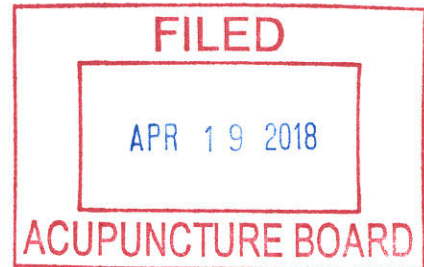


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8
9 **BEFORE THE**
ACUPUNCTURE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1A-2016-148

12 KARL DAKO CHANG, L.Ac.

13 474 High School Drive
14 Bishop, California 93514

A C C U S A T I O N

15 Acupuncturist License No. AC 13939,

16 Respondent.

17
18
19 Complainant alleges:

20 **PARTIES**

21 1. Benjamin Bodea (“Complainant”) brings this Accusation solely in his official
22 capacity as the Executive Officer of the Acupuncture Board of California (“Board”).

23 2. On September 27, 2010, the Board issued Acupuncturist number AC 13939 to Karl
24 Dako Chang, L.Ac. (“Respondent”). That license, which has a current expiration date of March
25 31, 2018, was previously revoked, but the order of revocation stayed, and the licensee was placed
26 on probation for a period of two years. Respondent completed his probation on July 9, 2017. In
27 the criminal matter of *The People of the State of California v. Karl Dako Chang*, Inyo County
28 Superior Court Case number 16-10153-AP, an Order Restricting Practice of Acupuncture under

1 Penal Code Section 23 was issued suspending his practice of acupuncture, effective November 6,
2 2016 until the conclusion of the criminal case.

3 **JURISDICTION**

4 3. This Accusation is brought before the Board under the authority of the following
5 provisions of the California Business and Professions Code (“Code”) unless otherwise indicated.

6 4. Section 4928 of the Code provides in part as follows:

7 “(a) The Acupuncture Board, which consists of seven members, shall enforce and
8 administer this chapter [the Acupuncture Licensure Act].”

9 5. Section 4928.1 of the Code states:

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

14 6. Section 4955 of the Code states:

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

21 “...

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

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 726 of the Code states:

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

12 “(b) This section shall not apply to consensual sexual contact between a licensee and his or
13 her spouse or person in an equivalent domestic relationship when that licensee provides medical
14 treatment, to his or her spouse or person in an equivalent domestic relationship.”

15 9. California Code of Regulations, title 16, section 1399.469.1 states:

16 “(a) Except as otherwise provided, if an individual is required to register as a sex offender
17 pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or
18 military or federal law, the board shall: (1) Deny an application by the individual for licensure, in
19 accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1
20 of Division 3 of Title 2 of the Government Code.

21 “(2) Promptly revoke the license of the individual, in accordance with the procedures set
22 forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the
23 Government Code, and shall not stay the revocation nor place the license on probation.

24 “(3) Deny any petition to reinstate or reissue the individual’s license.

25 “(b) This section shall not apply to any of the following: (1) An individual who has been
26 relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or
27 whose duty to register has otherwise been formally terminated under California law or the law of
28 the jurisdiction that required registration.

1 “(2) An individual who is required to register as a sex offender pursuant to Section 290 of
2 the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code,
3 provided, however, that nothing in this paragraph shall prohibit the board from exercising its
4 discretion to discipline a licensee under any other provision of state law based upon the licensee’s
5 conviction under section 314 of the Penal Code.

6 “(3) Any administrative proceeding that is fully adjudicated prior to the effective date of
7 this regulation. A petition for reinstatement of a revoked or surrendered license shall be
8 considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a)
9 against reinstating a license shall govern.”

10 10. Section 243.4, subsection (c) of the Penal Code states:

11 “(c) Any person who touches an intimate part of another person for the purpose of sexual
12 arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the
13 nature of the act because the perpetrator fraudulently represented that the touching served a
14 professional purpose, is guilty of sexual battery. A violation of this subdivision is punishable by
15 imprisonment in a county jail for not more than one year, and by a fine not exceeding two
16 thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and
17 by a fine not exceeding ten thousand dollars (\$10,000).”

18 11. Section 290 of the Penal Code states:

19 “(a) Sections 290 to 290.024, inclusive, shall be known and may be cited as the Sex
20 Offender Registration Act. All references to “the Act” in those sections are to the Sex Offender
21 Registration Act.

22 “(b) Every person described in subdivision (c), for the rest of his or her life while residing
23 in California, or while attending school or working in California, as described in Sections 290.002
24 and 290.01, shall register with the chief of police of the city in which he or she is residing, or the
25 sheriff of the county if he or she is residing in an unincorporated area or city that has no police
26 department, and, additionally, with the chief of police of a campus of the University of California,
27 the California State University, or community college if he or she is residing upon the campus or
28 in any of its facilities, within five working days of coming into, or changing his or her residence

1 within, any city, county, or city and county, or campus in which he or she temporarily resides,
2 and shall be required to register thereafter in accordance with the Act.

3 “(c) The following persons shall register:

4 Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this
5 state or in any federal or military court of a violation of Section 187 committed in the
6 perpetration, or an attempt to perpetrate, rape or any act punishable under Section 286, 288, 288a,
7 or 289, Section 207 or 209 committed with intent to violate Section 261, 286, 288, 288a, or 289,
8 Section 220, except assault to commit mayhem, subdivision (b) and (c) of Section 236.1, Section
9 243.4, Section 261, paragraph (1) of subdivision (a) of Section 262 involving the use of force or
10 violence for which the person is sentenced to the state prison, Section 264.1, 266, or 266c,
11 subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 266j, 267, 269, 285, 286,
12 288, 288a, 288.3, 288.4, 288.5, 288.7, 289, or 311.1, subdivision (b), (c), or (d) of Section 311.2,
13 Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (c) of Section
14 653f, subdivision 1 or 2 of Section 314, any offense involving lewd or lascivious conduct under
15 Section 272, or any felony violation of Section 288.2; any statutory predecessor that includes all
16 elements of one of the above-mentioned offenses; or any person who since that date has been or is
17 hereafter convicted of the attempt or conspiracy to commit any of the above-mentioned offenses.

18 “...”

19 COST RECOVERY

20 12. Section 4959 of the Code states:

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

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

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

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

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

9 FACTUAL SUMMARY

10 13. On or about October 26, 2016, Respondent was arrested for multiple felony offenses
11 including lewd or lascivious acts with a child of 14 or 15 years and sexual battery of multiple
12 victims.

13 14. Eight victims, who had sought acupuncture services from Respondent, were
14 interviewed by the Bishop, California, Police Department. Respondent inappropriately had
15 victims, on more than one occasion, sit in his hot tub nude, while Respondent, also nude, was in
16 the hot tub, touching the victims. Respondent also touched breasts and nipples as well as vaginal
17 areas of the victims, characterizing the touching as massaging.

18 15. Respondent, who was interviewed by the Bishop Police Department on October 27,
19 2016, stated that he was on probation with the Acupuncture Board because he entered his hot tub
20 with a client in 2012. He confirmed that after being placed on probation, he entered the hot tub
21 naked with some of the victims for “no good reason.” He confirmed that he touched the breasts
22 and nipples of the victims. He further confirmed that after being naked himself with one of his
23 victims, he then gave one of the victims a massage, on his bed, with both Respondent and the
24 victim naked.

25 a. With respect to Victim number 1, Respondent admitted that he entered the hot
26 tub with her and that it was inappropriate.¹

27 ¹ Victim names are omitted to protect their privacy. The names of the victims were disclosed to
28 Respondent during the criminal investigation and will further be produced, at Respondent’s request, during
discovery.

1 b. With respect to Victim number 2, Respondent admitted that he massaged her
2 breasts on more than one occasion during appointments.

3 c. With respect to Victim number 3, Respondent admitted that he entered the hot
4 tub naked with her and that it was inappropriate. He further admitted that he massaged this
5 victim's breasts and that he provided this victim a massage on his bed with both he and the victim
6 naked. While this victim was underage, Respondent maintained that he thought that she was 18-
7 years-old.

8 16. All of Respondent's misconduct was performed under the guise of acupuncture
9 services.

10 17. On October 31, 2016, in the criminal matter of *The People of the State of California*
11 *v. Karl Dako Chang*, Inyo County Superior Court Case number 16-10153-AP, a Felony
12 Complaint was filed against Respondent. In connection with five victims, Respondent was
13 charged with twenty-eight (28) felony counts, including twenty-five counts of Sexual Battery by
14 Fraud in violation of subdivision (c) of Penal Code section 243.4; one count of a Lewd Act Upon
15 a Child in violation of subdivision (c)(1) of Penal Code section 288; one count of Assault with
16 Intent to Commit a Felony on a Victim Under 18 Years of Age in violation of subdivision (a)(2)
17 of Penal Code section 220; and, one count of Sexual Penetration by Foreign Object in violation
18 of subdivision (d) of Penal Code section 289. All of these charges stem from Respondent conduct
19 during purported acupuncture services.

20 18. On October 19, 2017, in the criminal matter of *The People of the State of California*
21 *v. Karl Dako Chang*, Inyo County Superior Court Case number 16-10153-AP, Respondent plead
22 no contest to two felony counts of Sexual Battery by Fraud in violation of subdivision (c) of Penal
23 Code section 243.4. Terms of the plea agreement include that Respondent is not to practice
24 acupuncture or massage therapy during the term of probation.

25 19. On December 21, 2017, Respondent appeared in the Inyo County Superior Court for
26 judgment/sentencing in the criminal matter of *The People of the State of California v. Karl Dako*
27 *Chang*, Inyo County Superior Court Case number 16-10153-AP, for sentencing as to two felony

28 ///

1 counts of Sexual Battery by Fraud in violation of subdivision (c) of section 243.4 of the Penal
2 Code.

3 20. Respondent was convicted with the imposition of sentence suspended. He was placed
4 on formal felony probation for forty-eight (48) months under the following terms and conditions:

5 A. Pay various court related fines, fees and costs.

6 B. Serve 364 days in the Inyo County Jail with credit for one (1) actual day.

7 C. Pay restitution for damage or loss to each of the five victims.

8 D. Not own, possess, have in his custody or control any firearms or ammunition
9 for life and be subjected to search by any Peace Officer, at any time, with or without a warrant,
10 probable cause, or reasonable suspicion, day or night, of his person, automobile, garage,
11 residence, yard, and any other place under his control for the detection of firearms for the
12 duration of the term probation.

13 E. Enroll in and successfully complete a Sex Offender Management program
14 under the provisions of section 9003 of the Penal Code.

15 F. Must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk,
16 molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or
17 block movements of the five victims. Respondent must have no personal, electronic, telephonic,
18 or written contact with the five victims; must have no contact with the five victims through third
19 parties, except an attorney of record. Respondent must not come within 100 yards of the five
20 victims.

21 G. Must stay away from places where minors congregate, including but not limited
22 to parks and schools. Respondent is not to reside within 2000 feet of these places pursuant to
23 subsection (b) of Penal Code section 3003.5.

24 H. Must not be in the presence of female minors, without the prior written
25 permission of the Probation Officer.

26 I. Be subject to search by any Peace Officer, at any time, with or without a
27 warrant, probable cause, or reasonable suspicion, day or night, of his person, automobile, garage,
28 residence, yard, and any other place under his control for the detection of female minors.

1 J. Provide specimens and samples pursuant to section 296 of the Penal Code and
2 provide proof of compliance to the Inyo County Probation Department.

3 K. Respondent further agreed to waive his due process rights and consent and
4 agree to flash incarcerations for up to 10 consecutive days in jail at the discretion of the Probation
5 Officer, as provided for in section 1203.35 of the Penal Code.

6 **FIRST CAUSE FOR DISCIPLINE**

7 (Sexual Misconduct)

8 21. By reason of the facts set forth above in paragraphs 13 through 16, Respondent's
9 license is subject to disciplinary action under section 726 of the Code, in that he committed acts
10 of sexual misconduct with Victim numbers 1 through 3 during or in the guise of acupuncture
11 treatment.

12 22. Respondent's acts and/or omissions as set forth in paragraphs 13 through 16 above,
13 whether proven individually, jointly, or in any combination thereof, constitute committing acts of
14 sexual misconduct during acupuncture treatment pursuant to section 726 of the Code. Therefore,
15 cause for discipline exists.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Conviction of a Crime)

18 23. By reason of the facts set forth above in paragraphs 13 through 20, Respondent's
19 license is subject to disciplinary action under section 4955, subdivision (b) of the Code, in that he
20 was convicted of crimes substantially related to the qualifications, functions, or duties of an
21 acupuncturist.

22 24. Respondent's acts and/or omissions as set forth in paragraphs 13 through 20 above,
23 whether proven individually, jointly, or in any combination thereof, constitute a conviction of a
24 crime substantially related to the qualifications, functions, or duties of an acupuncturist pursuant
25 to section 4955, subdivision (b) of the Code. Therefore, cause for discipline exists.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 (Registration as a Sex Offender Requires Order of Revocation)

3 25. By reason of the facts set forth above in paragraphs 13 through 24, Respondent's
4 license is subject to disciplinary action under California Code of Regulations, title 16, section
5 1399.469.1, subdivision (a)(2), in that he is required to register as a sex offender pursuant to
6 Section 290 of the Penal Code, requiring an order of revocation.

7 26. Respondent's acts and/or omissions as set forth in paragraphs 13 through 24 above,
8 whether proven individually, jointly, or in any combination thereof, require the registration as a
9 sex offender pursuant to Section 290 of the Penal Code, requiring an order of revocation pursuant
10 to California Code of Regulations, title 16, section 1399.469.1, subdivision (a)(2). Therefore,
11 cause for discipline exists.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Unprofessional Conduct)

14 27. By reason of the facts set forth above, Respondent's license is subject to disciplinary
15 action under section 4955 of the Code, in that he has engaged in unprofessional conduct during
16 the acupuncture treatment of Victim numbers 1 through 3.

17 28. Respondent's acts and/or omissions as set forth in paragraphs 13 through 25 above,
18 whether proven individually, jointly, or in any combination thereof, constitute engaging in
19 unprofessional conduct during the acupuncture treatment of Victim numbers 1 through 3 pursuant
20 to section 4955 of the Code. Therefore, cause for discipline exists.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 (Violation of the Acupuncture Licensure Act)

23 29. By reason of the facts set forth above in paragraphs 13 through 27, Respondent's
24 license is subject to disciplinary action under section 4955, subdivision (d) of the Code, in that he
25 violated the terms of the Acupuncture Licensure Act.

26 ///

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28 ///

1 30. Respondent's acts and/or omissions as set forth in paragraphs 13 through 27 above,
2 whether proven individually, jointly, or in any combination thereof, constitute violating the terms
3 of the Acupuncture Licensure Act pursuant to section 4955, subdivision (d) of the Code.
4 Therefore, cause for discipline exists.

5 **DISCIPLINE CONSIDERATIONS**

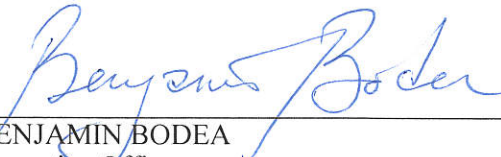
6 31. To determine the degree of discipline, if any, to be imposed on Respondent,
7 Complainant alleges that on or about June 9, 2015, in a prior disciplinary action entitled *In the*
8 *Matter of the Accusation Against Karl Dako Chang* before the Acupuncture Board, in Case
9 Number 1A-2012-5, Respondent's license was revoked for sexual misconduct, gross negligence,
10 unprofessional conduct and inadequate and inaccurate records as to three patients. However, the
11 revocation of Respondent's license was stayed and Respondent was placed on two years
12 probation with the requirements that he have a practice monitor, chaperone, complete a
13 professional boundaries program and other standard terms and conditions. That decision is now
14 final and is incorporated by reference as if fully set forth herein.

15 **PRAYER**

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

- 18 1. Revoking or suspending Acupuncturist Number AC 13939, issued to Karl Dako
19 Chang;
20 2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation
21 and enforcement of this case, pursuant to Business and Professions Code section 4959; and,
22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: APR 19 2018

25 
26 BENJAMIN BODEA
27 Executive Officer
28 Acupuncture Board
Department of Consumer Affairs
State of California

Complainant

LA2018600513