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FILED
JUN 28 2019
ACUPUNCTURE BOARD

**BEFORE THE**
**ACUPUNCTURE BOARD**
**DEPARTMENT OF CONSUMER AFFAIRS**
**STATE OF CALIFORNIA**

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| In the Matter of the Accusation Against:<br><br>**MIN LI DAO LIANG, L.AC.**<br>P.O. Box 1943<br>Orinda CA 94563<br><br>Acupuncturist License No. AC 6666<br><br>Respondent. | Case No. 1A-2017-57<br><br>**ACCUSATION** |

Complainant alleges:

PARTIES

1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about May 18, 1999, the Acupuncture Board issued Acupuncturist License Number AC 6666 to Min Li Dao Liang, 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 December 31, 2020, unless renewed.

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## 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 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 who 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. . . .

"(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action. . . .

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

5. 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:

"(a) Securing a license by fraud or deceit.

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

"(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."

6. 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."

7. Section 726 of the Code states in pertinent part:

"(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this or under any initiative act referred to in this division."

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."

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FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct: Gross Negligence and/or Sexual Misconduct)

9. Respondent is subject to disciplinary action for unprofessional conduct for gross negligence and/or sexual misconduct, pursuant to sections 4955, 4955.2, subd. (a), and/or 726, subd. (a), regarding his acts and omissions involving Patient A, as described herein.

10. On or about March 3, 2017, Patient A, a female 48 years of age, saw Respondent for an initial consultation and treatment for sensations she was experiencing on the right side of her head and neck and with complaint of looking pale and feeling tired. She reported to Respondent that she had been diagnosed with Mediterranean Anemia by a "Western" physician. Patient A saw Respondent at his office in San Francisco, Fu Xie Chinese Medical Center. Patient A and Respondent conversed in Mandarin Chinese during the visit.

11. According to Patient A, her visit with Respondent lasted about two hours and no one else was present during the examination. During the visit, Respondent asked questions about her marital status, whether she had children, and about previous sexual relationships, including the number of men with whom she had been sexually involved. The patient told Respondent that she was unmarried and had no children. According to Patient A, Respondent told her that her problem was due to a combination of depression and menopause, which she would have avoided if she had married and had children.

12. During the visit, Respondent lifted the patient's shirt and, using a stethoscope, rested his hand on the patient's breast, for what the patient described as an "abnormally long" time, appearing to be taking her pulse or blood pressure reading. Respondent, however, did not record the patient's blood pressure or pulse rate in the patient's records.

13. According to the patient, Respondent also had her lie down with her shirt raised for an additional examination. Patient A reported that Respondent examined her abdominal area and breasts, touching both of her breasts. Respondent also folded down the patient's bra several times to expose her nipples and breasts. Respondent pressed his hands along the patient's bare breasts, particularly her left breast, which contained lumps. Respondent continued to press on the left

breast even after the patient told him to stop and told him that the lumps were benign. The patient also reported that Respondent often stared at her breasts while speaking to her.

14. Patient A also reported that Respondent used a method of knocking or tapping his hands on her body, which he said was to locate her organs and to determine if they were enlarged. While doing this, Respondent explained to the patient the sound that the organs should make. Respondent also touched both of the patient's breasts during this part of the examination.

15. According to Patient A, on multiple occasions during the visit, Respondent used both hands to hug the patient's face and he hugged her several times. Respondent told her that she was cute and that she must have been pretty when she was younger.

16. Respondent did not address or treat any of the patient's symptoms. He did not examine the patient's head or neck area, which were the areas the patient reported caused her problems. Respondent did not perform any acupuncture or acupressure treatments. Respondent gave the patient two bags of herbal medicine. The patient did not have enough cash to pay for them completely.

17. On or about March 8, 2017, Patient A filed a complaint against Respondent for sexual misconduct with the San Francisco Police Department. Patient A complained that she had been touched inappropriately by Respondent during her visit on March 3, 2017 and that Respondent asked inappropriate questions about her sexual activity which were unnecessary for the diagnosing of her condition.

18. Respondent's records for Patient A's visit are handwritten in Chinese and consist of about seven lines. The records do not document an appropriate examination and medical history, and an appropriate evaluation of the patient's complaints and presenting symptoms.

19. Respondent's acts and/or omissions with regard to Patient A, as set forth in paragraphs 9 through 18 herein, constitute unprofessional conduct and an extreme departure from the standard of care through gross negligence under section 4955.2, subd. (a) and/or sexual misconduct pursuant to section 726, subd. (a). More specifically, Respondent's unprofessional conduct includes the following:

a. Respondent did not obtain and document an appropriate history and physical examination of the patient.

b. Respondent's verbal questioning of the patient about the patient's sexual activity and experiences was not related to the patient's presenting symptoms or to the patient's description of her health problems and constitutes an extreme departure from the standard of care.

c. Respondent's statement to the patient that her problems were due to a combination of depression and menopause was a diagnosis that was not documented in or supported by the records, and was not based in acupuncture or in Traditional Chinese Medicine (TCM).

d. Respondent's physical examination of the patient did not use diagnostic methods related to TCM and acupuncture. There was no legitimate medical reason for Respondent to use a stethoscope during a physical examination of the patient. Respondent's use of a stethoscope on the patient's chest and/or breasts was improper and not part of an appropriate examination. The use of a "knocking method" to determine organ position and/or health was also not an appropriate examination.

e. Respondent's improper touching of the patient, particularly of her breasts, was improper and constitutes an extreme departure from the standard of care and/or sexual misconduct.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

20. Respondent is subject to disciplinary action under section 4955.1, subd. (e) in that Respondent failed to maintain adequate and accurate records relating to the provision of services to Patient A, as alleged in Paragraphs 9 through 19 herein.

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## 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 AC 6666, issued to Min Li Dao Liang, L.AC.;

2. Ordering Min Li Dao Liang, 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,

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

DATED: JUN 28 2019

BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
*Complainant*

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