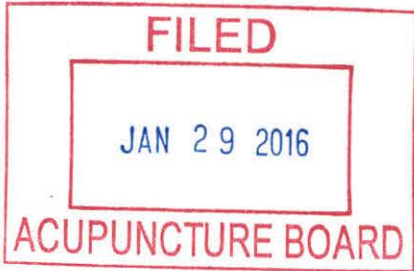


1 KAMALA D. HARRIS  
Attorney General of California  
2 E. A. JONES III  
Supervising Deputy Attorney General  
3 WENDY WIDLUS  
Deputy Attorney General  
4 State Bar No. 82958  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-2867  
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 Accusation Against:  
12  
13 **KANG DAE CHOI, L.Ac.**  
**1029 1/2 S. Berendo Street**  
**Los Angeles, CA 90006**  
14 **Acupuncturist License No. AC 4900,**  
15  
16 Respondent.

Case No. 1A-2014-206

**A C C U S A T I O N**

17  
18 Complainant alleges:

19 **PARTIES**

- 20 1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity  
21 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.  
22 2. On or about September 7, 1994, the Acupuncture Board issued Acupuncturist  
23 License Number AC 4900 to KANG DAE CHOI, L.Ac. (Respondent). The Acupuncturist  
24 License was in full force and effect at all times relevant to the charges brought herein and will  
25 expire on April 30, 2016, unless renewed.

26 **JURISDICTION**

27 3. This Accusation is brought before the Acupuncture Board (Board), Department of  
28 Consumer Affairs, under the authority of the following laws. All section references are to the

1 Business and Professions 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 4927 of the Code states:

8 “. . .

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

13 6. Section 4937 of the Code states, in pertinent part:

14 “An acupuncturist’s license authorizes the holder thereof:

15 “(a) To engage in the practice of acupuncture.

16 “(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques,  
17 exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and  
18 dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits  
19 any person who does not possess an acupuncturist’s license or another license as a healing arts  
20 practitioner from performing, or prescribing the use of any modality listed in this subdivision.

21 “. . .”

22 7. Section 4955 of the Code states, in pertinent part:

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

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

26 “. . .

27 “(e) Except for good cause, the knowing failure to protect patients by failing to follow  
28 infection control guidelines of the board, thereby risking transmission of blood-borne infectious

1 diseases from licensee to patient, from patient to patient, and from patient to licensee. In  
2 administering this subdivision, the board shall consider referencing the standards, regulations, and  
3 guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of  
4 the Health and Safety Code and the standards, regulations, and guidelines pursuant to the  
5 California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300)  
6 of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other  
7 blood-borne pathogens in health care settings. As necessary, the board shall consult with the  
8 Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of  
9 California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric  
10 Technicians, to encourage appropriate consistency in the implementation of this subdivision.

11 The board shall seek to ensure that licensees are informed of the responsibility of  
12 licensees and others to follow infection control guidelines, and of the most recent scientifically  
13 recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

14 “ . . . ”

15 8. Section 4955.1 of the Code states, in pertinent part:

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

19 “ . . . ”

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

22 9. Section 4955.2 of the Code states:

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

25 “(a) Gross negligence.

26 “(b) Repeated negligent acts.

27 “(c) Incompetence.”

28 //

1 10. California Code of Regulations, title 16, section 1399.450, states:

2 “(a) Every acupuncture office shall be maintained in a clean and sanitary condition at all  
3 times, and shall have a readily accessible bathroom facility in accordance with Title 24, Part 2,  
4 Building Standards Code Sections 494A.1 and 1994 Uniform Building Code Section 2902.3.”

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

6 “1399.451. Treatment Procedures.

7 “In treating a patient, an acupuncturist shall adhere to the following procedures:

8 “. . .

9 “(b) All instruments shall be sterilized before and between uses in a manner which will  
10 destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile.  
11 Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which  
12 shows that sterilization is complete.

13 “. . .”

14 12. 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 13. California Health and Safety Code section 110460 states:

19 “No person shall engage in the manufacture, packing, or holding of any processed food in  
20 this state unless the person has a valid registration from the department, except those engaged  
21 exclusively in the storing, handling, or processing of dried beans. The registration shall be valid  
22 for one calendar year from the date of issue, unless it is revoked. The registration shall not be  
23 transferable. This section shall not apply to a cottage food operation that is registered or has a  
24 permit pursuant to Section 114365.”

25 14. California Health and Safety Code section 110675 states:

26 “Any food is misbranded if it is in package form, unless it bears a label containing all of the  
27 following information:

28 (a) The name and place of business of the manufacturer, packer, or distributor.”

1 **COSTS**

2 15. Section 4959 of the Code states:

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

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

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

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

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

19 **Facts**

20 16. On or about November 3, 2014, the California Acupuncture Board (Board) received a  
21 complaint from former patient KM<sup>1</sup> alleging, inter alia, uncleanliness and failure to follow proper  
22 protocols for needle storage and use during her treatment by Respondent. The Board initiated an  
23 investigation of the events underlying this report through the Department of Consumer Affairs,  
24 Division of Investigation (DOI). The DOI investigator conducted an investigation regarding this  
25 complaint and prepared a report of that investigation for the Board.

26 17. On or about December 29, 2014, the DOI investigator went to “Rapha Acupuncture

27 <sup>1</sup> The names of the patients and/or witnesses are abbreviated to protect their privacy rights. The names will  
28 be provided to Respondent upon written request for discovery.

1 and Healing Center” (Respondent’s clinic) and spoke to Respondent. Respondent confirmed he is  
2 the sole owner and operator of the clinic, and no other acupuncturists treat patients at his clinic.

3 18. The DOI investigator explained to Respondent that he was investigating a complaint  
4 against Respondent filed by Respondent’s former patient, KM. The DOI investigator provided  
5 Respondent with KM’s signed releases for medical records whereupon Respondent provided the  
6 DOI investigator with KM’s patient file.

7 19. KM’s patient file consisted of two sheets of paper. One sheet of paper was a client  
8 intake and information sheet, and the second sheet of paper contained Respondent’s charting  
9 notes written in the Korean language.

10 20. During his conversation with the DOI investigator Respondent confirmed that he first  
11 met KM at his clinic on December 11, 2013. Because KM did not have very much money  
12 Respondent recommended to KM that he treat her both at his clinic and at the Korea Town Senior  
13 and Community Center (Community Center) in Los Angeles.

14 21. Respondent treated patient KM 20 times at both his clinic and the Community Center,  
15 but only billed patient KM when he treated her at his clinic.

16 22. Respondent stated he only charted the treatments performed at his clinic which KM  
17 paid for, and did not chart the free treatments at the Community Center. Consequently, there  
18 were only four (4) dates for acupuncture treatments in KM’s chart.

19 23. Respondent translated his KM’s chart notes from Korean into English as follows:  
20 “DATE OF TREATMENT: December 17, 2013; Hand acupuncture for large intestine, lungs, and  
21 heart.”

22 “DATE OF TREATMENT: January 7, 2014; Hand acupuncture for right side large intestine and  
23 liver; left side lungs, heart, and gallbladder.”

24 “DATE OF TREATMENT: February 11, 2014; Same treatment as occurred on January 7, 2014.”

25 “DATE OF TREATMENT: April 14, 2014; Same treatment as occurred on January 7, 2014.”

26 24. The DOI investigator and Respondent discussed Respondent’s acupuncture needles  
27 storage and use protocols. Respondent initially said he did not utilize a pincushion for his needles  
28 and stated that each time he provides needle treatment to patients he removed an acupuncture

1 needle from its sterile wrapper, inserted the needle directly into the patient, and then discarded the  
2 needle in a “sharps container.”<sup>2</sup>

3 25. Respondent stated he does not reuse needles and showed the DOI investigator his  
4 acupuncture equipment box.

5 26. The DOI investigator observed several needles inside Respondent’s acupuncture  
6 equipment box which were outside of their paper packaging and stuck directly into paper.

7 27. The DOI investigator asked Respondent why the needles were unpackaged and for  
8 what purpose were the unpackaged needles used. Respondent did not explain why the needles  
9 were unpackaged.

10 28. Respondent stated he used the unpackaged needles for acupuncture treatment by  
11 wiping the needles down with an alcohol patch before he uses them for acupuncture treatments.

12 29. Respondent told the DOI investigator when the sharps container was full he delivered  
13 the used needles for proper disposal to an acupuncture supply business in Los Angeles,  
14 California.

15 30. Respondent also said he provided herbal treatment to KM. Respondent allowed the  
16 DOI investigator to conduct an inspection of the clinic’s kitchen area where Respondent stated he  
17 prepared and packaged herbs.

18 31. Respondent did not provide the DOI investigator with a Department of Public Health  
19 business registration and/or permit for the manufacture, repackaging, labeling, or warehousing of  
20 processed food products for his preparation and packaging of dry herbs.

21 <sup>2</sup> A “sharps container” is defined as a puncture-resistant and leak-proof container with a one-way top used  
22 to dispose of needles and other sharp medical instruments, such as an IV catheter. Sharps containers fit into two  
23 main types: single use which are disposed of with the waste inside or reusable which are robotically emptied and  
sterilized before being returned for re-use. It is standard practice for used needles to be placed immediately into a  
sharps container after a single use.

24 Needles are dropped into the container without touching the outside of the container. Recapping and de-  
notching needles is also no longer accepted practice.

25 Proper use of a sharps container includes pick up by or delivery to an approved "red bag" or medical waste  
treatment site. In addition to this pre-existing safety measure, all U.S. medical and educational staff are federally  
26 required to be tested on their knowledge of blood borne pathogens.

27 During the last ten years, increased worldwide focus on safety and environmental impact has led to several  
positive government mandates being issued regarding engineered medical device standards and the reduction of  
28 clinical waste output from health facilities. This has resulted in a move toward reusable containers with built-in safety  
devices such as trays and locking devices. In the United States, sharps disposal regulations differ in each state.

1           32. The clinic’s kitchen area contained various utensils and machines identified by  
2 Respondent as a “packaging machine” and two “extractors” which Respondent stated he used  
3 during his preparation and packaging of dry herbs.

4           33. The DOI investigator observed herbs in plastic jars waiting to be stored which  
5 contained only Korean labels.

6           34. The DOI investigator observed opened and sealed packages of herbs stored directly  
7 on the kitchen floor.

8           35. The DOI investigator observed herbs which were stored so as to be completely  
9 unprotected from contamination.

10          36. Respondent’s kitchen did not contain any food utensil sanitation equipment or  
11 supplies. The DOI investigator asked Respondent if he used the kitchen to prepare his own food  
12 and Respondent initially stated he did not. When the DOI inspector told Respondent he observed  
13 Respondent’s personal food in the kitchen cupboards Respondent admitted he did prepare food in  
14 the kitchen.

15          37. The DOI investigator inspected Respondent’s restroom which contained a bar of hand  
16 soap on the sink counter and no paper towels.

17          38. In response to the DOI investigator’s question Respondent removed a bottle of “face  
18 and body wash” from the adjacent shower and stated it was his pump dispenser for hand soap.

19 **Standard of Care**

20          39. The standard of care requires an acupuncturist to prevent nosocomial<sup>3</sup> infections  
21 when performing acupuncture to ensure the sterility and safety of the acupuncture needle by  
22 utilizing proper hygiene and sanitary protocols.

23 \_\_\_\_\_  
24 <sup>3</sup> An nosocomial infection is defined as infection that is contracted from the environment or staff of a  
25 healthcare facility. It can be spread in the hospital environment, nursing home environment, rehabilitation facility,  
26 clinic, or other clinical settings. Infection is spread to the susceptible patient in the clinical setting by a number of  
27 means. Health care staff can spread infection, as can contaminated equipment, bed linens, and air droplets. In some  
28 cases the microorganism originates from the patient’s own skin microbiota, becoming opportunistic after surgery or  
other procedures that compromise the protective skin barrier. Though the patient may have contracted the infection  
from their own skin, the infection is still considered nosocomial since it develops in the health care setting.  
Nosocomial infections can cause severe pneumonia and infections of the urinary tract, bloodstream and other parts of  
the body. Many types are difficult to treat with antibiotics, and antibiotic resistance can complicate treatment.



1           40. The standard of care requires that the acupuncture needle inserted under the patient's  
2 skin be sterile. In order to ensure the sterility of an acupuncture needle it must remain sealed  
3 within appropriate packaging until insertion into the patient. If the acupuncture needle is  
4 removed from sealed packaging and not immediately inserted into the patient it cannot be  
5 sterilized by wiping it with an alcohol patch before insertion into the patient.

6           41. The standard of care requires that an acupuncture needle be isolated by being placed  
7 into a sharps container immediately after usage. It is a violation of the standard of care to have  
8 unsealed acupuncture needles stuck into paper.

9           42. An acupuncturist's failure to utilize proper hygiene and sanitary protocols to maintain  
10 the sterility and safety of the practitioner's acupuncture needles is an extreme departure from the  
11 standard of care.

12           43. The standard of care requires a practitioner to maintain appropriate standards of  
13 cleanliness for the preparation, extraction, packaging, and storage of dry herbs.

14           44. The standard of care requires a practitioner to utilize proper labeling in the  
15 preparation and packaging of extracted herbs. Proper labeling of herbs includes accurately  
16 designating the contents of the herbal ingredients, the quantity of the contents, the packing date of  
17 the contents, and the name and address of the manufacturer in English.

18           45. The standard of care requires a practitioner who manufactures, re-packs, labels, or  
19 warehouses processed food products such as dry herbs to register with the Department of Public  
20 Health.

21           46. An acupuncturist's failure to maintain appropriate standards of cleanliness for the  
22 preparation, extraction, packaging, and storage of dry herbs is an extreme departure from the  
23 standard of care.

24           47. An acupuncturist's failure to utilize proper labeling in the preparation and packaging  
25 of extracted herbs is an extreme departure from the standard of care.

26           48. The standard of care requires an acupuncturist to maintain complete, accurate,  
27 adequate, and current medical records/treatment notes of a patient's medical history, condition  
28 and treatment.



1 incorporated herein as if fully set forth.

2 59. Respondent's failure to conform to the applicable standard of care for an  
3 acupuncturist's maintenance of proper hygiene and sanitary protocols to maintain clean needle  
4 technique includes the following acts and/or omissions which constitute extreme departures from  
5 the standard of practice:

6 A. Respondent removed needles from sealed packaging and did not immediately use the  
7 needles for acupuncture treatment.

8 B. Respondent removed needles from sealed packaging and inserted them into paper.

9 C. Respondent used non-sterile acupuncture needles he inappropriately attempted to  
10 sterilize by wiping with an alcohol swab before use in acupuncture treatments.

11 **SECOND CAUSE FOR DISCIPLINE**

12 (Gross Negligence)

13 60. Respondent is subject to disciplinary action under 4955.2, subdivision (a), and  
14 California Health and Safety Code sections 110460 and 110675, subdivisions (a) and (b), in that  
15 he was grossly negligent in his practice of acupuncture. The circumstances are as follows:

16 61. The facts and circumstances alleged in paragraphs 16 through 56 above are  
17 incorporated herein as if fully set forth.

18 62. Respondent's failure to conform to the applicable standard of care for the preparation,  
19 extraction, packaging, labeling, and storage of dry herbs includes the following acts and/or  
20 omissions which constitute extreme departures from the standard of practice:

21 A. Respondent failed to maintain appropriate standards of cleanliness for the  
22 preparation, extraction, packaging, and storage of dry herbs.

23 B. Respondent failed to utilize proper labeling in the preparation and packaging of  
24 extracted herbs when he did not accurately designate the contents of the herbal ingredients, the  
25 quantity of the contents, the packing date of the contents, and the name and address of the  
26 manufacturer in English.

27 C. Respondent failed to register with the Department of Public Health which is  
28 mandated for a person who manufactures, re-packs, labels, or warehouses processed food

1 products such as dry herbs.

2 **THIRD CAUSE FOR DISCIPLINE**

3 (Failure to Maintain Sanitary Office)

4 63. Respondent is subject to disciplinary action under 4955, subdivision (i), and  
5 California Code of Regulations, title 16, sections 1399.450, subdivision (a), in that he failed to  
6 maintain his acupuncture office in a clean and sanitary condition. The circumstances are as  
7 follows:

8 64. Complainant refers to and, by reference incorporates herein paragraphs 36 through 38  
9 and 53 through 56 inclusive, above as though fully set forth here.

10 **FOURTH CAUSE FOR DISCIPLINE**

11 (Failure to Maintain Adequate and Accurate Records)

12 65. Respondent is subject to disciplinary action under section 4955.1, subdivision (e) and  
13 California Code of Regulations, title 16, section 1399.453 in that Respondent failed to maintain  
14 adequate and accurate records. The circumstances are as follows:

15 66. Complainant refers to and, by reference incorporates herein paragraphs 19 through 23  
16 and 48 through 52 inclusive, above as though fully set forth here.

17 **PRAYER**

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

20 1. Revoking or suspending Acupuncturist License Number AC 4900, issued to KANG  
21 DAE CHOI, L.A.c.;

22 2. Ordering Kang Dae Choi, L.A.c. to pay the Acupuncture Board the reasonable costs  
23 of the investigation and enforcement of this case, pursuant to Business and Professions Code  
24 section 4959;

25 3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of  
26 probation monitoring, and;

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4. Taking such other and further action as deemed necessary and proper.

DATED: JAN 29 2016



TERRI THORFINNSON  
Executive Officer  
Acupuncture Board  
Department of Consumer Affairs  
State of California  
*Complainant*

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