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FILED
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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **SEUNG MAN YU** **1750 Halford Avenue, Suite 111** **Santa Clara, CA 95051** **Acupuncture License No. AC 15888** Respondent.	Case No. 1A-2015-8 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about March 28, 2014, the Acupuncture Board issued Acupuncture License Number AC 15888 to Seung Man Yu (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2017, unless renewed.

JURISDICTION

3. This Accusation is brought before the Acupuncture Board (Board), 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:

"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.

"(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.

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."

COST RECOVERY

7. 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

(Unprofessional Conduct)

8. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4955, section 4955(a) (Dangerous Use of Alcohol), section 4955(b) (Substantially Related

Conviction), section 4955(d) (Violation of Board Rules/Regulations) and section 4956 (Criminal Conviction) based on the following circumstances:

9. On or about January 2, 2015 at approximately 8:27 p.m., a CHP officer observed Respondent's vehicle traveling westbound on East Hills Road in San Jose approaching an intersection. As Respondent's vehicle approached the intersection, it nearly collided with the CHP vehicle.

10. Respondent then made an illegal left turn from the intersection and crashed head on into another vehicle that had been stopped at the stoplight.

11. Both vehicles sustained moderate damage and the driver of the other vehicle complained of pain to his stomach resultant from the collision.

12. CHP officers investigated Respondent for driving under the influence of alcohol and/or drugs. Respondent displayed objective signs of intoxication: his gait was unsteady, his speech was slurred, his eyes were red and watery, and he had the odor of an alcoholic beverage on his breath. In addition, his performance of several field sobriety tests indicated that he was under the influence of alcohol.

13. Respondent admitted to drinking "two beers and two Jack Daniels" prior to driving that night.

14. Respondent submitted to a preliminary alcohol screening test which resulted in a .20% blood alcohol content. Respondent refused to submit to further lawfully-mandated chemical testing.

15. Respondent was transported to the Alcohol Investigation Bureau to complete the DUI investigation. At this location, Respondent became both physically and verbally abusive toward officers. Respondent urinated on the ground. Respondent attempted to spit on two officers. Respondent refused to follow directions, kicked the walls and slammed his hands on the table. He told one officer to take his handcuffs off and stated, "I fight you one time."

16. Respondent was arrested for driving under the influence of alcohol and transported to the local jail. While en route to the jail, Respondent attempted to kick out the door and window of the patrol vehicle. Respondent had to be placed in restraints to be safely booked into jail.

17. Respondent was charged in the Santa Clara County Superior Court, Case Number C1501715, with two misdemeanor counts: 1) Vehicle Coder section 23152(a) – Driving Under the Influence of Alcohol; 2) Vehicle Coder section 23152(b) – Driving with a Blood Alcohol Level of 0.08% or More. Both counts included an allegation that Respondent refused to complete a chemical test as required by law, pursuant to Vehicle Coder section 23577(a).

18. On or about April 23, 2015, Respondent was convicted of Vehicle Code section 23152(b), and was ordered to serve the following: three years probation; fifty days jail; nine-month Drinking and Driving Program.

19. Respondent's April 23, 2015 criminal conviction for driving with a blood alcohol content greater than 0.08%, is substantially related to the qualifications, functions and duties of an acupuncturist and constitutes unprofessional conduct pursuant to the Code sections enumerated above.

PRAYER

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

1. Revoking or suspending Acupuncture License Number AC 15888, issued to Seung Man Yu;

2. Ordering Seung Man Yu to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;

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

DATED: AUG 10 2016

Benjamin Bodea
Acting Executive Officer
Acupuncture Board
State of California
Complainant

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