

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

In the Matter of the Accusation Against:

Case No. 1A-2010-209

XIAOBO ZHANG, L.Ac.

OAH No. 2011110567

Acupuncture License No. AC7631,

Respondent.

NOTICE OF DECISION AND ORDER

No action having been taken on the attached Proposed Decision, pursuant to Government Code section 11517(c)(2) it is hereby deemed adopted.

Pursuant to Government Code section 11519, this Decision shall become effective on ~~MAR 27 2013~~

Date: FEB 25 2013



Terri Thorfinnson, J.D.
Executive Officer
Acupuncture Board

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In the Matter of the Accusation Against:

XIAOBO ZHANG, L.A.C.
Oakdale, California

Acupuncture License No. AC 7631

Respondent.

OAH No. 2011110567

Case No. 1A-2010-209

PROPOSED DECISION

This matter was heard before Administrative Law Judge Jonathan Lew, State of California, Office of Administrative Hearings, on July 17, 2012, in Sacramento, California.

Jannsen L. Tan, Deputy Attorney General, appeared on behalf of complainant Janelle Wedge, Executive Officer of the Acupuncture Board (Board), Department of Consumer Affairs (Department).

There was no appearance by, or on behalf of respondent Xiaobo Zhang, L.A.C. Compliance with the service and notice requirements under Government Code sections 11505 and 11509 was established. The case proceeded by way of default under Government Code section 11520.

Testimony and documentary evidence were received, the record was closed and the matter was submitted for decision on July 17, 2012.

FACTUAL FINDINGS

1. Complainant brought this Accusation solely in her official capacity.
2. The Board issued respondent Acupuncture License Number AC 7631 on February 9, 2001. The license expired on June 30, 2012. It is currently on hold in delinquent status as of June 30, 2012.

¹ As of July 2, 2012, Benjamin Bodea is the Executive Officer of the Board. The Accusation was filed by his predecessor, Janelle Wedge.

Over the period between 2004 and 2012, respondent practiced acupuncture at her place of business at 619 West F Street, Oakdale, California.

3. ~~Complainant seeks to take action against respondent's license based upon her failure to maintain her place of business in a sanitary condition, and to follow proper sanitary procedures in her care and treatment of patients. Complainant also alleges that respondent engaged in unprofessional conduct by misrepresenting to her patients that she is a medical doctor.~~

Unsanitary Practices

4. Infection Control. Licensees are responsible for following infection control guidelines, and are to be informed of scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases. (Bus. & Prof. Code, § 4955, subd. (e).)

5. Linda Strickland is a Department investigator. She inspected respondent's business premises on December 27, 2010. Ms. Strickland observed flecks of blood on the door handle of the front door, and on a counter in the reception area.

Ms. Strickland also determined that respondent did not place used needles into a hazardous waste container. Respondent admitted that she did not have a hazardous waste container at her business premises over the period 2006 to October 2010. Instead, respondent kept used needles in herb bottles which she stored in boxes in her office. Respondent's office was approximately 100 square feet. In it were boxes stacked two deep, and approximately six feet high along one wall. The boxes contained used needles. Used acupuncture needles were also stored openly in the empty herb bottles.

Respondent's failure to maintain clean premises resulted in her placing the public at risk of contact with blood on the front door handle and counter. She also failed to properly dispose used needles. She did not place them in a sealed, unbreakable container marked "Hazardous Waste." These practices created a risk of transmission of blood-borne infectious diseases were individuals to come into contact with the blood or the used needles.

6. Hand Washing. An acupuncturist is required to wash her hands between patients. The standard of care calls for an acupuncturist to brush-scrub her hands with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments, and between patients. (Cal. Code Regs., tit. 16, § 1399.451, subd. (a).) When Ms. Strickland inspected the business premises, respondent did not have running hot water in the restroom. Respondent admitted to Ms. Strickland that she did not wash her hands before she saw each patient.

Karen Berry was respondent's office manager over the period June 2004 through October 2010. She confirmed that respondent did not have hot water in the bathroom over the period that she worked there.

7. Sterile Procedures. Regulations governing acupuncture practice require that all instruments shall be sterilized before and between uses in a manner which will destroy all microorganisms. Needle trays which contain sterile needles shall be sterile, and each time ~~instruments are sterilized a tape or strip indicator shall be used to show that sterilization is~~ complete. (Cal. Code Regs., tit. 16, § 1399.451, subd. (b).)

Ms. Strickland observed unsanitary conditions when she inspected respondent's business premises on December 27, 2010. Respondent had four treatment rooms. The reception counter and area was dirty, with blood flecks, dirt and hair present. There was dirt and hair in the bathroom. The toilet was filthy. There were no paper towels or a towel to wipe one's hands. Although disposable pillow covers were available, they were not used for each patient. Pillow case covers in treatment rooms appeared to be dirty and torn. Respondent indicated that she disinfected treatment room beds with alcohol swabs. However, these swabs were too small for this purpose. Dirt and hair were visible on the treatment room carts.

Equipment used by respondent included a machine with electrodes to attach to the end of acupuncture needles. In one of the treatment rooms, the wires and electrodes extended down to the floor. Respondent explained that she let the wires extend down to the floor because they would otherwise become tangled. Respondent admitted that she did not use antiseptics or alcohol to wipe down instruments prior to use on patients.

8. Ms. Berry confirmed that the premises were not maintained in a sanitary condition over the period that she was employed by respondent. She confirmed that the premises were filthy, instruments were not sanitized, pillow cases were not changed and that she had never seen or heard respondent wash her hands. The premises had a lot of cobwebs in the corners of the room and the window sills were dirty. It was established that respondent failed to keep her place of business in a sanitary condition and to follow proper sanitary procedures in her care and treatment of patients for the period from June 2004 to December 2010.

9. Needle Disposal. As noted in Finding 5, respondent failed to comply with regulations relating to needle disposal, and that required her to place needles in a sealed, unbreakable container marked "Hazardous Waste" and disposed of in accordance with state and local law. (Cal. Code Regs., tit. 16, § 1399.451, subd. (h).)

10. Ms. Strickland provided respondent with guidelines regarding sanitary standards of practice, sterile practices to reduce patient harm and proper disposal of needles. Respondent indicated to Ms. Strickland that she was willing to work to come into compliance with Board rules and regulations. By letter to respondent dated December 31, 2010, the Board detailed the laws and regulations that respondent must follow regarding sanitary standards of practice.

Ms. Strickland returned to the business premises on February 8, 2011. Respondent had made a concerted effort to clean the premises. However, half of the used needles remained in her office stored in herb bottles and boxes as before. Respondent had attempted, but had yet to repair the hot water situation.

Misrepresentation

11. Respondent used business cards that stated that she was a medical doctor. Her business card stated after her name: "M.D. (PRC), L.Ac. Chinese Medicine and Acupuncture." By using the suffix "M.D.", respondent misrepresented to her patients that she was a medical doctor. Respondent explained to Ms. Strickland on December 27, 2010, that she told her patients that she was a doctor in China. When Ms. Strickland returned to the premises on February 8, 2011, the business cards were still there, and respondent continued to use the "M.D." suffix following her name.

12. The Board's subsequent attempts to contact respondent have been unsuccessful. The Board is unable to work with respondent to bring her into compliance with laws and regulations governing the above described sanitation and practice concerns. Respondent no longer practices acupuncture at the Oakdale premises. Under these circumstances, complainant seeks revocation of respondent's acupuncture license.

LEGAL CONCLUSIONS

1. Business and Professions Code section 4955 provides that 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." Subdivisions (c), (d) and (e) of this section include within the definition of unprofessional conduct the following:

- (c) False or misleading advertising.
- (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.
- (e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the

California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings....

2. California Code of Regulations, title 16, section 1399.450, provides: ~~“Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall~~ have a readily accessible bathroom facility in accordance with Title 24, Part 2, Building Standards Code Section 494A.1 and 1994 Uniform Building Code Section 2902.3.”

3. California Code of Regulations, title 16, section 1399.431, provides that acupuncturists shall adhere to the following procedures in treating a patient:

(a) The acupuncturist’s hands shall be brush-scrubbed with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments, and between patients.

(b) All instruments shall be sterilized before and between uses in a manner which will destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which shows that sterilization is complete.

[¶] ... [¶]

(c) Needles shall be disposed of by placing them in a sealed, unbreakable container marked “Hazardous Waste” and disposed of in accordance with state and local law.

4. Cause exists for disciplinary action against respondent’s acupuncture license under Business and Professions Code section 4955, subdivision (e), by reason of the matters set forth in Findings 4 and 5. Respondent’s unsanitary practices created a risk of transmission of blood-borne infectious diseases were individuals to come into contact with the blood observed at the premises or with the used needles.

5. Cause exists for disciplinary action against respondent’s acupuncture license under Business and Professions Code section 4955, subdivision (d), by reason of the matters set forth in Findings 6 through 10. Respondent failed to observe sanitary practices related to hand washing, instrument sterilization and disposal of used needles. (Cal. Code Regs., tit. 16, §§ 1399.450, 1399.431, subs. (a), (b) & (c).)

6. Cause exists for disciplinary action against respondent’s acupuncture license under Business and Professions Code section 4955, subdivision (c), by reason of the matters

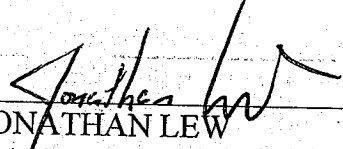
set forth in Findings 11. Respondent engaged in misleading advertising by using the suffix "M.D." after her name. Such constituted unprofessional conduct.

7. The matters set forth in Finding 12 were considered. No evidence in mitigation or rehabilitation was presented on respondent's behalf. Her present whereabouts are unknown to the Board. Revocation is appropriate in this case.

ORDER

Acupuncture License Number AC 7631 issued to respondent Xiaobo Zhang is revoked pursuant to Legal Conclusions 4 through 6, jointly and individually.

DATED: July 23, 2012



JONATHAN LEW
Administrative Law Judge
Office of Administrative Hearings