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FILED
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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SOO HYUCK IM, L.AC. Im's Acupuncture Clinic 6110 Orangethorpe Avenue Buena Park, CA 90620 Acupuncturist License No. AC5777, Respondent.	Case No. 1A-2015-164 **ACCUSATION**

Complainant alleges:

PARTIES

1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity as the Acting Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board).

2. On or about March 6, 1997, the Acupuncture Board issued Acupuncturist License Number AC5777 to Soo Hyuck Im, 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.

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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 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:

". . .

"(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.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"..."

5. 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."

6. 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."

7. 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.

"..."

8. California Code of Regulations, title 16, section 1399.450, states:

"Every acupuncture office shall be maintained in a clean and sanitary condition at all times, and shall have a readily accessible bathroom facility in accordance with Title 24, Part 2, Building Standards Code Sections 494A.1 and 1994 Uniform Building Code Section 2902.3."

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9. California Code of Regulations, title 16, section 1399.451, states:

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

"(a) The acupuncturist's hands shall be brush-scrubbed with soap and warm water immediately before examining patients or handling acupuncture needles and other instruments, and between patients.

"(b) All instruments shall be sterilized before and between uses in a manner which will destroy all microorganisms. All needle trays which contain sterile needles shall also be sterile. Each time instruments are sterilized, the acupuncturist shall use a tape or strip indicator which shows that sterilization is complete.

"(c) Acupuncture points, where needles are to be inserted, shall be cleaned with an appropriate antiseptic before insertion of the needle.

"(d) In the event an acupuncture needle inserted in a patient breaks subcutaneously, the treating acupuncturist shall immediately consult a physician. An acupuncturist shall not sever or penetrate the tissues in order to excise such a needle.

"(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.

"(g) All instruments to be discarded shall be disposed of safely.

"(h) Needles shall be disposed of by placing them in a sealed, unbreakable container marked 'Hazardous Waste' and disposed of in accordance with state and local law."

COST RECOVERY

10. 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.

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"(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

11. On July 1, 2015, the Board received a written complaint regarding Respondent's acupuncture clinic located at 6110 Orangethorpe Avenue in Buena Park, California. The complaint alleged that Respondent failed to follow proper infection control guidelines and failed to maintain sanitary conditions. Specifically, the complaint referenced unclean conditions and improper disposal of regulated waste at Respondent's clinic, as well as improper disposal of needles and syringes. The complaint was assigned to the Department of Consumer Affairs, Division of Investigation for subsequent investigation of these allegations.

12. On September 29, 2015, two investigators with the Department of Consumer Affairs, Division of Investigation conducted an unannounced site visit to Respondent's acupuncture clinic in Buena Park. The purpose of the visit was to investigate the allegations of unsanitary conditions and failure to follow proper infection control guidelines. The unannounced site visit included an interview of Respondent, inspection of the premises, and photographing observations of the clinic and equipment.

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13. Respondent's clinic is composed of four treatment rooms, one waiting room, one kitchen/lunch room, one office and one bathroom. Respondent told the investigators that he runs the acupuncture clinic alone and conducts all acupuncture procedures at the clinic.

14. At the time of the unannounced site visit, Respondent reported the following:

A. Respondent practices acupuncture and herbal medicine at his clinic, which includes alternative treatment referred to as "cupping therapy."[1]

B. Respondent confirmed that some patients will bleed during acupuncture or cupping therapy. Specifically, Respondent stated that he will lance (blood-let) the skin of a patient when he conducts cupping therapy. Respondent explained that he will clean the patient's skin with alcohol before lancing the skin with a disposable needle designed for this treatment. Respondent applies the cups and then removes all air from the cups using a special instrument.

C. Respondent stated that he reuses the cupping equipment between patients. When asked for further detail regarding the cupping equipment, Respondent stated that he cleans the plastic cups with hot water "over 100 degrees."

D. Respondent also prepares "herbal medicine" that he provides to his customers using an herbal extraction unit that is maintained at the clinic.

E. Respondent insisted that he uses sterilized acupuncture equipment after conducting a brief physical examination of each patient. Respondent elaborated that he uses alcohol with hot water to clean all of his acupuncture equipment.

F. Respondent claims to use only disposable needles and syringes. Respondent clarified that he disposes of these items in the red sharps containers located throughout the clinic.

G. Respondent disposes of medical waste in a standard trash receptacle.

H. Respondent stated that he does not have a contracted company to remove the needles, syringes and other medical waste from his clinic. Instead, Respondent takes these items home to his wife, who works as a nurse, and then she takes these items to her work for disposal.

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[1] "Cupping Therapy" is a form of alternative medicine in which a local suction is created on the skin, often using cups. The purpose of this method is to mobilize blood flow to promote healing. Respondent is authorized to conduct this procedure pursuant to Section 4927, subdivision (d) of the Code.

15. The investigators inspected and photographed Respondent's clinic. The investigators observed advertisements and equipment for cupping therapy. The investigators found a storage box containing several cups located on a table in the clinic and quickly noticed that the cups appeared to be old, deteriorated and in need of replacement.

16. While inspecting Respondent's acupuncture clinic the investigators also observed various red "sharps" containers, which are designed to safely hold used needles and syringes. The investigators quickly noticed that these sharps containers were either overfilled or inadequately sealed to prevent spillage or contamination.

17. Overall, the investigators observed dust and dirt on various chairs, tables and walls throughout Respondent's clinic. Additionally, the investigators noticed an accumulation of oil and residue on the herbal extracting unit and the adjacent wall in Respondent's clinic.

18. During the unannounced site visit to Respondent's acupuncture clinic, the investigators also observed that Respondent had an ultrasound machine in his possession. On February 8, 2016, the Department of Consumer Affairs, Division of Investigation sent Respondent a letter asking for clarification as to what the ultrasound machine was used for in Respondent's acupuncture practice.

19. On February 15, 2016, Respondent submitted a declaration that he signed and dated under the penalty of perjury under the laws of the State of California. Respondent declared that the ultrasound machine "is used on muscle pain/injury patients." Respondent further declared that the ultrasound machine was not frequently used, but admitted he used it a total of seven to ten times with the last occurrence being "a little over" two years ago. Respondent also indicated that he will remove the machine from his clinic and stated "it is not necessary for treating my muscle pain patients."

STANDARD OF CARE

20. **Condition of Office.** The standard of acupuncture practice in California is to maintain an acupuncture office in a clean and sanitary condition at all times.

21. **Sterilization of Equipment.** The standard of acupuncture practice in California is to sterilize acupuncture equipment before and between uses in a manner which will destroy all

microorganisms. Moreover, the standard of acupuncture practice in California requires the use of cleaning agents that are capable of removing visible organic residues (e.g., blood and tissue) and inorganic residues as soon as practicable after use on a patient.

22. **Storage of Sanitized Equipment.** The standard of acupuncture practice in California is to mark sterilized equipment with a tape or strip indicator showing that sterilization is complete. Furthermore, acupuncture equipment and devices must be handled using the aseptic storage technique to allow for adequate air circulation and to prevent moisture from contaminating the sterilized equipment by exposing it to microorganisms.

23. **Disposal of Needles, Syringes and Medical Waste.** The standard of acupuncture practice in California is to dispose of needles and syringes by placing them in a sealed, unbreakable container marked 'Hazardous Waste' and disposed of in a safe manner. Needles and syringes, in particular, should be discarded immediately after use and stored in sealed containers to prevent spillage or protrusion of contents during handling, storage or transport of the container. All other medical waste must be disposed of safely.

24. **Adherence to Infection Control Guidelines.** The standard of acupuncture practice in California is to protect patients by following infection control guidelines of the board, thereby reducing the risk of transmitting blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee.

FIRST CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

25. Respondent is subject to disciplinary action under Section 4955.2, subdivision (b) of the Code, California Code of Regulations, title 16, Section 1399.450, and California Code of Regulations, title 16, Section 1399.451, subdivision (b), (g), and (h), in that Respondent engaged in repeated acts of negligence. The circumstances are as follows:

26. Complainant refers to and, by this reference, incorporates paragraphs 11 through 24 above, as though fully set forth herein.

27. The following acts and omissions, considered individually and collectively, constitute repeated negligent acts:

A. Failing to properly clean and sterilize cupping equipment before and between uses;

B. Failing to properly mark sterilized equipment or utilize the aseptic storage technique between uses on patients;

C. Disposing of needles and syringes in an unsafe manner; and,

D. Failing to follow infection control guidelines designed to reduce the risk of transmitting blood-borne diseases.

E. Failing to maintain the acupuncture clinic in a clean and sanitary condition;

28. Respondent's acts and/or omissions as set forth in paragraphs 26 through 27 above, whether proven individually, jointly, or in any combination thereof, constitute repeated negligent acts pursuant to Section 4955.2, subdivision (b) of the Code, California Code of Regulations, title 16, Section 1399.450, and California Code of Regulations, title 16, Section 1399.451, subdivision (b), (g), and (h).

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

29. Respondent is subject to disciplinary action under Section 4955, subdivisions (d) and (e), Section 4927, and Section 4937 of the Code, as well as California Code of Regulations, title 16, Section 1399.450, and California Code of Regulations, title 16, Section 1399.451, subdivision (b), (g), and (h), in that Respondent engaged in unprofessional conduct. The circumstances are as follows:

30. Complainant refers to and, by this reference, incorporates paragraphs 11 through 24 above, as though fully set forth herein.

31. The following acts and omissions, considered individually and collectively, constitute unprofessional conduct:

A. Engaging in medical practice that exceeds the scope of Respondent's acupuncture license;

B. Failing to properly clean and sterilize cupping equipment before and between uses;

C. Failing to properly mark sterilized equipment or utilize the aseptic storage technique between uses on patients;

D. Disposing of needles and syringes in an unsafe manner; and,

E. Failing to follow infection control guidelines designed to reduce the risk of transmitting blood-borne diseases.

F. Failing to maintain the acupuncture clinic in a clean and sanitary condition;

32. Respondent's acts and/or omissions as set forth in paragraphs 30 through 31 above, whether proven individually, jointly, or in any combination thereof, constitute unprofessional conduct pursuant to Section 4955, subdivisions (d) and (e), Section 4927, and Section 4937 of the Code, as well as California Code of Regulations, title 16, Section 1399.450, and California Code of Regulations, title 16, Section 1399.451, subdivision (b), (g), and (h).

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 AC5777, issued to Soo Hyuck Im.

2. Ordering Soo Hyuck Im 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. Ordering Soo Hyuck Im, if placed on probation, to pay the Acupuncture Board the costs of probation monitoring; and,

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

DATED: MAY 23 2016

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

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