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

11 In the Matter of the First Amended Accusation
12 Against:

13 **JUNG GUN LEE, L.Ac.**
14 **2525 West 8th Street, Suite 210**
Los Angeles, CA 90057
15 **Acupuncturist License No. AC 12728,**

16 Respondent.

Case No. 1A-2016-10

FIRST AMENDED
ACCUSATION

17
18 Complainant alleges:

19 **PARTIES**

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

23 2. On or about September 17, 2008, the Acupuncture Board issued Acupuncturist
24 License Number AC 12728 to JUNG GUN LEE, L.Ac. (Respondent). The Acupuncturist
25 License was in full force and effect at all times relevant to the charges brought herein and will
26 expire on February 29, 2020, unless renewed.

27 **JURISDICTION**

28 3. This First Amended Accusation is brought before the Acupuncture Board (Board),

1 Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 4928.1 of the Code states:

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

8 5. Section 4927 of the Code states, in pertinent part:

9 “... ”

10 “(d) ‘Acupuncture’ means the stimulation of a certain point or points on or near the surface
11 of the body by the insertion of needles to prevent or modify the perception of pain or to normalize
12 physiological functions, including pain control, treatment of certain diseases or dysfunctions of
13 the body and includes the techniques of electroacupuncture, cupping, and moxibustion.”

14 6. Section 4955 of the Code states, in pertinent part:

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

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

18 “... ”

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

21 “... ”

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

23 “... ”

24 7. Section 4955.1 of the Code states, in pertinent part:

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

28 “... ”

1 “(e) Failing to maintain adequate and accurate records relating to the provision of services
2 to their patients.”

3 8. Section 4955.2, of the Code states:

4 “The board may deny, suspend, revoke, or impose probationary conditions upon the license
5 of any acupuncturist if he or she is guilty of committing any one of the following:

6 “(a) Gross negligence.

7 “(b) Repeated negligent acts.

8 “(c) Incompetence.”

9 9. California Code of Regulations, title 16, section 1399.451, states, in pertinent part:

10 “. . .

11 “(e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax
12 arising out of acupuncture treatment shall be referred immediately to a physician or dentist or
13 podiatrist, if appropriate, if immediate medical treatment is required.”

14 10. California Code of Regulations, title 16, section 1399.453 states:

15 “An acupuncturist shall keep complete and accurate records on each patient who is given
16 acupuncture treatment, including but not limited to, treatments given and progress made as a
17 result of the acupuncture treatments.”

18 11. California Code of Regulations, title 16, section 1399.454 states:

19 “An acupuncturist shall use needles labeled for single use only that meet the requirements
20 of federal regulations 21 CFR Part 880.5580 (61 FR 64617, December 6, 1996). It shall constitute
21 unprofessional conduct for an acupuncturist to use a needle more than once.”

22 12. United States Code of Federal Regulations, title 21, section 880.5580 states:

23 “(a) Identification. An acupuncture needle is a device intended to pierce the skin in the
24 practice of acupuncture. The device consists of a solid, stainless steel needle. The device may
25 have a handle attached to the needle to facilitate the delivery of acupuncture treatment.

26 “(b) Classification. Class II (special controls). Acupuncture needles must comply with the
27 following special controls:

28 “(1) Labeling for single use only and conformance to the requirements for prescription

1 devices set out in 21 CFR 801.109,

2 “(2) Device material biocompatibility, and

3 “(3) Device sterility.”

4 **COSTS**

5 13. Section 4959 of the Code states:

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

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

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

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

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

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Gross Negligence)

24 14. Respondent is subject to disciplinary action under 4955.2, subdivision (a), in that he
25 was grossly negligent in his care and treatment of Patient A.¹ The circumstances are as follows:

26 15. On or about January 22, 2016, the Board received a complaint regarding

27 ¹ The names of the patient and/or witnesses are anonymized to protect privacy rights. The names will be
28 provided to Respondent upon written request for discovery.

1 Respondent's treatment of Patient A. The Board initiated an investigation of the events
2 underlying this complaint.

3 16. Patient A was in a car accident on February 18, 2013. During the accident he struck
4 his right elbow on the steering wheel and suffered immediate right elbow pain.

5 17. After the accident Patient A experienced pain in his right elbow, right hand, and
6 numbness in his right pinky and ring fingers.

7 18. Respondent used acupuncture point SI8² on multiple occasions in treating Patient A:
8 September 18, 20, 23, 30, 2013; October 30, 2013; November 1, 15, 18, 20, 22, 2013; January 3,
9 6 and 16, 2014. In his progress notes for those visits Respondent did not note the length nor the
10 gauge of the needles used.

11 19. Respondent's progress notes did reflect the patient's improvement as follows: on
12 November 29, 2013, "4th finger numbness totally gone... 5th finger numbness still there. . .", on
13 December 12, 2013, "when having acupuncture, getting better...", and on January 3, 2012 "4th
14 and 5th finger numbness, get better after treatment."

15 20. Base on Patient A's description Respondent inserted much larger needles into Patient
16 A's right arm at and below his elbow during the patient's visits on December 23, 2013; January 3,
17 6, 10, 16, and 30, 2014.

18 21. Respondent's progress notes for January 10, 16, and 30, 2014, and did not include
19 comprehensive information regarding Patient A's pain during or subsequent to treatment.

20 22. During Patient A's January 10, 2014, treatment Respondent inserted the larger
21 needle directly into his ulnar nerve,³ causing him to scream in pain.

22 23. Following the January 10, 2014, treatment with the larger needle, Patient A
23 experienced increasing pain each day as well as new symptoms which included curling in his
24 right 4th and 5th fingers, loss of movement between his right 4th and 5th fingers, shrinkage in his
25

26 ² Acupuncture point SI8 is located on the medial aspect of the elbow, in the depression between the
27 olecranon of the ulna and the medial epicondyle of the humerus.

28 ³ The ulnar nerve is one of the three main nerves in the arm. The nerve travels from the neck down into the
hand.

1 right hand muscles, formation of a hump between his right thumb and index finger, and loss of
2 movement in his 3rd finger.

3 24. Patient A told Respondent he was having more pain and numbness every day since
4 the January 10, 2014, treatment.

5 25. Respondent apologized to Patient A, stating he had made a mistake during the
6 treatment. Respondent told Patient A that during the January 10, 2014, treatment he pierced
7 Patient A's nerve and the injury would require surgery for which Respondent would pay.

8 26. Patient A subsequently moved to Argentina, and on April 8, 2014, consulted with a
9 neurologist who determined that Patient A had severe acute axonotmesis⁴ of the ulnar nerve near
10 the right elbow. Patient A was advised to undergo surgery for the condition.

11 27. Patient A communicated the neurologist's findings to Respondent but Respondent did
12 not send any money to Patient A to pay for the surgery.

13 28. Patient A's condition worsened and he experienced curling in his right 4th and 5th
14 fingers, loss of movement between his right 4th and 5th fingers, shrinkage in his right hand
15 muscles, formation of a hump between his right thumb and index finger, and loss of movement in
16 his 3rd finger.

17 29. Following Patient A's return to the United States of America on January 14, 2016, he
18 underwent cubital tunnel release surgery⁵ to repair the damage to his ulnar nerve. After the
19 surgery Patient A was able to move his fingers, but did not regain full strength in his fingers.

21 _____
22 ⁴ Axonotmesis is defined as a nerve injury where severe disruption of axons (the long threadlike part of a
23 nerve cell along which impulses are conducted from the cell body to other cells) and surrounding endoneurial sheaths
(endoneurial sheath is a layer of delicate connective tissue around the myelin sheath of each myelinated nerve fiber)
takes place. Axonotmesis is characterized by axonal injury with subsequent degeneration or regeneration.

24 ⁵ Cubital tunnel release surgery is performed to correct the cubital tunnel syndrome. Cubital tunnel
25 syndrome, also called ulnar nerve entrapment, is a condition caused by compression of the ulnar nerve in an area of
the elbow called the cubital tunnel. The ulnar nerve travels down the back of the elbow behind the bony bump called
26 the medial epicondyle and through a passageway called the cubital tunnel. The cubital tunnel is a narrow
passageway on the inside of the elbow formed by bone, muscle, and ligaments with the ulnar nerve passing through
27 its center. Left untreated, cubital tunnel syndrome can lead to permanent nerve damage in the hand. Commonly
reported symptoms associated with cubital tunnel syndrome include intermittent numbness, tingling, and pain to the
28 little finger, ring finger, and the inside of the hand.

1 30. The standard of care requires an acupuncturist to stimulate acupuncture points within
2 a patient's tolerance. The standard of care requires the acupuncturist to initially utilize the least
3 amount of stimulation to obtain the desired benefits and increase or decrease the level of
4 stimulation over time if necessary to achieve treatment goals based on the patient's responses to
5 the treatment.

6 31. The standard of care requires an acupuncturist to change one treatment variable at a
7 time to determine the patient's response and tolerance to each change. The treatment variables
8 include the amount of time the acupuncture points are stimulated, the number of needles used
9 during the treatment, the size of the needles used during the treatment, and the placement of the
10 needles. The standard of care regarding change in treatment variables requires the acupuncturist
11 to initially utilize the least amount of stimulation and increase or decrease the level of stimulation
12 over time if necessary to achieve treatment goals based on the patient's response to the treatment.

13 32. Respondent's decision to utilize more aggressive treatment (i.e., Respondent's use of
14 longer, thicker needles and stronger stimulation) created the risk of Patient A suffering
15 complications⁶ which could include the abrupt increase of pain in his elbow and hand pain, finger
16 clawing deformation, weakness and impairment in function. Accordingly, Respondent's
17 utilization of more aggressive treatment constitute an extreme departure from the standard of
18 care.

19 33. Respondent's aggressive stimulation of the acupuncture point which lies atop a
20 peripheral nerve demonstrates a lack of knowledge, and is an extreme departure from the standard
21 of care.

22 34. Respondent's aggressive stimulation of the acupuncture point which lies on top of a
23 peripheral nerve created the risk of additional harm to the patient's existing injury and thus is an
24 extreme departure from the standard of care.

25 35. Respondent's continuing treatment of Patient A created the risk of exacerbating the
26 patient's symptoms and is thus an extreme departure from the standard of care.

27 ⁶ "Complication" is defined in medicine as an unfavorable evolution or consequence of a disease, a health
28 condition or a therapy. As a result, the disease can become worse in its severity or show a higher number of signs,
symptoms or new pathological changes, become widespread throughout the body, or affect other organ systems.

1 C. Respondent's aggressive stimulation of the acupuncture point which lies on top of a
2 peripheral nerve during Patient A's treatments.

3 D. Respondent's continuing treatment of A after his symptoms worsened following
4 Respondent's treatments.

5 E. Respondent's failure to immediately refer Patient A to a physician after the patient
6 informed Respondent he was experiencing increased pain, weakness, and impaired function.

7 **THIRD CAUSE FOR DISCIPLINE**

8 (Failure to Maintain Adequate and Accurate Records)

9 44. Respondent is subject to disciplinary action under section 4955.1, subdivision (e), and
10 California Code of Regulations, title 16, section 1399.453, in that he failed to maintain adequate
11 and accurate records relating to the services he provided to Patient A. The circumstances are as
12 follows:

13 45. Complainant refers to, and by reference incorporates herein paragraphs 15 and 41,
14 inclusive, above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Incompetence)

17 46. Respondent is subject to disciplinary action under section 4955.2, subdivision (c), in
18 that was incompetent in his care and treatment of Patient A. The circumstances are as follows:

19 47. Complainant refers to, and by reference incorporates herein, paragraphs 15 through
20 45, inclusive, above.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 (Unprofessional Conduct)

23 48. Respondent is subject to disciplinary action under section 4955 of the Code in that he
24 committed unprofessional conduct in his care and treatment of Patient A. The circumstances are
25 as follows:

26 49. Complainant refers to, and by reference incorporates herein paragraphs 15 through
27 47, inclusive, above.

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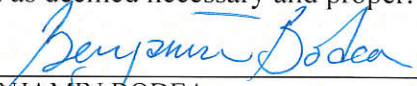
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PRAYER

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 Number AC 12728, issued to Jung Gun Lee, L.Ac.;
2. Ordering Jung Gun Lee, 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;
3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: **AUG 21 2018**



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

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