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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 Statement of Issues Against: MYENGSOOK KIM 8740 Garden Grove Blvd. Garden Grove, California 92844, Applicant.	Case No. 1A-2015-94 **STATEMENT OF ISSUES**

Complainant alleges:

PARTIES

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

2. On or about October 20, 2015, the Board received an application for an acupuncture license from Myengsook Kim (Applicant). On or about October 19, 2015, Applicant certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on October 23, 2015. On or about May 24, 2016, Applicant requested a hearing.

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JURISDICTION

3. This Statement of Issues is brought before the 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.

". . ."

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 480 of the Code states:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. 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, 1203.4a, or 1203.41 of the Penal Code.

". . .

"(3)(A) Done any act that if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

"(B) The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions, or duties of the business or profession for which application is made.

"(b) Notwithstanding any other provision of this code, a person shall not be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.

"(c) Notwithstanding any other provisions of this code, a person shall not be denied a license solely on the basis of a conviction that has been dismissed pursuant to Section 1203.4,

1203.4a, or 1203.41 of the Penal Code. An applicant who has a conviction that has been dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code shall provide proof of the dismissal.

"(d) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for the license."

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.

". . ."

FIRST CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct - Conviction of a Substantially Related Crime)

9. Applicant's application is subject to denial under Section 480, subdivision (a), subsection (1), and Section 4955, subdivision (b) of the Code, in that Applicant has been convicted of a crime that is substantially related to the qualifications, functions or duties of an acupuncturist. The circumstances leading to Applicant's conviction are as follows:

10. On September 2, 2015, in the case entitled *The People of the State of California v. Myengsook Kim*, case number 15WM07315, in the Superior Court of California, County of Orange, Applicant, upon her plea of guilty, was convicted of driving a vehicle while having a blood alcohol content of approximately 0.18 percent, in violation of Vehicle Code Section 23152,

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subdivision (b), a misdemeanor.[1] Applicant was placed on three years probation with the following terms and conditions:

A. Credit for four days in the Orange County Jail;

B. Complete eighty hours of community service as directed by the Court;

C. Attend and complete a six month, level two First Offender Alcohol Program;

D. Attend and complete Victim Impact Counseling;

E. Not drive a motor vehicle without a valid driver's license in her possession and proof of valid automobile liability insurance or financial responsibility as required by law;

F. Not drive a motor vehicle with a measurable amount of alcohol in her blood;

G. Submit to a chemical test of her blood on demand of any peace officer, probation officer, or mandatory supervision officer;

H. Pay fines, restitution and other penalty assessments as ordered by the Court;

I. Disclose terms and conditions of probation when asked by any law enforcement or probation officer;

J. Use her true name and date of birth only at all times;

K. Violate no law; and

L. Obey all orders, rules, regulations and directives of the Court and Jail.

11. The circumstances leading to Applicant's 2015 conviction are as follows:

A. At approximately 11:07 p.m. on April 23, 2015, law enforcement officers with the Garden Grove Police Department (GGPD) were dispatched to a non-injury hit and run investigation at 14151 Flower Street in Garden Grove. A witness contacted GGPD and reported that the female driver and sole occupant of the involved vehicle, later identified as Applicant, hit a garage door and adjacent wall with her vehicle before fleeing the scene of the crash. GGPD officers arrived on scene and spoke with the witness who reported that Applicant was parked nearby on 15th Street. The GGPD officers evaluated the crash scene and concluded that

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[1] Vehicle Code Section 23152, subdivision (b) provides: "It is unlawful for a person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle..."

Applicant was driving her vehicle into the public parking lot located at 1415 Flower Street when she conducted a U-turn and struck one of the garages and adjacent wall.

B. Meanwhile, other GGPD officers contacted Applicant in her white 2014 Hyundai Sonata, which was parked in front of a driveway eastbound on 15th Street in Garden Grove. Applicant was passed out, covered in dried vomit, and slumped over the steering wheel in the driver's seat when she was contacted by the GGPD officers. Applicant was initially unresponsive to the GGPD officers who quickly noticed that the vehicle engine was still running. The GGPD officers removed the keys from the vehicle ignition and repeatedly shook Applicant in an effort to wake her up. Applicant was eventually able to communicate with the GGPD officers by giving physical, non-verbal responses to their questions. Throughout her encounter with the GGPD officers, Applicant displayed symptoms of severe intoxication including: a strong odor of alcohol; watery and bloodshot eyes; delayed responses to questions; unsteady balance; and lethargic movements. Applicant did not perform standardized field sobriety tests due to her level of intoxication, but she admitted to consuming alcoholic beverages prior to the crash that evening. Consequently, Applicant was arrested for driving under the influence of an alcoholic beverage.

C. Applicant consented to a blood test, which was administered and collected at the GGPD jail after she was transported from the scene of the crash. Applicant provided one vial of her blood at 1:40 a.m., which later revealed Applicant's blood alcohol content of 0.18 percent within three hours of driving.

D. Applicant was issued a citation in lieu of custody and released from GGPD jail.

SECOND CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct - Use of Alcohol in a Dangerous Manner)

12. Applicant's application is further subject to denial under Section 480, subdivision (a), subsection (3), and Section 4955, subdivision (a) of the Code, in that Applicant used alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to herself, or to any other person or to the public, as more particularly alleged in paragraphs 10 and 11 above, which is hereby incorporated by reference and re-alleged as if fully set forth herein.

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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. Denying the application of Myengsook Kim for an acupuncture license; and
2. Taking such other and further action as deemed necessary and proper.

DATED: JUL 19 2016

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

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