

1 XAVIER BECERRA  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 WENDY WIDLUS  
Deputy Attorney General  
4 State Bar No. 82958  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-2867  
Facsimile: (213) 897-9395  
7 E-mail: Wendy.Widlus@doj.ca.gov  
*Attorneys for Complainant*  
8



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

11 In the Matter of the Statement of Issues  
12 Against:

Case No. 1A-2015-238

13 **CHOL SU KIM**  
14 **4838 Elmwood Ave., #1**  
**Los Angeles, CA 90004,**

**STATEMENT OF ISSUES**

15 Applicant.

16  
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about May 20, 2016, the Acupuncture Board received an application for an  
22 Acupuncturist License from Chol Su Kim (Applicant). On or about May 17, 2016, Applicant  
23 certified under penalty of perjury to the truthfulness of all statements, answers, and  
24 representations in the application. The Board denied the application on August 16, 2016.  
25 Applicant requested a hearing on September 30, 2016.

26 **JURISDICTION**

27 3. This Statement of Issues is brought before the Acupuncture Board (Board) under the  
28 authority of the following laws. All section references are to the Business and Professions Code

1 (Code) unless otherwise indicated.

2 4. Section 4928.1 of the Code states:

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

7 5. Section 4938 of the Code states:

8 “The Board shall issue a license to practice acupuncture to any person who makes an  
9 application and meets the following requirements:

10 “...

11 “(d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

12 “...”

13 6. Section 4944 of the Code states:

14 “The board shall have the authority to investigate and evaluate each and every applicant  
15 applying for a license to practice acupuncture and to make the final determination of the  
16 admission of the applicant to the examination, or for the issuance of a license, in conformance  
17 with the provisions of this chapter.

18 “...”

19 7. Section 4955 of the Code states:

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

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

23 “(a) Using or possessing any controlled substance as defined in Division 10 (commencing  
24 with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an  
25 extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and  
26 to an extent that the use impairs his or her ability to engage in the practice of acupuncture with  
27 safety to the public.

28

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

3 “...”

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

5 “...”

6 8. Section 4955.1 of the Code states:

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

10 “(a) Securing a license by fraud or deceit.

11 “... .

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

14 “...”

15 9. Section 4956 of the Code states:

16 A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a  
17 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist  
18 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 impose  
20 probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of  
21 conviction has been affirmed on appeal, or when an order granting probation is made suspending  
22 the imposition of sentence irrespective of a subsequent order under the provisions of Section  
23 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a  
24 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
25 information, or indictment.@

26 10. Section 475 of the Code states:

27 “(a) Notwithstanding any other provisions of this code, the provisions of this division shall  
28 govern the denial of licenses on the grounds of:

1           “(1) Knowingly making a false statement of material fact, or knowingly  
2           omitting to state a material fact, in an application for a license.

3           “(2) Conviction of a crime.

4           “(3) Commission of any act involving dishonesty, fraud or deceit with the  
5           intent to substantially benefit himself or another, or substantially injure another.

6           “(4) Commission of any act which, if done by a licentiate of the business or  
7           profession in question, would be grounds for suspension or revocation of license.

8           “(b) Notwithstanding any other provisions of this code, the provisions of this division shall  
9           govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)  
10          of subdivision (a).

11          “(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good  
12          moral character or any similar ground relating to an applicant's character, reputation, personality,  
13          or habits.”

14          11.       Section 480 of the Code states, in pertinent part:

15          “(a) A board may deny a license regulated by this code on the grounds that the applicant  
16          has one of the following:

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

23               “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially  
24               benefit himself or herself or another, or substantially injure another.

25               “(3)(A) Done any act that if done by a licentiate of the business or profession in question,  
26               would be grounds for suspension or revocation of license.

27               “(B) The board may deny a license pursuant to this subdivision only if the crime or act is  
28               substantially related to the qualifications, functions, or duties of the business or profession for

1 which application is made.

2 “ . . . ”

3 “(d) A board may deny a license regulated by this code on the ground that the applicant  
4 knowingly made a false statement of fact that is required to be revealed in the application for the  
5 license.”

6 12. Section 493 of the Code states:

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

16 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and  
17 ‘registration.’”

18 13. California Code of Regulations, title 16, section 1399.156.1, states, in pertinent part:

19 “For the purposes of denial, suspension or revocation of a license or registration pursuant to  
20 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be  
21 substantially related to the qualifications, functions or duties of a person holding a license under  
22 the Act if to a substantial degree it evidences present or potential unfitness of a person holding a  
23 license to perform the functions authorized by his or her license or registration in a manner  
24 consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be  
25 limited to, those involving the following:

26 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the  
27 violation of, or conspiring to violate any provision or term of the Act.

28 “ . . . ”

1 14. California Code of Regulations, title 16, section 1399.156.2, states:

2 “When considering the denial of a license or registration under Section 480 of the code or a  
3 petition for reinstatement under Section 11522 of the Government Code, the board, in evaluating  
4 the rehabilitation of the applicant and his or her present eligibility for a license, will consider the  
5 following criteria:

6 “(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for  
7 denial.

8 “(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under  
9 consideration as grounds for denial which also could be considered as grounds for denial under  
10 Section 480 of the code.

11 “(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in  
12 subdivision (1) or (2).

13 “(d) The extent to which the applicant has complied with any terms of parole, probation,  
14 restitution, or any other sanctions lawfully imposed against the applicant.

15 “(e) Evidence, if any, of rehabilitation submitted by the applicant.”

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 (Conviction)

18 15. Applicant's application is subject to denial under Code sections 4955, subdivisions  
19 (a), and 4955 subdivision (b), 4956, 475, subdivisions (a)(1)(2), 480, subdivision (a)(1), 480,  
20 subdivisions (a)(3)(A), and (a)(3)(B), and 490, subdivisions (a) and (c), in that he has sustained  
21 two substantially related convictions. The circumstances are as follows:

22 1998 Conviction

23 16. On or about April 1, 1998, in the city of White Plains, State of New York, Applicant  
24 hit a man over the head with a dangerous instrument or deadly weapon, to wit, a glass beer mug.  
25 Emergency medical treatment of was required and six (6) stitches were required to close the  
26 wound in the man's head.

27 17. The Westchester County New York State District Attorney filed felony criminal  
28 complaint case number 98-0914 against Applicant charging Applicant with a violation of Penal

1 Law section 120.05-02, assault with intent to cause physical injury with a weapon.

2 18. On July 21, 1998, in case number 98-0914, Applicant pled guilty to a lesser charge of  
3 Penal Law section 120.00, assault in the third degree. The Court sentenced Applicant as follows:  
4 three (3) years probation, with terms and conditions of probation which included a one (1) year  
5 restraining order, and the payment of a \$650.00 fine.

6 2015 Conviction

7 19. On or about September 9, 2015, Applicant was charged in *People of the State of*  
8 *California vs. Kim Chol*, Los Angeles County Superior Court Case 5CA11925, with a violation of  
9 Health and Safety Code section 11350, subdivision (a), possession of a controlled substance as a  
10 result of his June 15, 2015, arrest by Los Angeles Police Department officers who witnessed him  
11 purchasing cocaine at the Oasis Motel.

12 20. On or about November 2, 2015, in *People of the State of California vs. Kim Chol*, Los  
13 Angeles County Superior Court Case 5CA11925, the Court amended the complaint to add Count  
14 2, a violation of Penal Code section 602, subdivision (k), trespass for the purpose of injuring a  
15 property or business. Applicant was convicted on his plea of nolo contendere to Count 2, as a  
16 misdemeanor.

17 21. As a result of his plea Applicant was sentenced, inter alia, to two years summary  
18 probation, one day in county jail, ordered to pay fines, to stay at least 100 yards away from the  
19 Oasis Motel, to not use or possess any narcotics, dangerous or restricted drugs or associated  
20 paraphernalia, except with a valid prescription and to stay away from places where users or  
21 sellers congregate.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 Engaging in Conduct Which Warrants the Denial of An Acupuncture License

24 22. Applicant's application is subject to denial under Code section 4955, subdivision (i),  
25 in that he engaged in actions or conduct that would have warranted the denial of the acupuncture  
26 license. The circumstances are as follows:

27 2001 Arrest For Possession of Crack Cocaine

28 23. On or about March 9, 2001, Los Angeles Police Department officers arrested

1 Applicant for purchasing cocaine from a known 18<sup>th</sup> Street gang member in front of a liquor  
2 store.

3 24. On or about March 13, 2001, Applicant was charged in *People of the State of*  
4 *California vs. Kim Su Chol*, Los Angeles County Superior Court Case BA214817, with a  
5 violation of Health and Safety Code section 11350, subdivision (a), possession of a controlled  
6 substance and a violation of Health and Safety Code section 11364, as a result of his March 9,  
7 2001, arrest by Los Angeles Police Department officers.

8 25. On or about April 13, 2001, Applicant was referred to the Los Angeles County  
9 Probation Department for evaluation for Deferred Entry of Judgment. Applicant was ordered to  
10 return to court on April 27, 2001, for arraignment and plea. On or about May 1, 2001, the Court  
11 terminated proceedings in this matter.

#### 12 2003 Arrest For Possession of Crack Cocaine

13 26. On or about August 8, 2003, in the city of White Plains, State of New York,  
14 Applicant was arrested for a violation of Penal Law section 220.03, being in possession of a glass  
15 pipe used to smoke cocaine which contained a residue of crack cocaine.

16 27. The Westchester County New York State District Attorney filed a felony criminal  
17 complaint, case number 03-2466, against Applicant charging Applicant with a violation of Penal  
18 Law section 220.03. The Court referred Applicant to a drug diversion program.

### 19 **THIRD CAUSE FOR DENIAL OF APPLICATION**

#### 20 Failure to Disclose a Material Fact on a License Application

21 28. Applicant's application is subject to denial under Code sections 480, subdivision (d),  
22 and 4955, subdivision (i), in that he knowingly made a false statement of fact that is required to  
23 be revealed in the application for the license. The circumstances are as follows:

24 29. On or about May 17, 2016, Applicant signed, under penalty of perjury, that all  
25 statements made in his Application for an Acupuncture License were true in every respect, and  
26 that misstatement, or omissions of material facts may be cause for denial of his application for  
27 licensure. Applicant sent his signed Application for an Acupuncture License to the Acupuncture  
28 Board of California.




1 30. Applicant's signed Application for an Acupuncture License failed to disclose his  
2 2015 conviction sustained in *People of the State of California vs. Kim Chol*, Los Angeles County  
3 Superior Court Case 5CA11925, as a result of his plea of nolo contendere to a violation of Penal  
4 Code section 602, subdivision (k).

5 **PRAYER**

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

- 8 1. Denying the application of CHOL SU KIM for an Acupuncture license;  
9 2. Taking such other and further action as deemed necessary and proper.

10  
11 DATED:                     **MAR 13 2017**                    

  
12 **BENJAMIN BODEA**  
13 Executive Officer  
14 Acupuncture Board  
15 Department of Consumer Affairs  
16 State of California  
17 *Complainant*

16 LA2016503400  
62301833.docx