KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General
WENDY WIDLUS
Deputy Attorney General
State Bar No. 82958
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-2867
Facsimile: (213) 897-9395
E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

FILED
JUN 15 2016
ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KYUNG KIM, L.Ac.** **2772 West Sepulveda Blvd., #28** **Torrance, CA 90505** **Acupuncturist License No. AC14723** Respondent.	Case No. 1A-2014-221 **ACCUSATION**

Complainant alleges:

PARTIES

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

2. On or about March 26, 2012, the Acupuncture Board issued Acupuncturist License Number AC14723 to Kyung Kim, 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 September 30, 2017, 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 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 in pertinent part:

"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 a 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, a 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. Any 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 the provisions of 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 Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

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 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 the vehicle …"

10. California Vehicle Code Section 23578 states:

"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, or the refusal of the person to take a chemical test, 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."

COSTS

11. 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 Crime)

12. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4955, subdivision (b), in that she was convicted of violating California Vehicle Code section 23152, subdivision (b), commonly known as driving while having a 0.08% or higher blood alcohol, a crime which is substantially related to the qualifications, functions, and duties of an acupuncturist. The circumstances are as follows:

13. On or about December 3, 2014, in proceedings entitled *People of the State of California vs. Kyung Kim*, then pending in the Superior Court of California, case number 4SY09048, after a plea of nolo contendere, Respondent was convicted of Count 2, a violation of Vehicle Code section 23152, subdivision (b). The remaining count was dismissed by the Court in the interests of justice based on the plea and sentence agreement.

14. Following Respondent's plea of nolo contendere, the Court placed Respondent on three (3) years informal probation, and ordered her, inter alia, to obey all laws, enroll in and complete the nine (9) month First Offender Drinking Driver Program, pay total fines and penalty assessments in the amount of $2,142.00 plus penalty assessments, and not drive a motor vehicle with any measurable amount of alcohol in her blood.

15. The facts underlying Respondent's plea of nolo contendere to Count 2 in the above conviction are as follows:

16. On or about December 2, 2014, at approximately 10:43 p.m., an officer employed by the Torrance Police Department (TPD), who was driving his marked patrol vehicle while in full uniform, was notified that a white Toyota Camry had been involved in a traffic collision with a parked car.

17. The TPD officer observed Respondent, later identified as the driver of the Camry, at the scene of the accident.

18. The TPD officer observed that Respondent displayed objective signs of alcohol intoxication. Due to the fact that the Respondent spoke very little English the TPD officer was unable to communicate effectively with her, and could not explain Field Sobriety Tests for Respondent to complete.

19. Respondent did consent to have her blood drawn and tested for the presence of alcohol.

20. Respondent's blood alcohol test results were .20 or over two times the presumed blood alcohol content level used to define intoxication.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

21. Respondent is subject to disciplinary action under Code section 4955, for unprofessional conduct pursuant to Code section 4955, subdivision (a), in that she used alcoholic beverages or a dangerous drug to an extent or in a manner dangerous to herself, or to any other person, or to the public. The circumstances are as follows:

22. The facts and circumstances in paragraphs 16 through 20 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 AC14723, issued to Kyung Kim, L.Ac.;

2. Ordering Kyung Kim, 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;

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

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

DATED: JUN 15, 2016

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

LA2016500596
62007403.docx