BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:	)	Case No. 1A-2015-94
MYENGSOOK KIM 8740 Garden Grove Blvd. Garden Grove, CA 92844	)	
Respondent.	)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on October 28, 2016.

It is so ORDERED September 30, 2016.

Hildegarde Agumaldo, Board President
Acupuncture Board
Department of Consumer Affairs
State of California

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
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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 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Benjamin Bodea (Complainant) is the Acting Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board). He brought this action solely in his official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Nicholas B.C. Schultz, Deputy Attorney General.

2. Applicant Myengsook Kim (Applicant) is represented in this proceeding by attorney Daniel S. Lim, Esq., whose address is: 3600 Wilshire Blvd., Suite 410, Los Angeles, California 90010.

3. On or about October 20, 2015, Applicant filed an application dated October 19, 2015, with the Acupuncture Board to obtain an acupuncture license. The Board denied Applicant's application on October 23, 2015. On or about May 24, 2016, Applicant requested a hearing.

JURISDICTION

4. Statement of Issues No. 1A-2015-94 was filed before the Acupuncture Board and is currently pending against Applicant. The Statement of Issues and all other statutorily required documents were properly served on Applicant on July 19, 2016. A copy of Statement of Issues No. 1A-2015-94 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Applicant has carefully read, fully discussed with counsel, and understands the charges and allegations in Statement of Issues No. 1A-2015-94. Applicant has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Applicant is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Applicant voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Applicant admits the truth of each and every charge and allegation in Statement of Issues No. 1A-2015-94.

9. Applicant agrees that her acupuncture license is subject to denial and she agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

RESERVATION

10. The admissions made by Applicant herein are only for the purposes of this proceeding, or any other proceedings in which the Acupuncture Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

11. This stipulation shall be subject to approval by the Acupuncture Board. Applicant understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Applicant or her counsel. By signing the stipulation, Applicant understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Applicant will be issued an acupuncture license and immediately revoked. The revocation will be stayed and the Applicant placed on two (2) years probation on the following terms and conditions.

1. ABSTAIN FROM DRUGS AND ALCOHOL AND SUBMIT TO TESTS AND SAMPLES. Applicant shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act (Division 10, commencing with section 11000, Health and Safety Code) and dangerous drugs as defined by Section 4211 of the Business and Professions Code, or any drugs requiring a prescription. Applicant shall abstain completely from the use of alcoholic beverages. Applicant shall undergo random, biological fluid testing as determined by the Board. Applicant shall bear all costs of such testing. The length of time and frequency will be determined by the Board. Any confirmed

positive finding will be considered a violation of probation.

2. OBEY ALL LAWS. Applicant shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the applicant to the Board in writing within seventy-two (72) hours of occurrence.

3. QUARTERLY REPORTS. Applicant shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

4. SURVEILLANCE PROGRAM. Applicant shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Applicant shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Applicant shall not have any unsolicited or unapproved contact with 1) victims or complainants associated with the case; 2) Board members or members of its staff; or 3) persons serving the Board as expert examiners.

5. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Applicant shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

6. CHANGES OF EMPLOYMENT. Applicant shall notify the Board in writing, through the assigned probation surveillance compliance officer of any and all changes of employment, location and address within 30 days of such change.

7. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE. In the event Applicant should leave California to reside or to practice outside the State, Applicant must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

8. EMPLOYMENT AND SUPERVISION OF TRAINEES. Applicant shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Applicant shall terminate any such supervisorial relationship in existence on the effective date of this probation.

9. VIOLATION OF PROBATION. If Applicant violates probation in any respect, the Board may, after giving Applicant notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Applicant during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Applicant.

10. COMPLETION OF PROBATION. Upon successful completion of probation, Applicant's license will be fully restored.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Jessica Lim, Esq. I understand the stipulation and the effect it will have on my acupuncture license. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Acupuncture Board.

DATED: 8-5-2016

MYENGSOOK KIM
Applicant

I have read and fully discussed with Applicant MYENGSOOK KIM the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8-8-2016

JESSICA LIM, ESQ.
Attorney for Applicant

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Endorsement on the next page.

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board.

Dated: August 17, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

NICHOLAS B.C. SCHULTZ
Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Statement of Issues No. 1A-2015-94

KAMALA D. HARRIS
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Attorneys for Complainant

FILED
JUL 19 2016
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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