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8 **BEFORE THE**
9 **ACUPUNCTURE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1A-2017-61

12 JONATHAN HYUNGSUK KIM
3511 West Olympic Boulevard, #204
13 Los Angeles, California 90019

A C C U S A T I O N

14 Acupuncturist License No. AC 11861,
15 Respondent.

17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 16, 2007, the Acupuncture Board issued Acupuncturist License
22 No. AC 11861 to Jonathan Hyungsuk Kim (Respondent). The Acupuncturist License was in full
23 force and effect at all times relevant to the charges brought herein and it will expire on December
24 31, 2018, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board under the authority of the following
27 laws. All section references are to the Business and Professions Code unless otherwise indicated.

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1 4. Section 4928.1 of the Code states:

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

6 5. Section 4955 of the Code states:

7 “The board may deny, suspend, or revoke, or impose probationary conditions upon, the
8 license of any acupuncturist if he or she is guilty of unprofessional conduct.

9 “Unprofessional conduct shall include, but not be limited to, the following:

10 “... ”

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

13 “... ”

14 “(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation
15 of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

16 “... ”

17 6. Section 4955.1 of the Code states:

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

21 “... ”

22 “(c) Committing any act involving dishonesty or corruption with respect to the
23 qualifications, functions, or duties of an acupuncturist.

24 “... ”

25 7. Section 4956 of the Code states:

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

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

8 8. Section 490 of the Code states:

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

13 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
14 discipline a licensee for conviction of a crime that is independent of the authority granted under
15 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
16 of the business or profession for which the licensee’s license was issued.

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

23 “(d) The Legislature hereby finds and declares that the application of this section has been
24 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
25 554, and that the holding in that case has placed a significant number of statutes and regulations
26 in question, resulting in potential harm to the consumers of California from licensees who have
27 been convicted of crimes. Therefore, the Legislature finds and declares that this section
28 establishes an independent basis for a board to impose discipline upon a licensee, and that the

1 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
2 to, but rather are declaratory of, existing law.”

3 9. Section 493 of the Code states:

4 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
5 the department pursuant to law to deny an application for a license or to suspend or revoke a
6 license or otherwise take disciplinary action against a person who holds a license, upon the
7 ground that the applicant or the licensee has been convicted of a crime substantially related to the
8 qualifications, functions, and duties of the licensee in question, the record of conviction of the
9 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
10 and the board may inquire into the circumstances surrounding the commission of the crime in
11 order to fix the degree of discipline or to determine if the conviction is substantially related to the
12 qualifications, functions, and duties of the licensee in question.

13 “...”

14 **PENAL CODE SECTION**

15 10. Section 550 of the Penal Code states:

16 “(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any
17 person to do any of the following:

18 “(1) Knowingly present or cause to be presented any false or fraudulent claim for the
19 payment of a loss or injury, including the payment of a loss or injury under a contract of
20 insurance.

21 “...”

22 “(c)(1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is
23 guilty of a felony punishable by imprisonment pursuant to subdivision (h) of Section 1170 for
24 two, three, or five years, and by a fine not exceeding fifty thousand dollars (\$50,000), or double
25 the amount of the fraud, whichever is greater.

26 “...”

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1 COST RECOVERY

2 11. Section 4959 of the Code states:

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

7 “(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
8 any event be increased by the board. When the board does not adopt a proposed decision and
9 remands the case to an administrative law judge, the administrative law judge shall not increase
10 the amount of any costs assessed in the proposed decision.

11 “(c) When the payment directed in the board’s order for payment of costs is not made by
12 the licensee, the board may enforce the order for payment in the superior court in the county
13 where the administrative hearing was held. This right of enforcement shall be in addition to any
14 other rights the board may have as to any licensee directed to pay costs.

15 “(d) In any judicial action for the recovery of costs, proof of the board’s decision shall be
16 conclusive proof of the validity of the order of payment and the terms for payment.

17 “(e) All costs recovered under this section shall be considered a reimbursement for costs
18 incurred and shall be deposited in the Acupuncture Fund.”

19 FACTUAL SUMMARY

20 12. On June 23, 2017, in the case entitled *The People of the State of California v.*
21 *Jonathan Hyungsuk Kim*, case number BA455219, in the Superior Court of California, County of
22 Los Angeles, Respondent, upon his plea of guilty, was convicted of Insurance Fraud in violation
23 of Penal Code section 550, subdivision (a), subsection (1), a felony. The remaining six counts of
24 Insurance Fraud, as well as other charges filed against Respondent, were dismissed pursuant to
25 the plea agreement between Respondent and the Los Angeles County District Attorney’s Office.
26 Respondent was placed on five years of formal probation with the following terms and conditions:

27 A. Serve forty-four (44) days in the Los Angeles County Jail with credit for time
28 served and considered served;

- 1 B. Perform two hundred (200) hours of community service work;
- 2 C. Seek and maintain training, schooling or employment as approved by the
3 probation officer;
- 4 D. Pay restitution in the amount of \$105,455.28 to State Farm Automobile
5 Insurance, Progressive Insurance, Infinity Insurance, Allstate Insurance, Mercury Insurance, and
6 Bristol West Insurance;
- 7 E. Maintain residence as approved by the probation officer;
- 8 F. Not own, use or possess any dangerous or deadly weapons, including any
9 firearms, knives or other concealable weapons;
- 10 G. Submit his person and property to search and seizure at any time of the day or
11 night, by any probation officer or other peace officer, with or without a warrant, probable cause or
12 reasonable suspicion;
- 13 H. Report to the probation officer within forty-eight (48) hours of release from
14 court and obey all rules and regulations of the probation department;
- 15 I. Provide buccal swab samples, a right thumb print, a full palm print impression
16 of each hand, any blood specimens or other biological samples as required for law enforcement
17 identification; and
- 18 J. Pay other fines, fees or costs at the direction of the Superior Court.

19 13. The circumstances leading to Respondent's conviction are as follows:

- 20 A. On January 1, 2013, G.K. and her passenger M.K.¹ were in an automobile crash
21 that occurred in Hesperia, California. Both G.K. and M.K. reported being injured in the crash and
22 an insurance claim was submitted to State Farm Automobile Insurance. Both G.K. and M.K.
23 reported that they received treatment from Respondent at his clinic, Smile Chiropractic, which is
24 located at 3511 West Olympic Boulevard in Los Angeles, California. A medical report furnished
25 by Smile Chiropractic indicated that G.K. received fifteen treatments from Respondent between
26 January 4, 2013 and March 19, 2013. A similar medical report furnished by Smile Chiropractic

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28 ¹ These individuals are referred to by their initials in order to protect their privacy.

1 indicated that M.K. received eighteen treatments from Respondent between January 4, 2013 and
2 March 19, 2013.

3 B. On or about May 1, 2013, Respondent knowingly presented and caused to be
4 presented a false and fraudulent claim for the payment of a loss and injury, including payment of a
5 loss under a contract of insurance, in State Farm Automobile Insurance Claim No. 7515F7837.

6 C. On October 16, 2015, investigators with the Los Angeles County District
7 Attorney's Office interviewed M.K. The investigators learned that G.K. and M.K. are sisters and
8 that they were referred to Respondent's clinic by E.K., their other sister and attorney. M.K. told
9 the investigators that she received between ten and fifteen treatments from Respondent after
10 sustaining injuries from the automobile crash. Moreover, M.K. estimated that G.K. received less
11 than fifteen treatments from Respondent.

12 D. On October 11, 2016, investigators with the Los Angeles County District
13 Attorney's Office interviewed G.K. Although G.K. initially denied being in an automobile crash,
14 she eventually admitted to being the driver of one of the involved vehicles. Additionally, G.K.
15 reported that E.K. was her passenger in the vehicle and not M.K. as reported to State Farm
16 Automobile Insurance. According to G.K., she was referred to Respondent by E.K. for treatment
17 and M.K. accompanied her to these treatments for an unrelated pre-existing condition. Despite
18 the fact that G.K. was instructed to make twelve visits to Respondent's clinic, G.K. told the
19 investigators that she only had one chiropractic visit with Respondent.

20 E. State Farm Automobile Insurance paid \$4,500.00 to G.K. and \$5,000.00 to
21 M.K. in satisfaction of their insurance claim.

22 **FIRST CAUSE FOR DISCIPLINE**

23 **(Unprofessional Conduct - Conviction of a Substantially Related Crime)**

24 14. By reason of the facts set forth in paragraphs 12 and 13 above, Respondent's license
25 is subject to disciplinary action under Section 4955, subdivision (b), Section 4956, and Section
26 490 of the Code, in that Respondent has been convicted of a crime substantially related to the
27 qualifications, functions, or duties of an acupuncturist.

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1 15. Respondent's acts and/or omissions as set forth in paragraphs 12 and 13 above,
2 whether proven individually, jointly, or in any combination thereof, constitute the conviction of a
3 crime substantially related to the qualifications, functions, or duties of an acupuncturist, pursuant
4 to Section 4955, subdivision (b), Section 4956, and Section 490 of the Code.

5 **SECOND CAUSE FOR DISCIPLINE**

6 **(Unprofessional Conduct – Committing a Fraudulent Act)**

7 16. By reason of the facts set forth in paragraphs 12 and 13 above, Respondent's license
8 is subject to disciplinary action under Section 4955, subdivision (d), and Section 4955.1,
9 subdivision (c) of the Code, in that Respondent committed an act involving dishonesty or
10 corruption with respect to the qualifications, functions or duties of an acupuncturist.

11 17. Respondent's acts and/or omissions as set forth in paragraphs 12 and 13 above,
12 whether proven individually, jointly, or in any combination thereof, constitute the commission of
13 an act involving dishonesty or corruption with respect to the qualifications, functions or duties of
14 an acupuncturist, pursuant to Section 4955, subdivision (d), and Section 4955.1, subdivision (c)
15 of the Code.

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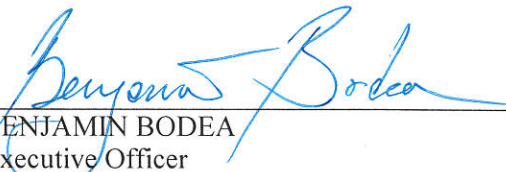
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PRAYER

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 No. AC 11861 issued to Jonathan Hyungsuk Kim;
2. Ordering Jonathan Hyungsuk Kim 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. Ordering Jonathan Hyungsuk Kim, if placed on probation, to pay the Acupuncture Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: AUG 11 2017


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

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