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FILED

OCT 27 2010

ACUPUNCTURE BOARD

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

In the Matter of the Accusation Against:
YULIN WU, L.Ac.
2459 42nd Avenue
San Francisco, CA 94116

Acupuncture License No. AC 9250

Respondent.

Case No. 1A-2009-148

ACCUSATION

Complainant alleges:

PARTIES

1. Janelle Wedge (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 October 1, 2003, the Acupuncture Board issued Acupuncture License Number AC 9250 to Yulin Wu, L.Ac. (Respondent)¹. The Acupuncture license was in full force and effect at all times relevant to the charges brought herein and will expire on November 30, 2012, unless renewed.

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¹ Respondent is also known as Yu Lin Wu.

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 if he or she is guilty of unprofessional conduct.

"Unprofessional conduct shall include, but not be limited to, the following: . . .

"(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

"(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.

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

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

"(l) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

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1 5. Section 4955.1 of the Code states:

2 “The board may deny, suspend, revoke, or impose probationary
3 conditions upon the license of any acupuncturist if he or she is
4 guilty of committing a fraudulent act including, but not be limited
5 to, any of the following:

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

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

8 (c) Committing any act involving dishonesty or corruption with
9 respect to the qualifications, functions, or duties of an
10 acupuncturist.

11 (d) Altering or modifying the medical record of any person, with
12 fraudulent intent, or creating any false medical record.

13 (e) Failing to maintain adequate and accurate records relating to
14 the provision of services to their patients.

15 6. Section 4956 of the Code states:

16 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made
17 to a charge which is substantially related to the qualifications, functions, or duties of an
18 acupuncturist is deemed to be a conviction within the meaning of this chapter.

19 “The board may order a license suspended or revoked, or may deny a license, or may
20 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
21 judgment of conviction has been affirmed on appeal, or when an order granting probation is
22 made suspending the imposition of sentence irrespective of a subsequent order under the
23 provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her
24 pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
25 dismissing the accusation, complaint, information, or indictment.”

1 7. Section 4961 of the Code states:

2 "(a) Every person who is now or hereafter licensed to practice acupuncture in this
3 state shall register, on forms prescribed by the Acupuncture Board, his or her place of
4 practice, or, if he or she has more than one place of practice, all of the places of practice. If
5 the licensee has no place of practice, he or she shall notify the board of that fact. A person
6 licensed by the board shall register within 30 days after the date of his or her licensure.

7 "(b) An acupuncturist licensee shall post his or her license in a conspicuous location
8 in his or her place of practice at all times. If an acupuncturist has more than one place of
9 practice, he or she shall obtain from the board a duplicate license for each additional
10 location and post the duplicate license at each location.

11 "(c) Any licensee that changes the location of his or her place of practice shall
12 register each change within 30 days of making that change. In the event a licensee fails to
13 notify the board of any change in the address of a place of practice within the time
14 prescribed by this section, the board may deny renewal of licensure. An applicant for
15 renewal of licensure shall specify in his or her application whether or not there has been a
16 change in the location of his or her place of practice and, if so, the date of that change. The
17 board may accept that statement as evidence of the change of address."

18 8. California Code of Regulations, title 19, section 1399.453, states:

19 "An acupuncturist shall keep complete and accurate records on each patient who is
20 given acupuncture treatment, including but not limited to, treatments given and progress
21 made as a result of the acupuncture treatments."

22 9. Section 490 of the Code states:

23 "(a) In addition to any other action that a board is permitted to take against a licensee,
24 a board may suspend or revoke a license on the ground that the licensee has been convicted
25 of a crime, if the crime is substantially related to the qualifications, functions, or duties of
26 the business or profession for which the license was issued.

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority
28 to discipline a licensee for conviction of a crime that is independent of the authority granted

1 under subdivision (a) only if the crime is substantially related to the qualifications,
2 functions, or duties of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty
4 or a conviction following a plea of nolo contendere. Any action that a board is permitted to
5 take following the establishment of a conviction may be taken when the time for appeal has
6 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
7 granting probation is made suspending the imposition of sentence, irrespective of a
8 subsequent order under the provisions of Section 1203.4 of the Penal Code.

9 "(d) The Legislature hereby finds and declares that the application of this section has
10 been made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142
11 Cal.App.4th 554, and that the holding in that case has placed a significant number of
12 statutes and regulations in question, resulting in potential harm to the consumers of
13 California from licensees who have been convicted of crimes. Therefore, the Legislature
14 finds and declares that this section establishes an independent basis for a board to impose
15 discipline upon a licensee, and that the amendments to this section made by Senate Bill 797
16 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of,
17 existing law."

18 10. Section 493 of the Code states:

19 "Notwithstanding any other provision of law, in a proceeding conducted by a board
20 within the department pursuant to law to deny an application for a license or to suspend or
21 revoke a license or otherwise take disciplinary action against a person who holds a license,
22 upon the ground that the applicant or the licensee has been convicted of a crime
23 substantially related to the qualifications, functions, and duties of the licensee in question,
24 the record of conviction of the crime shall be conclusive evidence of the fact that the
25 conviction occurred, but only of that fact, and the board may inquire into the circumstances
26 surrounding the commission of the crime in order to fix the degree of discipline or to
27 determine if the conviction is substantially related to the qualifications, functions, and
28 duties of the licensee in question.

1 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
2 'registration'."

3 11. Section 731, subdivision (a), of the Code states:

4 "Any person licensed, certified, registered, or otherwise subject to regulation pursuant
5 to this division [Division 2, Healing Arts, commencing with section 500 of the Business
6 and Professions Code] who engages in, or who aids or abets in, a violation of Section 266h,
7 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code
8 occurring in the work premises of, or work area under the direct professional supervision or
9 control of, that person, shall be guilty of unprofessional conduct. The license, certification,
10 or registration of that person shall be subject to denial, suspension, or revocation by the
11 appropriate regulatory entity under this division."

12 COST RECOVERY

13 12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
14 administrative law judge to direct a licentiate found to have committed a violation or violations of
15 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
16 enforcement of the case.

17 13. Section 4959 of the Code states:

18 "(a) The board may request the administrative law judge, under his or her
19 proposed decision in resolution of a disciplinary proceeding before the board, to
20 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
21 not to exceed actual and reasonable costs of the investigation and prosecution of the
22 case.

23 "(b) The costs to be assessed shall be fixed by the administrative law judge and
24 shall not in any event be increased by the board. When the board does not adopt a
25 proposed decision and remands the case to an administrative law judge, the
26 administrative law judge shall not increase the amount of any costs assessed in the
27 proposed decision.
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1 (c) When the payment directed in the board's order for payment of costs is not
2 made by the licensee, the board may enforce the order for payment in the superior
3 court in the county where the administrative hearing was held. This right of
4 enforcement shall be in addition to any other rights the board may have as to any
5 licensee directed to pay costs.

6 (d) In any judicial action for the recovery of costs, proof of the board's
7 decision shall be conclusive proof of the validity of the order of payment and the
8 terms for payment.

9 (e) All costs recovered under this section shall be considered a reimbursement for costs
10 incurred and shall be deposited in the Acupuncture Fund."

11 FACTS

12 14. On or about March 9, 2005, Respondent submitted to the Acupuncture Board a
13 registration of place of practice, pursuant to Business and Professions Code section 4961, for the
14 following locations:

- 15 a. East Bay Acupuncture & Acupressure, 22316 Main Street, Hayward, CA 94541;
16 b. Hayward² Health Center, 30048 Mission Blvd., #131, Hayward, CA 94544;
17 c. 638 Broadway St., San Francisco, 94134; and,
18 d. 3373 Mission Street, San Francisco, CA 94110.

19 15. On or about November 28, 2005, Respondent sent a letter to the Acupuncture Board
20 stating that he was currently working at only one location, whose business name was Hayward
21 Health Center located at 30048 Mission Blvd. #131, Hayward, CA 94544.

22 CONVICTION RELATED TO 22316 MAIN STREET, HAYWARD BUSINESS

23 16. On or about June 21, 2006, officers with the City of Hayward police department
24 conducted an undercover sting operation at Respondent's business, China Health Center, located
25 at 22316 Main Street, Hayward, California. The "Hayward China Health Center," at the same
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27 ² On or about 12/02/2005, Respondent's business name was corrected to "Hayward Health
28 Center" by the Board.

1 22316 Main Street address, was issued a business license by the City of Hayward, on February 9,
2 2006, to operate as an acupuncturist's office and Respondent was listed as the business owner.

3 17. The Hayward police officers were acting on information received from several
4 anonymous citizens and other sources regarding possible prostitution activity occurring at the
5 China Health Center.

6 18. During the undercover operation, a police officer presented himself at the China
7 Health Center and asked for a massage, which one of the women present began to provide. After
8 suspecting that their identities as police officers had been discovered, the undercover team made
9 an emergency entrance into the establishment. They had to force open the front door, which was
10 locked from the inside, when no one responded to their banging on the door for entry.

11 19. Respondent was present at the time and identified himself as the owner of the
12 business.

13 20. The police officers surveyed the business premises and found no acupuncture needles
14 or other equipment or devices associated with acupuncture. The police also found leaflets and
15 advertisements promoting massage services at the Hayward China Health Center. There were no
16 acupuncture patient records. There were no signs advertising or listing acupuncture services.
17 According to the police officers, the clear function of the business was as a massage parlor.

18 21. On or about July 6, 2006, Alameda County Superior Court Criminal Complaint No.
19 395017 was filed against Respondent and three female employees (Bao, Deng, Mah) for
20 operating a massage business without permits. Respondent, Bao, Deng and Mah were each
21 charged with a violation of Hayward Municipal Code 6-10.03(A)(1), operating a massage
22 establishment without a permit. Bao was also charged with a violation of Hayward Municipal
23 Code 6-10.03(B), functioning as a massage therapy technician without a permit.

24 22. On or about April 18, 2007, Respondent pleaded no contest and was found guilty of
25 a violation of Penal Code section 415, unlawfully fighting in a public place or challenging
26 another person in a public place to fight, and ordered to pay a \$200 fine. The three female
27 employees also pleaded no contest and were each found guilty of a violation of Penal Code
28 section 415 and ordered to pay a \$200 fine.

1 CONVICTION RELATED TO 30048 MISSION BLVD, HAYWARD BUSINESS

2 23. On or about January 15, 2008, officers with the City of Hayward police department
3 conducted an undercover sting operation at respondent's business, the Hayward Health Clinic
4 (aka Hayward Relaxation Center), located at 30048 Mission Boulevard #131, Hayward,
5 California. The "Hayward Health Center," at the same 30048 Mission Boulevard address, was
6 issued a business license by the City of Hayward, on April 5, 2004, to operate as an
7 acupuncturist's office and Respondent was listed as the business owner.

8 24. The Hayward police officers had received information from an anonymous citizen
9 regarding prostitution activity taking place at the Hayward Health Clinic.

10 25. During the undercover operation, an undercover officer went into the establishment
11 and negotiated a half hour massage for \$35.00 from an Asian female (Zheng) who later identified
12 herself as "Lisa." Partway through the massage, she proposed performing a sexual act for extra
13 money and accepted payment from the officer. The officer then gave the pre-designated bust
14 signal and arresting officers entered the business.

15 26. The police officers surveyed the business premises and found no acupuncture needles
16 or other equipment or devices associated with acupuncture. There were no acupuncture patient
17 records and no medical reference books or literature. The sign posted by the front desk advertised
18 massage services and listed prices. According to the police officers, the obvious function of the
19 business was to provide massages.

20 27. One of the employees told officers that Respondent was the owner. An obvious
21 photocopy of Respondent's acupuncture license certificate from the Acupuncture Board was on
22 the premises. The original license certificate was not found.³

23 28. On January 17, 2008, Respondent was interviewed by a police officer, with the
24 assistance of a Chinese translator. Respondent said that his patient medical records were in San
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27 ³ In or about May 2005, Respondent's application for a duplicate wall license for the
28 additional location of 30048 Mission Blvd #131 in Hayward was rejected by the Board because 3
or more duplicate wall licenses had already been issued to Respondent for additional locations.

1 Francisco. He claimed ignorance that he was violating a city ordinance by providing massages.
2 He also claimed ignorance that prostitution activity was taking place at his business.

3 29. On or about February 11, 2008, Alameda County Superior Court Criminal Complaint
4 No. 408315 was filed against Respondent and female employee Zheng. Respondent was charged
5 with a violation of Hayward Municipal Code 6-10.03(A)(1), operating a massage establishment
6 without a permit. Employee Zheng was charged with a violation of Penal Code section 647(b),
7 engaging and agreeing to engage in prostitution, and a violation of Hayward Municipal Code 6-
8 10.03(B), functioning as a massage therapy technician without a permit.

9 30. On or about April 28, 2008, employee Zheng pleaded no contest and was found guilty
10 of a violation of Hayward Municipal Code 6-10.03(B), functioning as a massage therapy
11 technician without a permit. Zheng was placed on a 36-month court probation and ordered to
12 take an AIDS test, to submit to 4-ways search, to stay out of the area of prostitution, not to
13 advertise on the Internet, and to pay a \$500 fine.

14 31. On or about July 1, 2008, Respondent pleaded no contest and was found guilty of a
15 violation of Hayward Municipal Code section 6-10.03(A)(1), operating a massage establishment
16 without a permit. Respondent was sentenced to two years probation, one day county jail with
17 credit for time served, and ordered to pay a fine of \$120.00.

18 CONVICTION RELATED TO SACRAMENTO BUSINESS

19 32. On or about March 14, 2009, the Sacramento County Sheriff's Department (SCSD)
20 conducted an undercover sting for suspected prostitution activity at Rainbow Massage, located at
21 9651 Folsom Boulevard, Sacramento, California. Rainbow CMT at 9651 Folsom Blvd. was
22 solely owned by Respondent and was registered as a licensed massage establishment with the
23 City and County of Sacramento since at least October 2007.

24 33. During the undercover operation, two officers entered the establishment and each of
25 the officers negotiated a massage. The employees performing the massage exposed their bare
26 breasts to the officers and each made an agreement for a sex act with an officer in exchange for
27 money.

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1 34. Arresting officers entered the establishment and found a locked door separating the
2 waiting area from the rest of the business. They arrested two female employees (Choi and
3 Vongkhamchanh) for solicitation for prostitution and other related violations.

4 35. Video surveillance cameras and a video monitor were found on the business
5 premises. Each massage room door, as well as the hallway door, had an operating door lock on it,
6 in violation of Sacramento County Code section 4.36.090J.

7 36. The police tried to contact Respondent, the owner, by calling the telephone number
8 listed on the Special Business License. Respondent's daughter answered the telephone and said
9 that the telephone number was her cellphone. She told him that her father, Respondent, does not
10 speak English and that she translates for him. She said that Ms. Choi, known as Lisa, was the
11 manager of Rainbow Massage. She told him that "they just use my dad's license." She stated
12 that she acts as interpreter for Respondent and talks to Lisa by telephone and in person for him.
13 When she and Respondent visit the business, Lisa will not let her in to the back of the business
14 but will let in Respondent, lock the door and make her wait in the front area. Lisa sends money to
15 Respondent by mail, in the form of a cashiers check or a personal check.

16 37. On or about April 9, 2009, Sacramento County Superior Court Criminal Complaint
17 Nos. 09377470-01 and 09377467-01 was filed against Defendants Young Sook Choi and Sathith
18 Vongkhamchanh, respectively, charging Choi with violation of Penal Code section 315 and eight
19 counts of violating the Sacramento County Code and charging Vongkhamchanh with violation of
20 Penal Code section 647(b) and three counts of violating the Sacramento County Code.

21 38. On or about May 7, 2009, Sacramento County Superior Court Criminal Complaint
22 No. 09M04469 was filed against Respondent charging eight (8) counts of violating the
23 Sacramento County Code: sections 4.36.100, 4.36.090C, 4.36.090F, 4.36.090I, 4.36.090J,
24 4.36.090K, 4.36.090L, and 4.36.090N.

25 39. On August 11, 2009, Respondent pleaded no contest and was found guilty of a
26 violation of section 4.36.100 of the Sacramento County Code, willfully and unlawfully acting as a
27 massage practitioner or massage establishment manager without a valid, unexpired and
28 unrevoked Special Business License. Respondent was sentenced to three years informal

1 probation, fined \$100.00, and given thirty days of county jail time that was stayed pending
2 successful completion of PES Choices III.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct: conviction of a crime/violation of law)

5 40. Respondent is subject to disciplinary action for unprofessional conduct under section
6 4955(b) and/or (d) and/or (j) for conviction of a crime and/or violation of any law or local
7 ordinance by an employee or person working under Respondent's professional license or business
8 permit, as described in paragraphs 14 through 22 which are incorporated herein by reference as if
9 fully set forth.

10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct: conviction of a crime/violation of law)

12 41. Respondent is subject to disciplinary action for unprofessional conduct under section
13 4955(b) and/or (d) and/or (j) for conviction of a crime and/or violation of any law or local
14 ordinance by an employee or person working under Respondent's professional license or business
15 permit, as described in paragraphs 14 through 15 and 23 through 31, which are incorporated
16 herein by reference as if fully set forth.

17 THIRD CAUSE FOR DISCIPLINE

18 (Unprofessional Conduct: conviction of a crime/violation of law)

19 42. Respondent is subject to disciplinary action for unprofessional conduct under section
20 4955(b) and/or (d) and/or (j) for conviction of a crime and/or violation of any law or local
21 ordinance by an employee or person working under Respondent's professional license or business
22 permit, as described in paragraphs 32 through 39, which are incorporated herein by reference as if
23 fully set forth.

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PRAYER

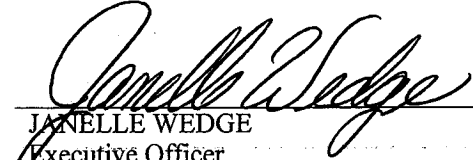
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board issue a decision:

1. Revoking or suspending Acupuncture License Number AC 9250, issued to Respondent Yulin Wu, L.Ac.;

2. Ordering Respondent Yulin Wu, 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 125.3; and/or

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

DATED: **OCT 27 2010**


JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

SF2010201460