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

13 In the Matter of the Petition to Revoke  
Probation Against:

Case No. D1-2015-238

14 **CHOL SU KIM, L.AC.**  
15 **331 South Gramercy Place, Apt. #212**  
**Los Angeles, CA 90020**  
16 **Acupuncturist License No. AC 17761**

PETITION TO REVOKE PROBATION

17 Respondent.

18  
19  
20 Complainant alleges:

21 **PARTIES**

22 1. Benjamin Bodea (Complainant) brings this Petition to Revoke Probation solely in his  
23 official capacity as the Executive Officer of the Acupuncture Board of California (Board).

24 2. On September 8, 2017, the Board issued Acupuncturist License Number AC 17761 to  
25 Chol Su Kim, L.Ac. (Respondent). That license was in effect at all times relevant to the charges  
26 brought herein and will expire on August 31, 2019, unless renewed.

27 3. In a disciplinary action entitled, "*In the Matter of Statement of Issues Against Chol Su*  
28 *Kim, L.Ac.*," Case No. 1A-2015-238, the Board issued a decision, effective September 8, 2018, in

1 which Respondent's Acupuncturist License was issued and immediately revoked. However, the  
2 revocation was stayed, and Respondent's Acupuncturist License was placed on probation for five  
3 (5) years with specific terms and conditions, among which were biological fluid testing and  
4 completion of a clinical diagnostic evaluation which includes quarterly psychological reports. A  
5 copy of that decision is attached as Exhibit A and is incorporated by reference.

#### 6 JURISDICTION

7 4. This Petition to Revoke Probation is brought before the Board under the authority of  
8 the following laws. All section references are to the Business and Professions Code unless  
9 otherwise indicated.

#### 10 STATUTORY PROVISIONS

11 5. Section 4928.1 of the Code states:

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

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

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

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

20 (a) Using or possessing any controlled substance as defined in Division 10  
21 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug  
22 or alcoholic beverage to an extent or in a manner dangerous the acupuncturist, or to  
23 any other person, or to the public, and to an extent that the use impairs the  
24 acupuncturist's ability to engage in the practice of acupuncture with safety to the  
25 public.

26 ...

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

...

#### REGULATORY PROVISIONS

7. California Code of Regulations, title 16, section 1361.52 states:

(a) A licensee who does any of the following shall be deemed to have  
committed a major violation of his or her probation:

1 (1) Fails to undergo a required clinical diagnostic evaluation;

2 (2) Commits multiple minor violations of probation conditions and terms;

3 ...

4 (5) Fails to undergo biological fluid testing when ordered;

5 (6) Uses, consumes, ingests, or administers to himself or herself a prohibited  
substance;

6 ...

7 (8) Fails to comply with any term or condition of his or her probation that  
8 impairs public safety.

9 (b) If a licensee commits a major violation, the Board will take one or more of  
the following actions:

10 (1) Issue an immediate cease-practice order and order the licensee to undergo a  
11 clinical diagnostic evaluation at the expense of the licensee. Any order issued by the  
Board pursuant to this subsection shall state that the licensee must test negative for at  
12 least a month of continuous biological fluid testing before being allowed to resume  
practice.

13 (2) Increase the frequency of biological fluid testing.

14 (3) Refer the licensee for further disciplinary action, such as suspension,  
15 revocation, or other action as determined by the Board.

16 (c) A licensee who does any of the following shall be deemed to have  
committed a minor violation of his or her probation:

17 (1) Fails to submit required documentation to the Board in a timely manner;

18 (2) Has an unexcused absence at a required meeting;

19 (3) Fails to contact a worksite monitor as required; or

20 (4) Fails to comply with any term or condition of his or her probation that does  
21 not impair public safety.

22 (d) If a licensee commits a minor violation, the Board will take one or more of  
the following actions:

23 (1) Issue a cease-practice order;

24 (2) Order practice limitations;

25 (3) Order or increase supervision of licensee;

26 (4) Order increased documentation;

27 (5) Issue a citation and fine, or a warning letter;

28 (6) Order the licensee to undergo a clinical diagnostic evaluation at the expense

of the licensee;

(7) Take any other action as determined by the Board.

(e) Nothing in this section shall be considered a limitation on the Board's authority to revoke the probation of a licensee who has violated a term or condition of that probation.

### **COST RECOVERY**

8. 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.

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

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

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

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

### **FIRST CAUSE TO REVOKE PROBATION**

(Failed Biological Fluid Testing)

9. At all times after the effective date of Respondent's probation in case number 1A-2015-238, Condition 3 of the probationary order stated in pertinent part as follows:

Applicant shall immediately submit to biological fluid testing, at Applicant's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Applicant shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Applicant shall be tested on the date of the notification as directed by the Board or its designee. The Board may order Applicant to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological

1 fluid testing shall be done on a random basis. The cost of biological fluid testing shall  
2 be borne by the Applicant.

3 ...

4 If the Board confirms that a positive biological fluid test is evidence of use of a  
5 prohibited substance, Applicant has committed a major violation, as defined in  
6 section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations,  
7 and the Board shall impose any or all of the consequences set forth in section  
8 1361.52, subdivision (b), of Title 16 of the California Code of Regulations, in  
9 addition to any other terms or conditions the Board determines are necessary for  
10 public protection or to enhance Applicant's rehabilitation.

11 10. Respondent's probation is subject to revocation because he failed to comply with  
12 Probation Condition 3, referenced above. The facts and circumstances regarding this violation  
13 are as follows:

14 A. Respondent's urine specimen from November 15, 2017, tested positive for the  
15 presence of alcohol.

16 B. Respondent's urine specimen from February 23, 2018, tested positive for the presence  
17 of alcohol.

18 C. Respondent's urine specimen from February 18, 2019, tested positive for the presence  
19 of alcohol.

20 D. Respondent was notified by the Board on November 22, 2017, that his urine  
21 specimen from November 15, 2017, tested positive for the presence of alcohol. On November 22,  
22 2017, Respondent admitted consuming beer and said he would not do it again.

23 E. Respondent was notified by the Board on March 2, 2018, that his urine specimen  
24 from February 23, 2018, tested positive for the presence of alcohol. On March 7, 2018,  
25 Respondent admitted using herbal medications mixed with alcohol and said he would not do it  
26 again.

27 F. Respondent was notified by the Board on February 26, 2019, that his urine specimen  
28 from February 18, 2019, tested positive for the presence of alcohol. On April 1, 2019,  
Respondent provided a handwritten statement to the Board in which he admitted consuming beer.

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1 **SECOND CAUSE TO REVOKE PROBATION**

2 (Failure to Check-in for Biological Fluid Testing)

3 11. Respondent's probation is further subject to revocation because he failed to comply  
4 with Probation Condition 3, referenced above. The facts and circumstances regarding this  
5 violation are as follows:

6 A On December 20, 2017, Respondent failed to check-in with *FirstSource Solutions*  
7 (*"FirstSource"*) to determine whether he had to provide a biological fluid sample for testing.

8 B. Respondent was notified by the Board on January 2, 2018, that he failed to check-in  
9 with *FirstSource* to determine whether he had to provide a biological fluid sample for testing. On  
10 January 10, 2018, Respondent provided information to the Board in which he stated his failure to  
11 check in with *FirstSource* resulted from his failure to provide a valid credit card for billing.

12 C. On October 19, 2018, Respondent failed to check-in with *FirstSource* to determine  
13 whether he had to provide a biological fluid sample for testing.

14 D. Respondent was notified by the Board on November 9, 2018, that he failed to check-  
15 in with *FirstSource* to determine whether he had to provide a biological fluid sample for testing.  
16 On November 26, 2018, Respondent provided a statement to the Board in which he denied he  
17 failed to check in with *FirstSource*.

18 E. On February 7 through 15, 2019, Respondent failed to check-in with *FirstSource* to  
19 determine whether he had to provide a biological fluid sample for testing.

20 F. Respondent was notified by the Board on February 25, 2019, that he failed to check-  
21 in with *FirstSource* February 7 through 15, 2019, to determine whether he had to provide a  
22 biological fluid sample for testing. On March 4, 2019, Respondent provided a statement to the  
23 Board in which he denied he failed to check in with *FirstSource*.

24 G. On June 13, 2019, Respondent failed to check-in with *FirstSource* to determine  
25 whether he had to provide a biological fluid sample for testing.

26 H. Respondent was notified by the Board on June 14, 2019, that he failed to check-in  
27 with *FirstSource* June 13, 2019, to determine whether he had to provide a biological fluid sample  
28 for testing. On June 28, 2019, Respondent provided a statement to the Board in which he stated

1 his failure to check in with *FirstSource* resulted from his phone system being broken.

2 **THIRD CAUSE TO REVOKE PROBATION**

3 (Failure to Provide Timely Quarterly Psychological Reports)

4 12. At all times after the effective date of Respondent's probation, Condition 1 stated:

5 **CLINICAL DIAGNOSTIC EVALUATION**

6 Within 30 days of the effective date of this decision and on whatever periodic basis  
7 thereafter as may be required by the Board or its designee, Applicant shall undergo  
8 and complete a clinical diagnostic evaluation, including any and all testing deemed  
9 necessary, by a Board-appointed board-certified physician and surgeon. The  
examiner shall consider any information provided by the Board or its designee and  
any other information he or she deems relevant, and shall furnish a written evaluation  
report to the Board or its designee.

10 The clinical diagnostic evaluation shall be conducted by a licensed physician and  
11 surgeon who holds a valid, unrestricted license, has three (3) years' experience in  
12 providing evaluation of healthcare practitioners with substance abuse disorders, and is  
13 approved by the Board or its Designees. The clinical diagnostic evaluation shall be  
14 conducted in accordance with acceptable professional standards for conducting  
15 substance abuse clinical diagnostic evaluations. The evaluator shall not have a  
16 current or former financial, personal, or business relationship with Applicant within  
17 the last five (5) years. The evaluator shall provide an objective, unbiased, and  
18 independent evaluation. The clinical diagnostic evaluation report shall set forth, in  
19 the evaluator's opinion, whether Applicant has a substance abuse problem, whether  
20 Applicant is a threat to himself or herself or others, and recommendations for  
21 substance abuse treatment, practice restrictions, or other recommendations related to  
22 Applicant's rehabilitation and ability to practice safely. If the evaluator determines  
23 during the evaluation process that Applicant is a threat to himself or herself or others,  
24 the evaluator shall notify the Board within twenty-four (24) hours of such a  
25 determination.

19 In formulating his or her opinion as to whether Applicant is safe to return to either  
20 part-time or full-time practice and what restrictions or recommendations should be  
21 imposed, including participation in an inpatient or outpatient treatment program, the  
22 evaluator shall consider the following factors: Applicant's license type; Applicant's  
23 history; Applicant's documented length of sobriety (i.e., length of time that has  
24 elapsed since Applicant's last substance use); Applicant's scope and pattern of  
25 substance abuse; Applicant's treatment history, medical history and current medical  
26 condition; the nature, duration and severity of Applicant's substance abuse problem or  
27 problems; and whether Applicant is a threat to himself or herself or the public. For  
28 all clinical diagnostic evaluations, a final written report shall be provided to the Board  
no later than ten (10) days from the date the evaluator is assigned the matter. If the  
evaluator requests additional information or time to complete the evaluation and  
report, an extension may be granted, but shall not exceed thirty (30) days from the  
date the evaluator was originally assigned the matter.

26 The Board shall review the clinical diagnostic evaluation report within five (5)  
27 business days of receipt to determine whether Applicant is safe to return to either  
28 part-time or full-time practice and what restrictions or recommendations shall be  
imposed on Applicant based on the recommendations made by the evaluator.  
Applicant shall not be returned to practice until he or she has at least thirty (30) days

1 of negative biological fluid tests or biological fluid tests indicating that he or she has  
2 not used, consumed, ingested, or administered to himself or herself a prohibited  
3 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California  
4 Code of Regulations or alcohol, marijuana and controlled substances, as defined in  
5 the California Uniform Controlled Substances Act (Division 10, commencing with  
6 section 11000, Health and Safety Code) and dangerous drugs as defined in Section  
7 4022 of the Business and Professions Code, or any drugs requiring a prescription and  
8 their associated paraphernalia except when the drugs are lawfully prescribed by a  
9 licensed practitioner as part of a documented medical treatment.

10 Clinical diagnostic evaluations conducted prior to the effective date of this Decision  
11 shall not be accepted towards the fulfillment of this requirement. The cost of the  
12 clinical diagnostic evaluation, including any and all testing deemed necessary by the  
13 examiner, the Board or its designee, shall be borne by the licensee.

14 Applicant shall not engage in the practice of acupuncture until notified by the Board  
15 or its designee that he or she is fit to practice acupuncture safely. The period of time  
16 that Applicant is not practicing acupuncture shall not be counted toward completion  
17 of the term of probation. Applicant shall undergo biological fluid testing as required  
18 in this Decision at least two (2) times per week while awaiting the notification from  
19 the Board if he or she is fit to practice acupuncture safely.

20 Applicant shall comply with all restrictions or conditions recommended by the  
21 examiner conducting the clinical diagnostic evaluation within fifteen (15) calendar  
22 days after being notified by the Board or its designee.

23 13. The Board did not violate Respondent's probation as a result of his failure to timely  
24 obtain the psychological counseling recommended in the Clinical Diagnostic Evaluation due to  
25 the difficulty Respondent experienced locating a psychologist who specialized in substance abuse  
26 and spoke Korean and English.

27 17. However, when Respondent did select a psychologist who specialized in substance  
28 abuse and spoke Korean and English the Board directed Respondent to submit quarterly reports to  
the Board from the psychologist regarding Respondent's compliance with the psychological  
counseling.

18. Respondent's second quarterly psychological report was due April 5, 2019.

19. Respondent's second quarterly psychological report was dated May 16, 2019, and  
submitted to the Board on May 16, 2019.

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**FOURTH CAUSE TO REVOKE PROBATION**

(Failure to Provide Timely Quarterly Reports)

20. At all times after the effective date of Respondent's probation, Condition 14 stated:

**QUARTERLY REPORTS**

Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

20. Respondent's quarterly report for the April through June 2019 reporting period was due no later than July 5, 2019.

21. Respondent's quarterly report for the April through June 2019 reporting period was dated July 16, 2019.

22. Respondent's quarterly report for the April through June 2019 reporting period was received by the Board on July 22, 2019.

23. Respondent was notified by the Board on August 1, 2019, that he was in violation of Condition 14 of his probation as a result of he failure to timely submit his quarterly report.

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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 the probation that was granted by the Acupuncture Board in Case No. 1A-2015-238 and imposing the disciplinary order that was stayed thereby revoking Acupuncturist License No. AC 17761 issued to Chol Su Kim, L.Ac.;
2. Revoking or suspending Acupuncturist License No. AC 17761, issued to Chol Su Kim, L.Ac.;
3. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case pursuant to Business and Professions Code section 4959; and
4. Taking such other and further action as deemed necessary and proper.

DATED: **AUG 12 2019**

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

*Complainant*

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**Exhibit A**

Decision and Order

Acupuncture Board Case No. D1-2015-238