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Attorneys for Complainant	
BEFORE THE ACUPUNCTURE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
In the Matter of the Accusation Against:	*
BENG YUE YAN	Case No. 1A-2012-18
1854 35 <sup>th</sup> Avenue San Francisco, CA 94122	
Acupuncture License No. AC 61	ACCUSATION
Responde	ent
Complainant alleges:	
<u>P</u>	PARTIES
	t") brings this Accusation solely in her official
	ouncture Board ("Board"), Department of Consumer
Affairs.  2. On or about October 21, 1976 th	Post II
	e Board issued Acupuncture License Number AC 61 puncture License was in full force and effect at all
	The Acupuncture License expired on August 31,
2014 and has not been renewed.	The state of the s
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	Accusation No. 1A-2012-18

## JURISDICTION

- This Accusation is brought before the 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 118 of the Code states, in relevant part:

...

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprived the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter or order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground."

5. Section 726 of the Code states, in relevant part:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional 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. ..."

6. Section 4955 of the Code states, in relevant 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 4955.1 of the Code states, in relevant part:

"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:

"

- "(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients."
- 8. 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."
- 9. California Code of Regulations, title 16, 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"

## COST RECOVERY

- 10. 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

(Unprofessional Conduct - Sexual Misconduct)

- 11. Respondent's license is subject to disciplinary action for unprofessional conduct under Code sections 4955 and 726, in that he engaged in sexual misconduct in his care and treatment of Patient S.B. The circumstances are as follows:
- 12. Dr. B.M., S.B.'s treating physician and pain management specialist, diagnosed S.B., an adult female, with carpal tunnel syndrome. For pain management, Dr. B.M. prescribed twelve acupuncture sessions. S.B. scheduled her acupuncture appointments with Respondent.
- 13. On January 17<sup>th</sup>, 19<sup>th</sup>, 24<sup>th</sup> and 26<sup>th</sup> of 2012, S.B. saw Respondent for acupuncture treatment. At each visit, Respondent provided acupuncture treatment.
- 14. On January 26, 2012, Respondent directed S.B. to lie face down on an examination table. While Respondent was placing acupuncture needles in her neck, S.B. felt his erect penis rubbing against her arm. S.B. was confused and very upset. She tried to move her arm, but Respondent moved closer to rub his penis against her upper arm. S.B. then moved her arm closer to her side, and Respondent abruptly left the room. Respondent returned to the room to remove the needles, and left the room once again. S.B. met Respondent at the reception desk, where he appeared nervous, fumbling to write S.B.'s next appointment card. S.B. felt uncomfortable and wanted to leave. After S.B. returned to her car, she became emotional. She then contacted Dr.

<sup>&</sup>lt;sup>1</sup> Initials are used to protect patient confidentiality. Names will be released with discovery.

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1	B.M.'s office and informed a female employee of the incident who advised her to cancel her			
2	remaining appointments.			
3	SECOND CAUSE FOR DISCIPLINE			
4		(Unprofessional Conduct - Gross Negligence)		
5	15.	Paragraphs 10 through 13 are incorporated herein.		
6	16.	Respondent's license is subject to disciplinary action for unprofessional conduct		
7	under Code section 4955.2, in that Respondent committed an extreme departure from the standard			
8	of care by rubbing his penis against Patient S.B.'s arm.			
9		THIRD CAUSE FOR DISCIPLINE		
10		(Unprofessional Conduct - Inadequate Recordkeeping)		
11	17.	Paragraphs 10 through 13 are incorporated herein.		
12	18.	Respondent's license is subject to disciplinary action for unprofessional conduct		
13	under Code section 4955.1(e) and California Code of Regulations, title 16, section 1399.453, in			
14	that a review of S.B.'s translated (Kanji to English) patient records indicate that Respondent			
15	failed to chart the following:			
16	A.	S.B.'s tongue, pulse, and other objective findings;		
17	В.	S.B.'s TCM diagnosis; treatment plan, or goals; and		
18	C.	Acupuncture points for S.B.'s January 19, 2012 treatment session.		
19				
20		PRAYER		
21	WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,			
22	and that fo	llowing the hearing, the Acupuncture Board issue a decision:		
23	1.	Revoking or suspending Acupuncture License Number AC 61, issued to Beng Yue		
24	Yan;			
25	2.	Ordering Beng Yue Yan to pay to the Acupuncture Board the reasonable costs of the		
26	investigation and enforcement of this case, pursuant to Business and Professions Code section			
27	4959; and			
20				

1	3. Ta	aking such other and fur	rther action as deemed necessary and proper.
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4	MALE SANCE	SEP 3 0 2014	1
5	DATED:	OE 30 2017	TERRI THORFINNSON
6			Executive Officer
7			Acupuncture Board Department of Consumer Affairs State of California
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