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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **JOHN JUNGMIN KIM, L.Ac.** **901 N. Pacific Coast Hwy, #116** **Redondo Beach, CA 90277** **Acupuncturist License No. AC 3059,** Respondent.	Case No. 1A-2014-64 **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 Interim Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about December 1, 1987, the Acupuncture Board issued Acupuncturist License Number AC 3059 to John Jungmin 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 November 30, 2016, 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 4927, of the Code states, in pertinent part:

"As used in this chapter, unless the context otherwise requires:

"…

"(d) '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, 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 substances 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:

". . .

"(c) False or misleading advertising.

"(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.

". . .

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

". . ."

8. Section 4955.1 states, in pertinent part:

"The board may deny, suspend, revoke, or impose probationary conditions upon the license of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be limited to, any of the following:

". . .

"(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients."

9. 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."

10. Section 2051 of the Code states:

"The physician's and surgeon's certificate authorizes the holder to use drugs or devices in or upon human beings and to sever or penetrate the tissues of human beings and to use any and all other methods in the treatment of diseases, injuries, deformities, and other physical and mental conditions."

11. California Code of Regulations, title 16, section 1399.451, states, in pertinent part:

". . .

"(e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required.

"(f) Acupuncture shall not be performed using hypodermic needles.

". . ."

12. California Code of Regulations, title 16, section 1399.453, states:

"An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments."

13. California Code of Regulations, title 16, section 1399.455, states:

"(a) A licensed acupuncturist may advertise the provision of any acupuncture services authorized to be provided by such licensure in a manner authorized by Section 651 of the code so long as such advertising does not promote the excessive or unnecessary use of such services.

"(b) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising which represents in any manner that the acupuncturist can cure any type of disease, condition or symptom.

"(c) It is improper advertising as provided in Section 4955 of the code to disseminate any advertising of a practice, technique or procedure which is not within the scope of the practice of acupuncture as defined in Sections 4927 and 4937 of the code and which is the unlawful practice of medicine."

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COSTS

14. 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 ALLEGATIONS

15. Patient EH[1] was a 44 year old woman with a history of breast cancer, double mastectomy and breast implants in 2010 and a parathyroidectomy[2] in 2010 when she first saw Respondent at his office, Re Nu Mi Wellness Center, with a complaint of low energy.

16. According to Respondent's medical records EH had 14 office visits with Respondent which began in September, 2013. The patient's complaints during her course of treatment with

[1] The name of the patient and/or witnesses are abbreviated to protect their privacy rights. The names will be provided to Respondent upon written request for discovery.

[2] A parathyroidectomy is defined as the removal of one or more of the parathyroid glands. The parathyroid glands are usually four in number, although the exact number may vary from three to seven, located in the neck in front of the Adam's apple and are closely linked to the thyroid gland. The parathyroid glands regulate the balance of calcium in the body.

Respondent included low energy, dizziness, described as frequent in occurrence and associated with range of motion (ROM), upper back and neck tightness, anxiety, heart pounding, and upper leg buzzing. EH also was concerned with scars on her breasts and neck as a result of the double mastectomy and parathyroidectomy operations she had undergone.

17. Respondent repeatedly urged EH to allow him to treat her scars with an acupuncture technique he called ART (advanced regeneration therapy). Respondent told EH that ART was used for scarring and would rejuvenate the healing of her skin. When EH asked if Respondent had used ART on someone who had reconstruction surgery Respondent insisted this procedure was safe.

18. The first sentence in the paragraph regarding "Advanced Regeneration Therapy" in EH's informed consent for acupuncture treatment states, "I understand that I will be receiving an advanced acupuncture technique."

19. Respondent's flyer entitled "Advanced Regeneration Therapy" states "Re Nu Mi Advanced Regeneration Therapy (ART) is a cutting edge therapy."

20. At the ART page on the Re Nu Mi Wellness Center website it states:

> "**Anti-Aging Program – Holistic Facelift**
>
> "NON-INVASIVE COSMETIC SURGERY – A.R.T. A natural method of rejuvenating dry, sagging and wrinkled skin. If you are contemplating invasive, expensive and temporary anti-aging methods such as surgical face life or chemical injections, you owe it to yourself to explore the healthier, natural and satisfying results that can be achieved through the Advanced Regeneration Therapy (ART) Facial Sculpting. This unique alternative approach removes wrinkles, relieves facial muscle tension, brightens the complexion, and improves collagen production. Using time-honored and time-tested Acupuncture Techniques."

21. Respondent performed ART on EH's neck and right breast on January 11 and 18, 2015. The ART procedure consisted of Respondent taking a hypodermic needle and repeatedly jamming the needle into the patient's neck and right breast surgical scars. The ART procedures, which were extremely painful, lasted approximately 90 minutes and caused bleeding and bruising.

22. EH was very concerned about the bruising she experienced after the ART procedures and consulted with her surgeon. EH's surgeon advised her to discontinue the ART treatment and

recommended that she have an imaging study done of her right breast.

23. Prior to scheduling the imaging study EH noticed implant silicone leakage under her skin. EH informed Respondent that she was experiencing silicone leakage from her right breast implant. In response to that information Respondent sent EH flowers accompanied by a note of apology. EH's medical records do not reflect any notation that EH's breast implant was leaking silicone.

24. EH's right breast implant was examined via imaging studies and was found to be ruptured with extensive leakage of silicone from the implant. As a result of the damage to the implant EH underwent surgery which consisted of removal of the ruptured implant, irrigation of the implant pocket to wash out the leaked implant gel, replacement of the damaged implant and soft tissue reconstruction of the surrounding tissues.

25. EH's first office visit to Respondent was on September 12, 2013. The patient's medical record for this visit shows an undated, unsigned medical history with a chief complaint of frequent dizziness associated with ROM. The medical records for September 16 and 20, 2013, state the dizziness was better.

26. The medical records for September 20, 2013, state the patient's additional complaint of low energy.

27. The medical records for September 20, 2013, state the patient's dizziness and energy level was better.

28. The medical records for September 27, 2013, state the patient had an upper respiratory infection.

29. The medical records for October 4, 2013, state the patient's chief complaint was low energy. The chart notes state the patient's dizziness was "all gone."

30. The medical records for October 4, 2013, state the patient was revaluated and her chief complaint was upper back and neck tightness. There are no history or examination findings in the chart which reflect the new complaint. The chart notes that "dizziness was gone."

31. The medical records for October 14, 2013, state "neck tight same."

32. The medical records for November 7, 2013, show a note which states "ART is too

much" and "*want to know scar tx fee.*"

33. The medical records for November 25, 2013, state new chief complaints of "anxiety 7-8/10 heart pounding" as well as "upper leg buzzing."

34. There are medical records for a December visit, but the date of that visit is indecipherable. The medical records for that date state "anxiety 5/10" and the 'left leg buzzing feeling."

35. The medical records for December 16, 2013, state "no complaints" and "left leg same."

36. The medical records for January 11, 2014, state that the patient's chief complaint is "Neck scar tissue removal" and "Ft scar TX." Another chart note indicates an initial service of Re Nu Mi ART, sculpting on the "scar (neck and chest)" and "sample right breast."

37. The medical records for January 18, 2014, do not state a chief complaint. There are notations which state "1. Numbness (L)" with the following words illegible, "2. Vision (L) eye white" with the following words illegible, "3. (L) thigh buzzing." The chart note for this visit indicates Re Nu Mi ART with sculpting on the "scar (neck and chest)" and "fire cupping sample rt breast."

38. Use of a hypodermic needle for acupuncture treatment is governed by California Code of Regulations, title 16, section 1399.451, which states, in pertinent part: "(f) Acupuncture shall not be performed using hypodermic needles."

39. Respondent's use of a hypodermic needle to perform ART is an extreme departure from the standard of care.

40. When EH informed Respondent that she was experiencing silicone leakage and Respondent sent her flowers with a note of apology. The appropriate standard of care for responding to any complication arising from a patient's acupuncture treatment is governed by California Code of Regulations, title 16, section 1399.451, which states, in pertinent part:

"(e) Any complication, including but not limited to, hematoma, peritonitis or pneumothorax arising out of acupuncture treatment shall be referred immediately to a physician or dentist or podiatrist, if appropriate, if immediate medical treatment is required."

41. Respondent's failure to advise EH to immediately contact her primary physician or the specialist physician with whom EH had been receiving medical care is an extreme departure from the standard of care.

42. Based on Code sections 2051, the scope of what the holder of a physician and surgeon's certificate is authorized to do in the practice of medicine, and section 4827, subsection (d), which defines acupuncture, ART is not the practice of acupuncture but instead the unlawful practice of medicine when performed by an acupuncturist.

43. Respondent's performance of ART is an extreme departure from the standard of care.

44. Respondent's description of the ART technique as "an advanced acupuncture technique" for "non-invasive cosmetic surgery" for the stated purpose of altering the appearance of scars is false advertising and an extreme departure from the standard of care.

45. Standards of medical recordkeeping are determined by the Center of Medicare and Medicaid Services (CMS) as detailed in their 1997 "Documentation Guidelines for Evaluation and Management Services." The principles of documentation are applicable to all types of medical and surgical services in all settings and apply to non-physician providers in California which includes licensed acupuncturists.

46. The initial chief complaint for EH was dizziness. During the patient's treatments additional chief complaints of anxiety and low energy were noted by Respondent. The standard of care for the treatment of a complaint of dizziness requires further evaluation to determine the cause of the dizziness.

47. The standard of care to determine the cause of dizziness requires the acupuncturist to obtain a medical history and perform an appropriate examination.

48. An appropriate medical history requires a history of present illness (HPI) and a past family and social history (PFSH).

49. An appropriate physical examination includes the performance of a limited review of systems (ROS), and a physical examination.

50. Respondent's medical records did not provide a history or show that he performed a physical examination of EH to determine the cause of her dizziness. As a result, the patient's

evaluation and history are incomplete and Respondent's treatment of EH cannot be justified.

51. Respondent's failure to obtain a history of present illness, a past family and social history, a limited ROS, and an appropriate physical examination of EH when treating EH's complaints of dizziness are each a simple departure from the standard of care.

52. The standard of care for the treatment of a complaint of anxiety requires further evaluation to determine the cause of the anxiety.

53. The standard of care to determine the cause of anxiety requires the acupuncturist to obtain a medical history and perform an appropriate examination.

54. An appropriate medical history requires a HPI and a PFSH.

55. An appropriate physical examination includes the performance of a ROS, and a physical examination.

56. Respondent's medical records did not provide a history or show that he performed an appropriate examination of EH to determine the cause of her anxiety. As a result, the patient's evaluation and history are incomplete and Respondent's treatment of EH cannot be justified.

57. Respondent's failure to obtain a history of present illness, a past family and social history, a limited ROI, and an appropriate examination of EH when treating EH's complaints of anxiety are each a simple departure from the standard of care.

58. The standard of care for the treatment of a complaint of low energy requires further evaluation to determine the cause of the patient's complaint of low energy.

59. The standard of care to determine the cause of low energy requires the acupuncturist to obtain a medical history and perform an appropriate examination.

60. An appropriate medical history requires a HPI and a PFSH.

61. An appropriate physical examination includes the performance of a ROS, and a physical examination.

62. Respondent's medical records did not provide a history or show that he performed an appropriate examination of EH to determine the cause of her complaints of low energy. As a result, the patient's evaluation and history are incomplete and Respondent's treatment of EH cannot be justified.

63. Respondent's failure to obtain a history of present illness, a past family and social history, a limited ROS, and an appropriate examination of EH when treating EH's complaints of low energy are each a simple departure from the standard of care.

64. The standard of care for the treatment of a complaint of post-surgical scarring requires

a limited evaluation which includes an HPI with the date and description of the initial surgical procedures, any associated symptoms and/or factors, a limited ROS, a physical examination of the location, appearance, and dimensions of the scars, an assessment of the scarring, and a plan.

65. The standard of care for the treatment of a complaint of post-surgical scarring requires further evaluation.

66. Respondent's medical records did not provide an HPI with the date and description of the initial surgical procedures, a limited ROS, and an appropriate examination of EH when treating EH's complaints of post-surgical scarring. As a result, the patient's evaluation and history are incomplete and Respondent's treatment of EH cannot be justified.

67. Respondent's failure to obtain an HPI with the date and description of the initial surgical procedures, a limited ROS, and an appropriate examination of EH when treating EH's complaints of post-surgical scarring are each a simple departure from the standard of care.

CAUSE FOR DISCIPLINE

(Gross Negligence)

68. Respondent is subject to disciplinary action under 4955.2, subsection (a), in that he was grossly negligent in his care and treatment of EH. The circumstances are as follows::

69. Respondent's care and treatment of patient EH as set forth above includes the following acts and/or omissions which constitute extreme departures from the standard of care:

A. Respondent's use of a hypodermic needle to perform ART.

B. Respondent's failure to advise EH to immediately contact her primary physician or the specialist physician with whom EH had been receiving medical care when she notified him her breast implant was leaking after he performed ART.

C. Respondent's practice of medicine when he performed ART.

D. Respondent's misleading advertising of ART as acupuncture in his brochure and consent form.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

70. Respondent is subject to disciplinary action under section 4955.2, subdivision (b), of the Code, in that he has committed repeated acts of negligence in the practice of acupuncture. The circumstances are as follows:

71. Complainant refers to, and by reference incorporates herein paragraphs 15 through 8, 42, 45, 62, and 64-66, inclusive, above.

72. Respondent's care and treatment of patient EH as set forth above includes the following acts and/or omissions which constitute departures from the standard of care:

A. Respondent's use of a hypodermic needle to perform ART.

B. Respondent's failure to advise EH to immediately contact her primary physician or the specialist physician with whom EH had been receiving medical care when she notified him that her breast implant was leaking after he performed ART.

C. Respondent's practice of medicine when he performed ART.

D. Respondent's use of misleading advertising of ART as acupuncture in his brochure and consent form.

E. Respondent's repeated failure to obtain a history of present illness, a past family and social history, a limited ROS, and to conduct an appropriate physical examination of EH when treating EH's complaints of dizziness, anxiety, low energy and scarring.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

73. Respondent is subject to disciplinary action under section 4955, as defined by section 4955.1, subdivision (e), in that he failed to maintain adequate and accurate records relating to the services he provided to EH. The circumstances are as follows:

74. Complainant refers to, and by reference incorporates herein paragraphs 15 through 37, 39 through 41, 43-44, 48 through 67, inclusive, above.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

75. Respondent is subject to disciplinary action under section 4955.1, subdivision (e), of the Code, and California Code of Regulations, title 16, section 1399.453, in that he committed unprofessional conduct in his care and treatment of EH. The circumstances are as follows:

76. Complainant refers to, and by reference incorporates herein paragraphs 15 through 38, 42-62, and 64-66, inclusive, above.

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 AC 3059, issued to John Jungmim Kim, L.Ac.

2. Ordering John Jungmin 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 him 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: OCT 11 2016

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

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