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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Bong Dal Kim,** **1807-B Wilshire Blvd.** **Santa Monica, CA 90403** **Acupuncturist License number AC 292,** Respondent.	Case No. 1A-2011-70 **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.

2. On or about February 1, 1977, the Acupuncture Board issued Acupuncturist License Number AC 292 to Bong Dal Kim (Respondent). That license Acupuncturist was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2014, 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 652 of the Code states, in pertinent part:

" Violation of this article in the case of a licensed person constitutes unprofessional conduct and grounds for suspension or revocation of his or her license by the board by whom he or she is licensed, or if a license has been issued in connection with a place of business, then for the suspension or revocation of the place of business in connection with which the violation occurs. The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and each board shall have all the powers granted therein.

". . ."

5. Section 4927, subdivision (d), of the Code states:

"'Acupuncture ' means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, for the treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."

6. Section 4937 of the Code states:

" An acupuncturist's license authorizes the holder thereof:

"(a) To engage in the practice of acupuncture.

"(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques, exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits any person who does not possess an acupuncturist's license or another license as a healing arts practitioner from performing, or prescribing the use of any modality listed in this subdivision.

"(c) For purposes of this section, a 'magnet' means a mineral or metal that produces a magnetic field without the application of an electric current.

"(d) For purposes of this section, 'plant, animal, and mineral products' means naturally occurring substances of plant, animal, or mineral origin, except that it does not include synthetic compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

"(e) For purposes of this section, 'dietary supplement' has the same meaning as defined in subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary supplement does not include controlled substances or dangerous drugs as defined in Section 4021 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code."

7. 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:

" . . ."

"(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.

". . ."

8. 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."

9. California Code of Regulations, title 16, section 1399.426 states, in pertinent part:

"Each supervising acupuncturist shall have the following duties and responsibilities:

"(a) A supervisor shall at all times be responsible for and provide supervision of the work performed by the trainee as required in these regulations.

"(b) The supervisor shall only assign those patient treatments which can be safely and effectively performed by the trainee and which are consistent with the level of training received by the trainee. The supervisor shall provide continuous direction and immediate supervision of the trainee when patient services are provided. The supervisor shall be in the same facility as and in proximity to the location where the trainee is rendering services and shall be readily available at all times to provide advice, instruction and assistance to the trainee.

" . . ."

" (e) The supervisor shall insure that the trainee complies with the standards of practice in Article 5 of the Acupuncture Regulations.

". . ."

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

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."

Factual Summary

12. Respondent is the founder of Emperor's College Acupuncture and is the chief acupuncturist at the school's clinic. On or about February 3, 2011, patient Dalia D.[1] died at Emperor's College Acupuncture clinic. Patient D. began treatment with Respondent, at Emperor's College in October 2010, when she presented with a primary complaint of numbness of the feet. Patient D. suffered other health issues which included only one (1) functioning, albeit infected lung, chronic cough, shortness of breath and difficulty breathing, asthma, rapid heartbeat, poor appetite, fatigue, depression, and anxiety.

The following clinic student assistants and intern were also involved with patient D.'s care: Ms. J., Ms. B., both assistants, and the intern, Mr. B. There are no records which specify the time patient D. arrived at the clinic on or about February 3, 2011, nor do the patient's records fully and clearly convey what each assistant and the intern did with regard to patient D.'s care on this date.

13. According to Ms. B., a student assistant under Respondent's supervision, on or about February 3, 2011, patient D. complained more than was usual about experiencing labored

[1] The names of patients and certain other witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

breathing, poor/minimal sleep, no appetite, back pain, and weight loss. The patient arrived at the clinic with an anxiety attack which had begun prior to treatment.

Ms. B. performed the intake assessment on patient D. assisted by student assistant Ms. J. However, neither student assistant recorded results for patient D.'s blood pressure in the patient's medical records. Based on her observations, Ms. B. believed the level of distress patient D. was experiencing during the intake assessment was "more than usual," and reported her assessment to Respondent. Respondent interviewed patient D. and then proceeded with her acupuncture treatment. After inserting the acupuncture needles Respondent left the room. Ms. B. and Ms. J. prepared patient D. for rest after the insertion of the needles and then stepped out of the room.

14. According to Ms. B., a few minutes after the student assistants left the treatment room, patient D. requested someone to return and remain in the room with her, and Ms. J. went into the patient's room. When Ms. B. returned to check on patient D. the patient reported feeling uncomfortable. Ms. B. believed the patient was having a panic attack, as the patient was exhibiting increased, labored breathing, and restlessness. The patient attempted to sit up while Ms. B. went to alert Respondent to the patient's condition. Respondent returned to the treatment room, and, according to Ms. B., removed some needles from the patient, calmed patient D. and permitted the acupuncture treatment to continue. Ms. B. said patient D. refused to have 911 called. Ms. B. left patient D. at the end of her shift at 1:00 p.m.

15. Ms. J. and Ms. Bs' reports are not consistent as to the sequence of events after Patient D. sat up. During her description of what occurred on or about February 3, 2011, Ms. J. stated that after Ms. B. left the room patient D. attempted to sit up with needles still inserted in various parts of her body. According to Ms. J., although she was a student assistant, with no training, experience, or authorization to remove needles, and during this time was not being supervised by a licensed acupuncturist, she nonetheless removed an unknown number of the acupuncture needles from the patient to enable her to sit upright without experiencing injury.

Both Ms. J and Ms. B stated Respondent did return to the patient's treatment room, but their accounts of Respondent's action differ. Ms. B. stated Respondent "removed some of the

acupuncture needles" and continued the patient's acupuncture treatment. As previously stated, Ms. J. said she removed the needles from patient D. after which she calmed patient D.

During the police investigation into the events surrounding patient D.'s death Ms. J. also said patient D. attempted to urinate as Ms. J. took the patient to the bathroom, but instead defecated on the floor and toilet.

16. Further reports indicate that at 1:45 p.m. patient D. was lucid, conscious, but was having difficulty breathing. After 2:00 p.m., patient D.'s pulse became weak and she began to lose consciousness, so 911 was called. Prior to the arrival of emergency services patient D. lost consciousness, was non responsive, and the patient's pulse could not be located. CPR was performed on the patient by emergency services as soon as they arrived. Patient D. was transported by emergency personnel to a nearby hospital where she arrived in full cardiac arrest, and died shortly thereafter.

17. Respondent's statements to the police are inconsistent in a number of areas with the student assistants' statements as well as with his statement to the Board. Respondent admitted leaving the clinic to go to lunch in the cafeteria at 1:30 p.m., but made inconsistent statements about where he was and what time it was when he became aware of the arrival of emergency personnel. Respondent failed to mention being aware of patient D.'s attempted urination and defecation on the floor and toilet. In addition, student notes with regard to patient D.'s physical condition were not signed off by Respondent, and he did not appear to be aware of the information the notes contained.

Standard of Care

18. The applicable standard of care requires that a licensed acupuncturist must directly supervise student interns when the student interns perform an acupuncturist's duties. Student assistants are not trained, experienced, or authorized to perform any of the duties of an acupuncturist, most particularly those which involve handling needles. The licensee is liable for the care provided by the trainees under his supervision.

19. The applicable standard of care requires a licensed acupuncturist ensure that another licensed acupuncturist consult with the original acupuncturist with regard to the patient's condition when the original acupuncturist leaves the clinic site.

20. The applicable standard of care requires a licensed acupuncturist ensure that a student intern be present with the patient to provide continuous care for a patient who is in distress until the patient is discharged from the acupuncture clinic.

21. The applicable standard of care requires a licensed acupuncturist be aware of his patient's condition if he leaves the patient after performing treatment.

22. The applicable standard of care requires that a licensed acupuncturist review and sign all notes and/or reports a trainee or student assistant or intern prepares about a patient's care and condition.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

23. Respondent is subject to disciplinary action under 4955.2, subsection (b) and California Code of Regulations, title 16, section 1399.426, subsections (a),(b),(e) in that Respondent committed repeated negligent acts in his care and treatment of his patient. The circumstances are as follows:

24. Complainant refers to and, by reference incorporates herein paragraphs 12-17 inclusive, above as though fully set forth here.

25. Respondent committed a simple departure from standard of care when he was not in the patient's treatment room to directly supervise the student assistants and/or the student intern during the patient's care. Treatment of a patient begins at the moment of intake until the patient leaves the clinic. Respondent was the supervising acupuncturist and failed to supervise the care given to patient D. by the two student assistants and student intern throughout the duration of the patient's treatment. A practitioner must be responsible for the patient's care and available on site until a patient is discharged from the treatment room. As detailed above, it is unclear from the various interviews and unsigned reports whether Respondent was present and/or available throughout Patient D.'s treatment. The patient's records do not reflect with certainty that

Respondent removed all of the needles from the patient prior to his departure from the clinic for lunch.

26. Patient D.'s obvious distress throughout the time she began treatment is another circumstance which required Respondent, to remain with the patient throughout her treatment, instead of leaving the patient in the care of student assistants and/or an intern. Student assistants are not equipped with the training, experience, or authorization to be responsible for patient care in these circumstances. After Ms. B., the student intern, left the treatment room there is no evidence that another student intern under Respondent's supervision was present to assist with patient D.'s care. This is a simple departure from the standard of care.

27. Respondent's failure to remain in the clinic throughout Patient D.'s treatment is a simple departure from standard of care. Patient D. was left in the care of inexperienced, student assistants when Respondent went to lunch. The supervisor must be in the same facility as, and in proximity to, the location where the trainee is rendering services in order to be readily available at all times to provide advice, instruction and assistance to the trainee. Being on campus in the cafeteria does not constitute being in the clinic able to provide immediate and direct supervision of the trainee caring for the patient.

28. Respondent's failure to have another licensed acupuncturist readily available to provide necessary patient care is a simple departure from the standard of care. Respondent failed to maintain a check-in/check-out log available for any clinic personnel, student, or intern to review to determine which licensed acupuncturist practitioners were on duty to assist with the patient when Respondent was not present.

29. There was a simple departure from standard of care when an unauthorized trainee removed the needles from patient D. According to some of the renditions of the care provided to patient D. a student assistant who was not trained, experienced, or authorized to perform needle insertion or removal, removed needles from the patient without appropriate supervision. The standard of care requires that a supervisor may only assign patient treatments to an authorized trainee which can be safely and effectively performed by the trainee and which are consistent with the level of training received by the trainee. The standard of care states that a licensee is

liable for the care provided by the trainees under his supervision. The removal of needles by an unauthorized person is a simple violation of the standard of care.

30. There was a simple departure from standard of care exhibited by Respondent's failure to be aware of pertinent information his trainees possessed about patient D.'s continual distress throughout her treatment, which distress significantly increased after he left the clinic. Respondent's failure in this regard is illustrated by his failure to describe the patient's weakened state after he allegedly removed the needles, as well as his failure to approve and initial his student assistant's report that the patient experienced a worsening panic attack, labored breathing, weakened pulse and defecated on the floor in the bathroom prior to her cardiac arrest. Respondent's failure to be aware of relevant patient information is a simple departure from the standard of care.

31. There was a simple departure from standard of care when Respondent left the patient with student assistants without a student intern present to provide continuous care until the patient was discharged from the acupuncture clinic. Respondent's failure to confirm that the student intern would remain with the patient under these circumstances is a simple departure from the standard of care.

32. Respondent exhibited repeated failures to maintain and review adequate records. Respondent failed to review and show signature approval of the addendum report provided by his student assistant Ms. B. In addition, Respondent failed to maintain an appointment log with information regarding when the patient signed into the clinic, when she was taken into a patient room for treatment, and failed to maintain a check-in/check-out log available for any clinic personnel, student, or intern to review to determine which licensed acupuncturist practitioners were on duty to assist with the patient when Respondent was not present. These failures to maintain and review are emblematic of his overall practice habits and are a simple departure from the standard of care.

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SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

33. Respondent is subject to disciplinary action under Respondent is subject to disciplinary action under section 4955 for unprofessional conduct. The circumstances are as follows:

34. Complainant refers to and, by reference incorporates herein paragraphs 12-17 inclusive, above as though fully set forth here.

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 Number AC 292, issued to Bong Dal Kim;

2. Ordering him 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 him to pay to the Acupuncture Board the costs of probation monitoring;

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

DATED: FEB 10 2014

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

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