body. The standard of care requires the acupuncturist to be familiar with anatomy and know where the borders of the pleurae[8] and lungs are situated and the thickness of the soft tissue which covers them. The insertion of needles into points close to the lungs should be shallow regardless of the patient's age, weight and constitution.

33. Respondent's failure to appropriately utilize basic anatomical knowledge to enable him to correctly insert needles into treatment points was an extreme departure from the standard of care.

34. The standard of care requires that an acupuncturist be able to effectively communicate with a patient. Effective communication includes being able to understand a

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[7] A scapula is a flat, triangular bone forming the back part of a shoulder in humans which is also referred to as the shoulder blade.

[8] Each of a pair of serous (watery) membranes lining the thorax and enveloping the lungs in humans and other mammals.

patient's assertion of discomfort and/or pain in the patient's language, as well as to appropriately respond to the patient's communication.

35. Respondent's failure to appropriately respond to PT's initial demonstration of pain and requests that Respondent remove the needle which caused PT great pain when inserted reveals Respondent's inability to communicate effectively with his patient and is an extreme departure from the standard of care.

36. Respondent's subsequent failure to appropriately respond to PT's entreaties to remove the needles when he returned to PT's room reveals Respondent's inability to communicate effectively with his patient and is an extreme departure from the standard of care.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

37. Respondent is subject to disciplinary action under 4955.2, subdivision (a), in that he was grossly negligent in in his care and treatment of his patient, PT. The circumstances are as follows:

38. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances alleged in paragraphs 9 through 18.

39. Respondent's failure to conform to the applicable standard of care when treating patient PT, includes the following acts and/or omissions which constitutes extreme departures from the standard of practice:

A. Respondent's choice to use potentially dangerous points when treating PT rather than using a different treatment method is an extreme departure from the standard of care.

B. Respondent's vigorous stimulation of the needle he placed into PT's back after PT expressed great pain after the needle's insertion.

C. Respondent's careless act of dropping a heavy cotton blanket on top of acupuncture needles he previously inserted into potentially dangerous points located close to PT's lungs resulted in pushing the needles deeper into PT in multiple directions which created random insertion angles.

D. Respondent's careless act of dropping a heavy cotton blanket on top of acupuncture

needles he previously inserted into potentially dangerous points located close to PT's lungs resulted in pushing the needles deeper into PT which caused PT's pneumothorax.

E. Respondent's choice to use a 1.5 inch needle instead of a ½ inch needle put PT at risk of incurring a pneumothorax and was an extreme departure from the standard of care.

F. Respondent's failure to insert needles into PT without utilizing proper needle technique put PT at risk of incurring pneumothoraces.

G. Respondent's failure to appropriately utilize basic anatomical knowledge to enable him to correctly insert needles into treatment points.

H. Respondent's failure to appropriately respond to PT's initial demonstration of pain and requests that Respondent remove the needle which caused PT great pain when inserted reveals Respondent's inability to communicate effectively with his patient.

I. Respondent's subsequent failure to appropriately respond to PT's entreaties to remove the needles when he returned to PT's room reveals Respondent's inability to communicate effectively with his patient.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

40. Respondent is subject to disciplinary action under 4955.2, subdivision (b) in that he was repeatedly negligent in the care and treatment of the patient. The circumstances are as follows:

41. Respondent's failure to conform to the applicable standard of care when treating PT includes the following acts and/or omissions which constitute repeated negligent acts.

42. Complainant refers to, and by reference incorporates herein as if fully set forth the allegations set forth in paragraph 39, subparagraphs A through I.

THIRD CAUSE FOR DISCIPLINE

(Incompetence)

43. Respondent is subject to disciplinary action under 4955.2, subdivision (c), in that he was incompetent in in his care and treatment of his patient, PT. The circumstances are as follows:

44. Complainant refers to, and by reference incorporates herein as if fully set forth the

facts and circumstances alleged in paragraphs 9 through 18.

FORTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

45. Respondent is subject to disciplinary action under section 4955 of the Code for unprofessional conduct. The circumstances are as follows:

46. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances alleged in paragraphs 9 through 18.

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 AC11661, issued to ZONG LIANG JIANG, L.Ac.;

2. Ordering Zong Liang Jiang, 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;

3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of probation monitoring; and

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

DATED: FEB 12 2016

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

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