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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KYONG KEUN KWAK, L.Ac.** 10063 Folsom Boulevard, #D Sacramento, California 95827 Acupuncture License No. AC 5461 Respondent.	Case No. 1A-2012-25 **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 ("Board").

2. On or about July 31, 1996, the Board issued Acupuncture License Number AC 5461 to Kyong Keun Kwak, L.Ac. ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

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JURISDICTION

3. This Accusation 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 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 [the Administrative Procedure Act], 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, 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.

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(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 an acupuncturist if 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 4955.1 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 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:

"..."

"(b) Repeated negligent acts."

"..."

10. California Code of Regulations, title 19, 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."

COST RECOVERY

11. 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.

12. 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 declaration.

"(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.

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"(d) In any judicial action for the recover 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 reimbursement for costs incurred and shall be deposited in the Acupuncture Fund."

FACTUAL SUMMARY

12. Respondent is employed at Asiana Acupuncture as a licensed acupuncturist. On or about April 12, 2012, at approximately 6:30 p.m., patient Julia K. received treatment at Asiana Acupuncture for back pain. Ms. K. began treatment with Respondent on July 27, 2011, when she presented with a primary complaint of a sore ankle and depression. Ms. K. received follow-up treatment on July 29, 2011, on August 1, 2011, and on August 8, 2011.

13. On April 23, 2012, Ms. K. made a complaint to the Acupuncture Board regarding her treatment on April 12, 2012. On May 3, 2012, the Acupuncture Board submitted a request that Ms. K's complaint be investigated. On June 22, 2012, Investigator Laura Avila was assigned to investigate Ms. K's complaint against Respondent. Ms. K. provided Investigator Avila with a signed authorization for the release of her medical records on October 15, 2012.

14. On or about October 15, 2012, Investigator Avila went to Asiana Acupuncture and requested to see the medical file that corresponded to Ms. K. The medical records for Ms. K. included records for July 27, 2011, July 29, 2011, August 1, 2011, and August 8, 2011. There were no records that showed Ms. K. received services in the month of April, 2012.

15. Investigator Avila spoke to Respondent and asked why there were no medical records present from April, 2012. Respondent admitted that, "he must have forgotten to make it, because she (Ms. K.) came in after hours." Investigator Avila took possession of Respondent's records as they related to Ms. K. Ms. K's records were in both Korean and English.

16. On or about September 30, 2013, a retained Acupuncture Board expert, Lance D. Lee, Lic. # AC 5461, reviewed and translated the records that related to Ms. K. Respondent's failure to document acupuncture treatment provided to Ms. K. on April 12, 2012, represented a departure from the standard of care.

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17. Respondent also failed to document Ms. K's progress in treatment, failed to list the results of findings, failed to document subsequent treatments, and failed to note physical measurements taken during the intake exam. Respondent's records as they related to Ms. K. represented a departure from the standard of care.

18. On or about October 15, 2012, Respondent suggested that Investigator Avila speak to a second patient named Beverly C. about her experiences receiving treatment from the Respondent. On November 2, 2012, Investigator Avila and Ms. Park, a Korean-English translator, met and interviewed Ms. C. Ms. C. explained that she had been going to Respondent for a year and half. Ms. C. agreed to have her medical records examined and signed an Authorization for Release.

19. On November 5, 2012, Investigator Avila sent Ms. C's authorization to Respondent's office. On December 6, 2012, Investigator Avila received Ms. C's records. Ms. C's records were in both Korean and English.

20. On or about, September 30, 2013, retained expert, Mr. Lee, reviewed and translated the records that related to Ms. C. Respondent had twelve records of treatment for Ms. C. between February 29, 2010, through January 7, 2012. Only one record, dated March 21, 2010, noted the progress of the patient. Also, there was a record for a price list that indicated Ms. C. had received treatments on June 20, 2011 and October 15, 2011, but the treatments and progress forms contained no record of treatments on those dates. Respondent's failure to document Ms. C's records indicated a departure from the standard of care.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate And Accurate Records)

21. Respondent is subject to disciplinary action under section 4955.1 (e) and California Code of Regulations 1399.453 in that Respondent failed to maintain adequate and accurate records. The circumstances are as follows:

22. Complainant refers to and, by reference incorporates herein paragraphs 12-20 inclusive, above as though fully set forth here.

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SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

23. Respondent is subject to disciplinary action under section 4955.2(b) in that Respondent committed repeated negligent acts. The circumstances are as follows:

24. Complainant refers to and, by reference incorporates herein paragraphs 12-20 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 Acupuncture License Number AC 5461, issued to Kyong Keun Kwak, L.Ac.

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: MAR 2 1 2014

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

Complainant

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