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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **HYO WEON KANG, L.Ac.** **14838 Magnolia Blvd.,** **Sherman Oaks, CA 91403** **Acupuncturist License No. AC 5730,** Respondent.	Case No. 1A-2014-160 **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, Department of Consumer Affairs.

2. On or about February 26, 1997, the Acupuncture Board issued Acupuncturist License Number AC 5730 to HYO WEON KANG, 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 October 31, 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:

"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.

"...

" (l) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

8. Section 651 of the Code states, in pertinent part:

"(a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A 'public communication' as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

"(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a

statement or claim that does any of the following:

"(1) Contains a misrepresentation of fact.

"(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3)

" . . .

"(5) Contains other representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

". . .

"(8) Includes any statement, endorsement, or testimonial that is likely to mislead or deceive because of a failure to disclose material facts.

". . .

"(e) Any person so licensed may not use any professional card, professional announcement card, office sign, letterhead, telephone directory listing, medical list, medical directory listing, or a similar professional notice or device if it includes a statement or claim that is false, fraudulent, misleading, or deceptive within the meaning of subdivision (b).

"(f) Any person so licensed who violates this section is guilty of a misdemeanor. A bona fide mistake of fact shall be a defense to this subdivision, but only to this subdivision.

"(g) Any violation of this section by a person so licensed shall constitute good cause for revocation or suspension of his or her license or other disciplinary action.

". . .

"(i) Each of the healing arts boards and examining committees within Division 2 shall adopt appropriate regulations to enforce this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

"Each of the healing arts boards and committees and examining committees within Division 2 shall, by regulation, define those efficacious services to be advertised by businesses or professions under their jurisdiction for the purpose of determining whether advertisements are false or misleading. Until a definition for that service has been issued, no advertisement for that service shall be disseminated. However, if a definition of a service has not been issued by a board

or committee within 120 days of receipt of a request from a licensee, all those holding the license may advertise the service. Those boards and committees shall adopt or modify regulations defining what services may be advertised, the manner in which defined services may be advertised, and restricting advertising that would promote the inappropriate or excessive use of health services or commodities. A board or committee shall not, by regulation, unreasonably prevent truthful, nondeceptive price or otherwise lawful forms of advertising of services or commodities, by either outright prohibition or imposition of onerous disclosure requirements. However, any member of a board or committee acting in good faith in the adoption or enforcement of any regulation shall be deemed to be acting as an agent of the state.

". . ."

9. Section 4936 of the Code states:

"(a) It is unprofessional conduct for an acupuncturist to use the title "Doctor" or the abbreviation "Dr." in connection with the practice of acupuncture unless he or she possesses a license that authorizes the use or possesses an earned doctorate degree from an accredited, approved, or authorized educational institution as set forth under Chapter 8 (commencing with Section 94800) of Part 59 of Division 10 of Title 3 of the Education Code, which is in acupuncture, oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturist as set forth in Sections 4927 and 4937.

"(b) The use of the title "Doctor" or the abbreviation "Dr." by an acupuncturist as authorized in subdivision (a) without further indicating the type of license or degree which authorizes that use shall constitute unprofessional conduct."

10. Section 4955.1 of the Code 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:

". . .

"(b) Committing a fraudulent or dishonest act as an acupuncturist.

". . .

"(d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.

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

11. 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."

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

"In treating a patient, an acupuncturist shall adhere to the following procedures:

". . .

"(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.

". . ."

13. 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."

14. California Code of Regulations, title 16, section 1399.455, states, in pertinent part:

"(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.

". . .

"(1) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

15. California Code of Regulations, title 16, section 1399.456, states:

"It is unprofessional conduct for an acupuncturist to use the title 'Doctor' or the abbreviation 'Dr.' in connection with the practice of acupuncture unless he or she possesses a license or certificate which authorizes such use or possesses an earned doctorate degree from an accredited, approved or authorized educational institution as set forth under Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 which is in acupuncture, Oriental medicine, a biological science, or is otherwise related to the authorized practice of an acupuncturist as set forth in Sections 4927 and 4937 of the Code.

"The use of the title 'Doctor' or the abbreviation 'Dr.' by an acupuncturist as authorized above without further indicating the type of license, certificate or degree which authorizes such use, constitutes unprofessional conduct."

COSTS

16. 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."

Facts

17. On or about August 22, 2014, the California Acupuncture Board (Board) received a complaint from PL[1] alleging that her mother took her 11 year old daughter, RV, to Respondent for acupuncture treatment and RV became seriously ill as a result of what occurred during Respondent's treatment.

The Board initiated an investigation of the events underlying this report through the Department of Consumer Affairs, Division of Investigation (DOI). The DOI investigator conducted an investigation regarding this complaint and prepared a report of that investigation for the Board.

18. RV, an 11 year old girl, told the DOI investigator that without RV's parents permission, on or about July 3, 2014, her grandmother took her to Respondent for acupuncture treatment.

19. RV's grandmother stayed in the room with her while Respondent treated RV. During RV's treatment RV told Respondent that she was allergic to nuts.

20. Respondent told RV that he could fix her allergies and then put acupuncture needles into the tops of her feet.

21. After Respondent put the acupuncture needles into RV's feet he got mixed nuts and instructed RV to eat the mixed nuts.

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

22. RV told Respondent that she could not eat the nuts because she is allergic to nuts after which Respondent instructed RV once more to eat the mixed nuts.

23. RV followed Respondent's instructions and ate the mixed nuts. Immediately after RV ate the mixed nuts her mouth and throat started to itch and hurt. RV told Respondent that her mouth and throat started to itch and hurt after she ate the nuts.

24. Respondent did not do anything to assist RV after RV told him her mouth and throat started to itch and hurt after she ate the mixed nuts. After RV told him her mouth and throat hurt Respondent told RV she needed ten (10) more visits with him to fix her allergies.

25. RV then felt her throat getting tight and told Respondent that her throat was getting tight. Respondent did nothing to help her after she told Respondent that her throat was getting tight, but did tell RV that should schedule more treatments with him.

26. After RV and her grandmother left Respondent's office her grandmother gave RV Benadryl and took RV home. RV vomited all night while her father, a medical doctor, observed and evaluated her physical condition throughout the night.

27. On or about December 30, 2014, the DOI investigator went to Respondent's practice in Sherman Oaks, California. Respondent's practice was closed and had a sign hanging on the door stating "on [sic]vacation from 12/29/14 to 1/6/15. Call make [sic] appointment (818) 385-0916 [sic] Dr. Henry Kang."

28. On or about January 14, 2015, the DOI investigator returned to Respondent's practice and interviewed Respondent. Respondent told the DOI investigator his true name was "Hyo Weon Kang" but that he uses the name Henry Kang. Respondent gave his business card which specified "Henry Kang's Acupuncture" to the DOI investigator.

29. Respondent had never notified the Board that he used the fictitious name "Dr. Henry Kang" to refer to himself in his acupuncture practice.

30. Respondent did recall treating RV and provided the DOI investigator with a copy of RVs treatment records. In RV's treatment records Respondent did not document that RV experienced an allergic reaction as a result of Respondent's treatment.

31. Respondent told the DOI investigator he treated RV with acupressure and

acupuncture and then instructed RV to eat a pistachio nut.

32. Respondent stated after eating the pistachio nut RV told him her throat hurt.

33. Respondent said he did not offer any assistance to RV when she told him her throat hurt because her grandmother knows how to treat RV's allergy.

Standard of Care

34. The standard of care regarding treatment of patients with nut allergies is to advise complete avoidance of nuts because of the unpredictable danger of anaphylactic shock[2] which can result in the patient dying a few minutes after eating nuts or having a secondary, delayed reaction later.

35. Treatment of a patient with a known nut allergy by giving the patient nuts to eat is a potentially life-threatening complications which an acupuncturist has no training or license to treat and is an extreme departure from the standard of care.

36. The standard of care regarding appropriate management of a patient's potentially dangerous complication from acupuncture treatment requires the acupuncturist to immediately call 911 or refer the patient to a physician for immediate medical evaluation, treatment and possible hospitalization for observation and further treatment.

37. The failure of an acupuncturist to refer a patient who experiences a potentially dangerous complication from acupuncture treatment to 911 or to a physician for immediate medical evaluation, treatment and possible hospitalization for observation and further treatment is an extreme departure from the standard of care.

38. The standard of care requires an acupuncturist to refrain from using the title "Doctor"

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[2] Anaphylactic shock is defined as a particularly severe form of allergic reaction, which may be fatal if not rapidly and properly cared for. Anaphylactic shock can cause the patient to stop breathing accompanied by a sudden collapse of blood pressure, which stops blood flow to the brain, heart and kidneys which results in cardiac arrest and death. The allergens which may bring on this condition are varied, and in some cases even a trace amount is enough to trigger full anaphylaxis. Because of its extremely quick action, this reaction is responsible for many deaths in the United States and worldwide. It is estimated that more than 125 people die each year as a result of anaphylaxis from food allergies. The symptoms of anaphylactic shock are varied, but often include a constriction of the airway, light-headedness and fainting, swelling of the neck and face, itching, and low blood pressure. A constricted airway, caused by a tightening of the bronchiole walls, is the most common cause of death in these cases. This will often occur within minutes of contact with the responsible allergen and, unless emergency assistance is on hand or very nearby, there is little one can do to restore air flow.

or the abbreviation "Dr." in connection with the practice of acupuncture unless possessed of a license or certificate or an earned doctorate degree which authorizes such use.

39. The use of the title "Dr." by an acupuncturist who does not possess a license or certificate or an earned doctorate degree which authorizes such use is a departure from the standard of care.

40. The standard of care requires an acupuncturist to notify the Board of the use of any false, assumed, or fictitious name other than the name under which the individual is licensed to practice acupuncture.

41. The failure of an acupuncturist to notify the Board of the use of any false, assumed, or fictitious name other than the name under which the individual is licensed as an individual to practice acupuncture is a departure from the standard of care.

42. The standard of care requires an acupuncturist to obtain written permission from a minor's parents to provide acupuncture treatment to the minor.

43. The failure of an acupuncturist to obtain written permission from a minor's parents to provide acupuncture treatment to the minor is a departure from the standard of care.

44. The standard of care requires that an acupuncturist ensure that family members other than the parents of a minor have the minor's parents' consent for elective medical treatment except in cases of emergencies.

45. The failure of an acupuncturist to assure that a minor's family members have the minor's parents' consent for the acupuncturist to provide elective medical treatment to the minor is a departure from the standard of care.

46. The standard of care requires an acupuncturist to 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. Failure of an acupuncturist to keep complete and accurate records on each patient who is given acupuncture treatment is unprofessional conduct.

47. The failure of an acupuncturist to keep complete and accurate records on each patient who is given acupuncture treatment is a departure from the standard of care.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

48. Respondent is subject to disciplinary action under section 4955.2, subdivision (a), in that he was grossly negligent in his care and treatment of his patient, RV. The circumstances are as follows:

49. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances in paragraphs 19 through 36.

50. Respondent's failure to conform to the applicable standard of care when treating patient RV, a patient with known allergies to nuts, includes the following act and/or omission which constitutes an extreme departures from the standard of practice:

A. Giving RV, a patient with a known allergy to nuts, nuts to eat created a potentially life-threatening complication which an acupuncturist has no training or license to treat.

SECOND CAUSE FOR DISCIPLINE

(Gross Negligence)

51. Respondent is subject to disciplinary action under section 4955.2, subdivision (a), in that he was grossly negligent in his care and treatment of his patient, RV. The circumstances are as follows:

52. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances in paragraphs 19 through 34, 37 and 38.

53. Respondent's failure to conform to the applicable standard of care for appropriate management of RV's potentially dangerous complication from Respondent's acupuncture treatment includes the following acts and/or omissions which constitute extreme departures from the standard of practice:

A. Respondent's failure to immediately call 911 to evaluate and treat RV after RV told Respondent that her mouth and throat started to itch and hurt after she ate the nuts Respondent instructed her to eat.

B. Respondent's failure to refer RV to a physician for immediate medical evaluation, treatment and possible hospitalization for observation and further treatment after RV felt her

throat getting tight and told Respondent.

THIRD CAUSE FOR DISCIPLINE

(Failure to Document)

54. 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 for failing to keep complete and accurate records of the care and treatment of patient RV. The circumstances are as follows:

55. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances in paragraphs 19 through 34.

FOURTH CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

56. Respondent is subject to disciplinary action under sections 4955.2, subdivision (b) and 4936, in that Respondent was repeatedly negligent in the care and treatment of RV. The circumstances are as follows:

57. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances in paragraphs 18 through 48.

58. Respondent's failure to conform to the applicable standard of care when treating patient RV includes the following acts and/or omissions which constitute departures from the standard of practice:

A. Giving RV, a patient with a known allergy to nuts, nuts to eat created a potentially life-threatening complication which an acupuncturist has no training or license to treat.

B. Respondent's failure to immediately call 911 to evaluate and treat RV after RV told Respondent that her mouth and throat started to itch and hurt after she ate the nuts Respondent instructed her to eat.

C. Respondent's failure to refer RV to a physician for immediate medical evaluation, treatment and possible hospitalization for observation and further treatment after RV felt her throat getting tight and told Respondent.

D. The use of the title "Dr." by an acupuncturist who does not possess a license or certificate or an earned doctorate degree which authorizes such use.

E. The failure of Respondent to notify the Board of the use of any false, assumed, or fictitious name other than the name under which he was licensed as an individual to practice acupuncture.

F. The failure of Respondent to obtain written permission from a RV's parents to provide acupuncture treatment to RV, a minor.

G. The failure of Respondent to assure that RV's family members have RV's parent's consent for Respondent to provide elective medical treatment to RV, a minor.

H. The failure of Respondent to keep complete and accurate records on the acupuncture treatment Respondent gave RV.

FIFTH CAUSE FOR DISCIPLINE

(Committing A Fraudulent Act)

59. Respondent is subject to disciplinary action under sections 4955.2, subdivisions (b), (c), (d), and (e), and California Code of Regulations, title 16, section 1399.453 for creating false medical records of the care and treatment of patient RV. The circumstances are as follows:

60. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances in paragraphs 19 through 34.

61. Respondent created false medical records of his care and treatment of patient RV by deliberately omitting a description of RV's allergic reaction to eating nuts pursuant to Respondent's repeated specific instruction to do so notwithstanding Respondent's knowledge that RV was allergic to nuts.

SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

62. Respondent is subject to disciplinary action under sections 4955 of the Code for unprofessional conduct. The circumstances are as follows:

63. Complainant refers to, and by reference incorporates herein as if fully set forth the facts and circumstances in paragraphs 19 through 62.

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 5730, issued to Hyo Weon Kang, L.A.c.;

2. Ordering Hyo Weon Kang, 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: FEB 17 2016

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

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