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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KI BONG SUK, L.AC.** **150 S. Magnolia Ave., #130** **Anaheim, CA 92804** **Acupuncturist License No. AC 12007,** Respondent.	Case No. 1A-2011-111 A C C U S A T I O N

Complainant alleges:

PARTIES

1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board.

2. On or about October 18, 2007, the Acupuncture Board issued Acupuncturist License Number AC 12007 to Ki Bong Suk, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and expired on October 31, 2013. Pursuant to Business and Professions Code Section 118 subsection (b), the Acupuncture Board may take disciplinary action against Respondent notwithstanding the expiration of his license.

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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 4928.1 of the Code states:

"Protection of the public shall be the highest priority for the acupuncture board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. Section 4955 of the Code states:

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

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

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

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

"..."

6. Section 4956 of the Code states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter. The board may order a license suspended or revoked, or may deny a license, or may impose probationary conditions upon the license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence

irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment."

7. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, the board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. An action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change to, but rather are declaratory of, existing law."

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8. Section 493 of the Code states:

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

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

9. California Code of Regulations, title 16, section 1399.469, states:

"In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Acupuncture Board shall consider the disciplinary guidelines entitled 'Disciplinary Guidelines' 1996 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation is appropriate where the Acupuncture Board in its sole discretion determines that the facts of the particular case warrant such a deviation-- for example: the presence of mitigating factors; the age of the case; evidentiary problems."

10. California Vehicle Code Section 23152 states, in pertinent part:

"(a) It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive the vehicle.

"(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle.

". . ."

11. California Vehicle Code Section 23578 states, in pertinent part:

"In addition to any other provision of this code, if a person is convicted of a violation of

Section 23152 or 23153, the court shall consider a concentration of alcohol in the person's blood of 0.15 percent or more, by weight . . . as a special factor that may justify enhancing the penalties in sentencing, in determining whether to grant probation, and, if probation is granted, in determining additional or enhanced terms and conditions of probation."

12. California Vehicle Code Section 23540 states, in pertinent part:

"(a) If a person is convicted of a violation of section 23152 and the offense occurred within ten years of a separate violation of Section 23103, as specified in Section 23103.5, 23152, or 23153, that resulted in a conviction, that person shall be punished by imprisonment in the county jail for not less than 90 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the department pursuant to paragraph (3) of subdivision (a) of section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

"(b) Whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed under paragraph (3) of subdivision (a) of Section 13352, the court may disallow the issuance of a restricted driver's license required under Section 13352.5.

"(c) This section shall become operative on September 20, 2005."

13. California Vehicle Code Section 23546 states:

"(a) If a person is convicted of a violation of section 23152 and the offense occurred within 10 years of two separate violations of Section 23103, as specified in Section 23103.5, 23152, or 23153, or any combination thereof, that resulted in convictions, that person shall be punished by imprisonment in the county jail for not less than 120 days nor more than one year and by a fine of not less than three hundred ninety dollars ($390) nor more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be revoked by the Department of Motor Vehicles as required in paragraph (5) of subdivision (a) of 13352. The court shall require the person to surrender his or her driver's license to the court in accordance with Section 13550.

"(b) A person convicted of a violation of section 23152 punishable under this section shall be designated as a habitual traffic offender for a period of three years, subsequent to this conviction. The person shall be advised this designation pursuant to subdivision (b) of Section 13550."

COST RECOVERY

14. 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 FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

15. Respondent is subject to disciplinary action under sections 490 and 4955, subdivision (b), of the Code and California Code of Regulations, title 16 section 1399.469, in that he was convicted of a crime which is substantially related to the qualifications, functions, or duties of his profession. The circumstances are as follows:

16. On or about July 14, 2010, at 1:10 a.m., while driving a motor vehicle Respondent was arrested in the city of Norwalk, County of Los Angeles, by members of the Los Angeles County Sheriff's Department for driving under the influence of alcohol.

17. As a result of Respondent's arrest on July 14, 2010, the Los Angeles County District Attorney filed a two count misdemeanor criminal complaint entitled *People of the State of California v. Suk Kibong*,[1] in the Los Angeles County Superior Court, Case No. OWW05172. In Count 1 the criminal complaint alleged a violation of Vehicle Code section 23152, subsection (a), and in Count 2 alleged a violation of Vehicle Code Section 23152, subsection (b), with an enhancement pursuant to California Vehicle Code Section 23578.

On or about September 22, 2010, Respondent failed to appear in Los Angeles County Superior Court for his arraignment for *People of the State of California v. Suk Kibong*, Case No. OWW05172, and the Court issued a warrant for his arrest for failure to appear.

18. On or about June 30, 2011, Respondent was arraigned on the charges in *People of the State of California v. Suk Kibong*, Case No. OWW05172, and remanded into custody.

19. Respondent pled nolo contendere to Count 2 of Los Angeles Superior Court Case No. OWW05172: Driving a vehicle with more than 0.08 percent or more, by weight, of alcohol in his blood, and admitted the special allegation pursuant to Vehicle Code section 23578 as alleged in case number OWW05172.

20. Immediately following Respondent's nolo contendere plea, the Court sentenced Respondent to summary probation for three years and ordered him to pay various fines, to enroll in and complete a nine (9) month first offender alcohol program, and not drive a motor vehicle with any measurable amount of alcohol in his blood. The Court also advised Respondent that being under the influence of alcohol or drugs, or both, impairs his ability to safely operate a motor vehicle, and that it is extremely dangerous to human life to drive while under the influence of alcohol. Count 1 was dismissed by the Court in the interest of justice.

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[1] It appears that Respondent's name was misspelled in this criminal complaint.

21. Respondent's acts and/or admissions as set forth in paragraphs 16 through 20, inclusive, above, constitute the conviction of a crime substantially related to the practice of an acupuncturist, in violation of section 490, 4955, subdivision (b), of the Code and California Code of Regulations, title 16 section 1399.469. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Conviction of a Substantially Related Crime)

22. Respondent is subject to disciplinary action under sections 490 and 4955, subdivision (b), of the Code and California Code of Regulations, title 16 section 1399.469, in that he was convicted of a crime which is substantially related to the qualifications, functions, or duties of his profession. The circumstances are as follows:

23. On or about November 12, 2011, while driving a motor vehicle Respondent was arrested in the city of Lakewood, County of Los Angeles, by members of the California Highway Patrol for driving under the influence of alcohol.

24. As a result of Respondent's arrest on November 12, 2011, the Los Angeles County District Attorney filed a two count misdemeanor criminal complaint entitled *People of the State of California v. Kibong Suk*,[2] in the Los Angeles County Superior Court, Case No. 2DY00514. In Count 1 the criminal complaint alleged a violation of Vehicle Code section 23152, subsection (a), and in Count 2 alleged a violation of Vehicle Code Section 23152, subsection (b), with enhancements pursuant to California Vehicle Code Sections 23578, 23540, and 23546.

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25. On February 23, 2012, Respondent pled nolo contendere to count two of Los Angeles Superior Court Case No. 2DY00514: Driving a vehicle with more than 0.08 percent or more, by weight, of alcohol in his blood, and admitted the special allegation pursuant to Vehicle Code sections 23540 and 23546 that he had previously been convicted of a violation of Vehicle Code section 23152 (b) in case number OWW05172.

[2] It appears that Respondent's name was misspelled in this criminal complaint.

26. Immediately following Respondent's nolo contendere plea, the Court sentenced Respondent to summary probation for four years and ordered him to pay various fines, to enroll in and complete an eighteen (18) month Second Offender alcohol program, and not drive a motor vehicle with any measurable amount of alcohol in his blood. The Court also advised Respondent that being under the influence of alcohol or drugs, or both, impairs his ability to safely operate a motor vehicle, and that it is extremely dangerous to human life to drive while under the influence of alcohol. Count 1 was dismissed by the Court in the interest of justice.

27. Respondent's acts and/or admissions as set forth in paragraph 23 through 26, inclusive, above, constitute the conviction of a crime substantially related to the practice of an acupuncturist, in violation of section 490, 4955, subdivision (b), of the Code and California Code of Regulations, title 16 section 1399.469. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

28. Respondent is subject to disciplinary action under section 4955, subdivision (a), of the Code and California Code of Regulations, title 16 section 1399.469, in that he used alcoholic beverages to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his ability to engage in the practice of acupuncture with safety to the public. The circumstances are as follows:

29. The facts and circumstances in paragraphs 16 and 26 are incorporated by reference as if set forth in full herein.

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 or suspending Acupuncturist License Number AC 12007, issued to Ki Bong Suk, L.Ac.

2. Ordering Ki Bong Suk to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;

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

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

DATED: APR 17 2015

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

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