

1 XAVIER BECERRA
Attorney General of California
2 JANE ZACK SIMON
Supervising Deputy Attorney General
3 EMILY L. BRINKMAN
Deputy Attorney General
4 State Bar No. 219400
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3374
6 Facsimile: (415) 703-5843
E-mail: Emily.Brinkman@doj.ca.gov
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

Case No. 1A-2016-178

13 **ASHLEY RO AKA HEE RO KYUNG**
14 1101 S. Winchester Blvd
Suite D-138
15 San Jose, CA 95128

ACCUSATION

16 **Acupuncture License No. AC 15197**

17 Respondent.

18
19 **PARTIES**

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

22 2. On or about April 2, 2013, the Acupuncture Board issued Acupuncture License
23 Number AC 15197 to Ashley Ro AKA Hee Ro Kyung (Respondent). The Acupuncture License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 October 31, 2020, unless renewed.

26 \\\

27 \\\

28 \\\

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 (Code) unless otherwise indicated.

4. Section 4927, of the Code states:

As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Acupuncture Board.

(b) "Person" means any individual, organization, or corporate body, except that only individuals may be licensed under this chapter.

(c) "Acupuncturist" means an individual to whom a license has been issued to practice acupuncture pursuant to this chapter, which is in effect and is not suspended or revoked.

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

5. Section 4955 of the Code states, in relevant part:

The board may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist who 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.

“ . . . ”

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

“ . . . ”

6. Section 4955.1 of the Code states:

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

(a) Securing a license by fraud or deceit.

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

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

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

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

8 7. Section 4956 of the Code states:

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

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

21 8. Section 810 of the Code states:

22 (a) It shall constitute unprofessional conduct and grounds for disciplinary
23 action, including suspension or revocation of a license or certificate, for a health care
24 professional to do any of the following in connection with his or her professional
25 activities:

26 (1) Knowingly present or cause to be presented any false or fraudulent claim for
27 the payment of a loss under a contract of insurance.

28 (2) Knowingly prepare, make, or subscribe any writing, with intent to present or
use the same, or to allow it to be presented or used in support of any false or
fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or
certificate for a health care professional to engage in any conduct prohibited under
Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

(c) (1) It shall constitute cause for automatic suspension of a license or
certificate issued pursuant to Chapter 4 (commencing with Section 1600), Chapter 5
(commencing with Section 2000), Chapter 6.6 (commencing with Section 2900),
Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with Section
4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a licensee or
certificate holder has been convicted of any felony involving fraud committed by the
licensee or certificate holder in conjunction with providing benefits covered by
worker's compensation insurance, or has been convicted of any felony involving
Medi-Cal fraud committed by the licensee or certificate holder in conjunction with
the Medi-Cal program, including the Denti-Cal element of the Medi-Cal program,
pursuant to Chapter 7 (commencing with Section 14000), or Chapter 8 (commencing

1 with Section 14200), of Part 3 of Division 9 of the Welfare and Institutions Code. The
2 board shall convene a disciplinary hearing to determine whether or not the license or
3 certificate shall be suspended, revoked, or some other disposition shall be considered,
including, but not limited to, revocation with the opportunity to petition for
reinstatement, suspension, or other limitations on the license or certificate as the
board deems appropriate.

4 (2) It shall constitute cause for automatic suspension and for revocation of a
5 license or certificate issued pursuant to Chapter 4 (commencing with Section 1600),
6 Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing with Section
7 2900), Chapter 7 (commencing with Section 3000), or Chapter 9 (commencing with
8 Section 4000), or pursuant to the Chiropractic Act or the Osteopathic Act, if a
9 licensee or certificate holder has more than one conviction of any felony arising out
10 of separate prosecutions involving fraud committed by the licensee or certificate
11 holder in conjunction with providing benefits covered by worker's compensation
12 insurance, or in conjunction with the Medi-Cal program, including the Denti-Cal
13 element of the Medi-Cal program pursuant to Chapter 7 (commencing with Section
14 14000), or Chapter 8 (commencing with Section 14200), of Part 3 of Division 9 of the
15 Welfare and Institutions Code. The board shall convene a disciplinary hearing to
16 revoke the license or certificate and an order of revocation shall be issued unless the
17 board finds mitigating circumstances to order some other disposition.

18 (3) It is the intent of the Legislature that paragraph (2) apply to a licensee or
19 certificate holder who has one or more convictions prior to January 1, 2004, as
20 provided in this subdivision.

21 (4) Nothing in this subdivision shall preclude a board from suspending or
22 revoking a license or certificate pursuant to any other provision of law.

23 (5) Board, as used in this subdivision, means the Dental Board of California,
24 the Medical Board of California, the California Board of Podiatric Medicine, the
25 Board of Psychology, the State Board of Optometry, the California State Board of
26 Pharmacy, the Osteopathic Medical Board of California, and the State Board of
27 Chiropractic Examiners.

28 (6) More than one conviction, as used in this subdivision, means that the
licensee or certificate holder has one or more convictions prior to January 1, 2004,
and at least one conviction on or after that date, or the licensee or certificate holder
has two or more convictions on or after January 1, 2004. However, a licensee or
certificate holder who has one or more convictions prior to January 1, 2004, but who
has no convictions and is currently licensed or holds a certificate after that date, does
not have more than one conviction for the purposes of this subdivision.

(d) As used in this section, health care professional means any person licensed
or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative
Act, or the Chiropractic Initiative Act.

COST RECOVERY

9. Section 4959 of the Code states:

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

1 (b) The costs to be assessed shall be fixed by the administrative law judge and
2 shall not in any event be increased by the board. When the board does not adopt a
3 proposed decision and remands the case to an administrative law judge, the
4 administrative law judge shall not increase the amount of any costs assessed in the
5 proposed decision.

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

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

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

16 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
20 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
21 included in a stipulated settlement.

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Criminal Conviction)

24 11. Respondent is subject to disciplinary action under Code sections 4955 [unprofessional
25 conduct], and/or 4955(b) [criminal conviction], and or 4956 [criminal conviction]. The
26 circumstances are as follows:

27 12. On or about May 30, 2018, the Santa Clara District Attorney's Office charged
28 Respondent with eight counts of felony fraud under Penal Code sections 550(a)(1) [Knowingly
present or cause to be presented any false or fraudulent claim for the payment of a loss or injury,
including payment of a loss or injury under a contract of insurance] in *The People v. Ashley Ro*,
Case No. C1892138.

13. On or about June 12, 2019, Respondent pled no contest to a misdemeanor violation of
Penal Code section 550(a)(6) [Knowingly make or cause to be made any false or fraudulent claim

1 for payment of a health care benefit]. The Court sentenced Respondent to two years' probation,
2 60 days in county jail, and pay restitution.

3 **SECOND CAUSE FOR DISCIPLINE**

4 (Unprofessional Conduct; Fraud/Dishonesty; and or Submitting False Insurance Claims Related
5 to the Care Provided to Patient A

6 14. Respondent is subject to disciplinary action under Code sections 4955 [unprofessional
7 conduct]; and/or 4955(i) [conduct that would have been grounds for denial of a license]; and/or
8 4955.1 [fraud/dishonesty]; and/or 810 [insurance fraud]. The circumstances are as follows:

9 15. Respondent is the owner of The One Family Wellness Center and the only
10 acupuncture provider. Respondent employs a receptionist and two massage therapists. Along
11 with acupuncture treatment, Respondent also provides electric acupuncture, massage, cupping,
12 herbal treatments, Transcutaneous Electrical Stimulation (TENS) therapy, and heat treatments
13 (referred to as "infrared").

14 16. Between June 20, 2014 through September 10, 2014, Respondent provided
15 acupuncture treatment to Patient A. Patient A went to Respondent for complaints of infertility,
16 allergy/sinus, acne, and headache problems. According to Patient A, Respondent only provided
17 acupuncture treatment lasting between 20 to 30 minutes and never included massage or exercises
18 of any kind. Patient A stopped seeing Respondent after the September 10, 2014 appointment.
19 Patient A also stated the acupuncture treatment Respondent provided never included electrical
20 acupuncture and she never saw a massage therapist.

21 17. According to the "Acupuncture Evaluation" form, Patient A was seeking treatment
22 for infertility, skin rash/acne, tendinitis in her right wrist, neck stiffness, and left knee
23 "numbness." Respondent diagnosed the patient with cervical pain and "liv yin xu, kid yang xu, &
24 kid yin xu" [liver and kidney deficiencies]. In the intervention portion of the record, Respondent
25 placed a checkmark next to the following treatment methods: Acupuncture, Electric Acupuncture,
26 Infrared, Therapeutic Exercises, and manual body parts. Respondent also listed several
27 acupuncture treatment points in the body where treatment would be applied. Respondent listed
28 the frequency of treatment would be two times per week for twelve weeks.

1 18. Respondent uses a half page “Acupuncture Daily Note” form to document the care
2 provided to Patient A. This includes information on the diagnosis and pain scale for the specific
3 condition(s) treated. For Patient A’s June 20, 2014 form, infertility is listed as “Dx1” [diagnosis]
4 and “neck stiff/skin rash” is listed as “Dx2.” The form also includes a subjective check list
5 portion with descriptive words. For example, Respondent checked “stiffness” and “occasional”
6 on the June 20, 2014 note. The next portion of the form includes objective information, such as
7 the length of the various treatment provided for the specific diagnosis. The form lists five
8 treatment modalities with a check mark next to the modality to indicate whether it was provided
9 to the patient. On the June 20, 2014 note, Respondent wrote that she provided 30 minutes of
10 acupuncture, 30 minutes of infrared, 10 minutes of therapeutic exercises (including
11 strengthening), and 10 minutes of manual therapy. The time and treatment amounts are listed for
12 both Dx1 and Dx2. The “Acupuncture Daily Note” also includes an assessment portion of the
13 note where Respondent can check whether the condition is improved or not. For the June 20,
14 2014 note, Respondent placed a checkmark next to the term “chronic.” The final portion of the
15 form contains information related to the treatment plan. Respondent can place a check mark next
16 to “decrease pain,” “increase ROM [range of motion]/strength,” or “improve activities of daily
17 living” for both the diagnosis listed at the top of the form. Respondent checked “decrease pain”
18 for Dx2 on Patient A’s June 20, 2014 form. There is a line for Respondent to sign next to “Tx
19 [treatment] by.”

20 19. Respondent completed these forms for Patient A’s appointments on June 20, 22, 26,
21 27, July 2, 5, 8, 10, 12, 16, 18, 23, 25, 28, 30, August 5, 8, 9, 12, 14, 20, 22, 25, 29, September 3,
22 5, 10, and 12,¹ 2015. All of the forms are identical with one exception after the first appointment
23 on June 20, 2014, under the assessment portion Respondent also placed a check mark next to
24 “improving as expected.”

25 \\\

26 \\\

27 _____
28 ¹ Patient A claims she did not receive any treatment from Respondent on September 12,
2015.

1 20. None of the “Acupuncture Daily Notes” identifies what locations Respondent
2 needed, what types of exercises were provided for “strengthening,” or what manual therapy
3 Respondent provided.

4 21. Respondent billed Patient A’s insurance for services using five different billing
5 codes: 97813 (Acupuncture, one or more needles, with electrical stimulation, 15 minutes of one-
6 on-one contact with patient); 97814 (Each additional 15 minutes of one-on-one contact with
7 patient with reinsertion of needles); 97026 (infrared); 97110 (physical therapy billing code for
8 therapeutic exercises); and 97140 (physical therapy billing code for manual therapy).²

9 22. For all 28 appointments, Respondent billed Patient A’s insurance using codes 97813,
10 97814, and 97026. For all but two appointments, Respondent also billed Patient A’s insurance
11 using code 97110. For ten appointments, Respondent also billed Patient A’s insurance code
12 97140. Respondent listed Patient A’s diagnosis code as lumbago³ on all of the insurance claim
13 forms even though she was not complaining of lumbago or any lower back pain.

14 23. Respondent admitted to investigators that she uses the CPT billing codes 97026 for
15 “therapeutic exercises” or 97140 “manual therapy” to bill for the treatments provided by the
16 massage therapist, “which is working on muscles and stretching” or providing “sports massage.”
17 Respondent also stated that she does not keep any treatment notes or “SOAP notes” for her
18 patients but simply knows what codes to bill insurance from her own memory.⁴ Respondent told
19 investigators that she performs the “same treatment” on all of her patients but just targets different
20 areas for each patient based on their specific complaints.

21 24. Respondent’s insurance billings for Patient A are not supported by the medical
22 record. Key elements for each billing code are missing. For example, Respondent billed for
23 physical therapy therapeutic exercises and manual therapy but never documented in Patient A’s
24 records the exercises performed, the type of manual therapy applied, the length of exercises or
25 manual therapy, and the parts of the body where the therapy was applied. Respondent also billed

26 ² Respondent billed Patient A’s insurance for a new patient evaluation using CPT code
27 99203 for treatment provided June 20, 2014.

28 ³ Lumbago is pain in the muscles and joints of the lower back.

⁴ This statement is in direct conflict with the “Acupuncture Daily Notes” form Respondent
produced for Patient A.

1 Patient A's insurance using code 98713 (Acupuncture, one or more needles, with electrical
2 stimulation, 15 minutes of one-on-one contact with patient) and 97814 (Each additional 15
3 minutes of one-on-one contact with patient with reinsertion of needles) yet she only checked the
4 line next to "Acupuncture" using billing code 97810 (acupuncture, one or more needs, without
5 electrical stimulation, initial 15 minutes) in the "Acupuncture Daily Notes." There was no
6 documentation in the patient's records as to what part of the body Respondent inserted needles
7 and re-inserted needles to support the billing code 97814 for each appointment. Additionally, the
8 "Acupuncture Daily Notes" has a line for "Electro Acupuncture (97813)" but Respondent never
9 checked this line on Patient A's progress note to support the billing to Patient A's insurance.

10 25. Respondent departed from the standard of care based on the following:

- 11 a) Making false insurance claims;
- 12 b) Billing insurance for treatments not supported in the medical records; and
- 13 c) Failing to adequately document patient care provided.

14 **PRAYER**

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

- 17 1. Revoking or suspending Acupuncture License Number AC 15197, issued to Ashley
18 Ro AKA Hee Ro Kyung;
- 19 2. Ordering Ashley Ro AKA Hee Ro Kyung to pay the Acupuncture Board the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 4959; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23
24 DATED: November 21, 2019

Original Signature on File

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

25
26
27
28 SF2019202299
14181932.docx