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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **CHAN JOON PARK, L.Ac.** **5330 Falls Way, Suite M** **Buena Park CA 90621** **Acupuncturist License No. AC12692,** Respondent.	Case No. 1A-2013-97 **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, Department of Consumer Affairs.

2. On or about September 15, 2008, the Acupuncture Board issued Acupuncturist License Number AC12692 to Chan Joon Park, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2016, unless renewed.

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 of the Code provides in part as follows:

"(a) The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter [the Acupuncture Licensure Act]."

5. 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.

6. 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.

"(c) False or misleading advertising.

"(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the violation of the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of

Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

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

"(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

"(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

"(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

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

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose

acupuncturist license the employee is working, to disciplinary action.

"(k) The abandonment of a patient by the licentiate without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

"(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

7. Section 4955.2 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 any one of the following:

"(a) Gross negligence.

"(b) Repeated negligent acts.

"(c) Incompetence."

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."

9. Section 4961 of the Code states in relevant part:

"(a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee has no place of practice, he or she shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure."

10. Section 726 of the Code states:

"The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division, under any initiative act referred to in this division and under Chapter 17 (commencing with Section 9000) of Division 3.

"This section shall not apply to sexual contact between a physician and surgeon and his or her spouse or person in an equivalent domestic relationship when that physician and surgeon provides medical treatment, other than psychotherapeutic treatment, to his or her spouse or person in an equivalent domestic relationship."

FIRST CAUSE FOR DISCIPLINE

(Sexual Misconduct)

11. Respondent is subject to disciplinary action under section 726 of the Code in that Respondent engaged in acts of sexual abuse, misconduct, or relations with a patient, client, or customer. The circumstances are as follows:

A. On or about July 13, 2012, patient D.A., a 33-year-old female, arrived at Respondent's office for acupuncture treatment. This was her fourth visit for acupuncture treatment from Respondent. Respondent gave D.A. shorts and a shirt to change into. Then

Respondent asked D.A. to take off her clothes for the treatment. He gave her a towel to cover herself. Then for about an hour Respondent, while sitting on a chair next to the treatment table, massaged D.A.'s back, including her buttocks. After that, Respondent had D.A. lie on her back without any clothing on. Respondent then massaged her breasts and vaginal area. Respondent stated that the massaging would help with the patient's blood circulation. He then began sucking on her left breast. At the same time one or more of his fingers penetrated her vagina. Respondent then started sucking on the patient's vagina, stating that he had to get out the bad toxins.

B. Subsequently, the patient got dressed, left the clinic and flagged down a police officer to report what had happened to her.

C. The location of Respondent's acupuncture practice was not registered with the Board.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

12. Respondent is subject to disciplinary action under section 4955.2, subdivision (a), of the Code in that Respondent was grossly negligent in the care and treatment of a patient. The circumstances are as follows:

A. The facts and circumstances alleged in paragraph 11 above are incorporated here as if fully set forth.

THIRD CAUSE FOR DISCIPLINE

(Failure to Register Practice Location)

13. Respondent is subject to disciplinary action under sections 4961, subdivision (a), and 4955, subdivision (d), of the Code in that Respondent failed to register his place of practice as required by law. The circumstances are as follows:

A. The facts and circumstances alleged in paragraphs 11 above are incorporated here as if fully set forth.

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FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

14. Respondent is subject to disciplinary action under section 4955 of the Code in that Respondent engaged in unprofessional conduct. The circumstances are as follows:

A. The facts and circumstances alleged in paragraphs 11 through 13 above are incorporated here as if fully set forth.

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 AC12692, issued to Chan Joon Park, L.Ac.;

2. Ordering Chan Joon Park, L.Ac. 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

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

DATED: SEP 04 2015

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

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