BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against:	)	Case No. D2-2002-5
	)	OAH No. 2010120944
JASON YOUNG MO KIM, L.AC. 14954 Chase Avenue Panorama City, CA 91402	)	
Acupuncture License No. AC 8104	)	
Respondent.	)	

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on AUG 17 2011.

It is so ORDERED JUL 18 2011.

Robert Brewer, Chair
Acupuncture Board
Department of Consumer Affairs
State of California

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition to Revoke Probation Against: **JASON YOUNG MO KIM** 14954 Chase Avenue Panorama City, CA 91402 Acupuncture License No. AC 8104, Respondent.	Case No. D2-2002-5 OAH No. 2010120944 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the Acupuncture Board of California (Board) the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Petition to Revoke Probation.

PARTIES

1. Janelle Wedge (Complainant) is the Executive Officer of the Board. She brought this action solely in her official capacity and is represented in this matter by Kamala D. Harris, Attorney General of the State of California, by Margaret J. Phe, Deputy Attorney General.

2. Respondent Jason Young Mo Kim (Respondent) is representing himself in this proceeding and has chosen not to exercise his right to be represented by counsel.

3. On or about September 18, 2001, the Board issued Acupuncture License No. AC 8104 to Respondent. The Acupuncturist's License expired on May 31, 2009, and has not been renewed.

JURISDICTION

4. Petition to Revoke Probation No. D2-2002-5 was filed before the Board, and is currently pending against Respondent. The Petition to Revoke Probation and all other statutorily required documents were properly served on Respondent on June 7, 2011. Respondent timely filed his Notice of Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation No. D2-2002-5 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Petition to Revoke Probation No. D2-2002-5. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to be represented by counsel at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. D2-2002-5.

9. Respondent agrees that his Acupuncturist's License is subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

10. This stipulation shall be subject to approval by the Acupuncture Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Acupuncture Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Acupuncture License No. AC 8104, issued to Respondent Jason Young Mo Kim, is revoked. However, the revocation is stayed for five business days subsequent to the effective date of this order and Respondent is continued on probation subject to the following conditions. If Respondent complies with the Cost Recovery condition set forth below, Respondent's probation will be terminated. If Respondent fails to comply with the Cost Recovery condition set forth below, the probation that was extended above will be revoked and the disciplinary order that was stayed will be automatically imposed, thereby revoking Acupuncture License number AC 8104 issued to Respondent Jason Young Mo Kim.

1. COST RECOVERY Respondent shall pay the Board the amount of $8,278.00 within 5 business days after the effective date of this Stipulated Settlement and Disciplinary

Order. Said payment shall be made payable to the Acupuncture Board of California by personal check or money order and mailed via Federal Express or certified mail to:

Acupuncture Board of California
c/o Kristine Brothers, Enforcement Coordinator
444 North 3rd Street, Suite 260
Sacramento, CA 95811

Upon the Board's receipt of the outstanding cost recovery amount, Respondent's probationary term shall be concluded. The Board waives it right to recover the additional costs in the amount of $4,590.00 incurred from the prosecution and investigation of the instant Accusation and Petition to Revoke Probation Case No. D2-2002-5. Respondent's failure to pay the $8,278.00 within 5 business days after the effective date of the Stipulated Settlement and Disciplinary Order shall result in automatic revocation of Acupuncture License number AC 8104 issued to Respondent Jason Young Mo Kim, as set forth above.

2. RENEWAL OF LICENSE

A. Fees

NOTICE IS HEREBY GIVEN TO RESPONDENT that his licensing fees due May 31, 2009, in the amount of $325.00, and May 31, 2011, in the amount of $325.00, for a total of $650.00 are delinquent. Therefore, a total of $675.00, including a late fee of $25.00, must be paid no later than May 31, 2012, to avoid termination/cancellation of his license under California Business and Professions Code sections 4966 and 4977.

B. Continuing Education Requirements

NOTICE IS HEREBY GIVEN TO RESPONDENT that proof of completion of 50 continuing education units by May 31, 2007, May 31, 2009, and May 31, 2011, has not been satisfied. Therefore, proof of a total of 150 continuing education requirements must be submitted to the Board no later than May 31, 2012, to avoid termination/cancellation of his license under California Business and Professions Code sections 4966 and 4977.

ACCEPTANCE

I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the stipulation and the effect it will have on my Acupuncturist's License. I enter into this Stipulated

Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: 6-8-11

JASON YOUNG MO KIM
Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

Dated: June 8, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
E. A. JONES III
Supervising Deputy Attorney General

MARGARET J. PHE
Deputy Attorney General
Attorneys for Complainant

LA2010504145
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ATTACHMENT A

Accusation and Petition to
Revoke Probation

FILED

SEP 20 2010

ACUPUNCTURE BOARD

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BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation/Petition to Revoke Probation Against, JASON YOUNG MO KIM 14954 Chase Avenue Panorama City, California 91402 Licensed Acupuncturist No. AC 8104, Respondent.	Case No. D2-2002-5 **ACCUSATION AND PETITION TO REVOKE PROBATION**

Complainant alleges:

PARTIES

1. Janelle Wedge (Complainant) brings this Accusation and Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Acupuncture Board of California (Board).

2. On or about September 18, 2001, the Board issued Acupuncture License number AC AC 8104 to Jason Young Mo Kim (Respondent). The Acupuncturist's License expired on May 31, 2009, and has not been renewed.

JURISDICTION

3. In a disciplinary action entitled "In the Matter of the Accusation Against Jason Young Mo Kim," Case No. 1A-2002-5, the Board, issued a decision, effective September 21, 2005, in

which Respondent's acupuncture license was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

4. This Accusation and Petition to Revoke Probation 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.

5. 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.

". . .

GROUNDS FOR DISCIPLINE

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

6. Respondent is subject to disciplinary action under Business and Professions code section 4955, subdivision (d), in that he has violated the terms of the chapter by failing to comply with the Board's Order to pay to the Board its costs of investigation and enforcement incurred from the disciplinary action entitled "In the Matter of the Accusation Against Jason Young Mo Kim," Case No. 1A-2002-5, in the amount of $11,278 prior to the end of his probationary term, September 21, 2010. The circumstances are as follows:

A. On or about August 23, 2005, the Board issued a final decision and order in "In the Matter of the Accusation Against Jason Young Mo Kim," Case No. 1A-2002-5, (Order) placing Respondent on probation for five (5) years, suspending him from the practice of acupuncture for thirty (30) days, and requiring him to comply with certain terms and conditions,

including paying the Board its costs of investigation and enforcement in the amount of $11,278 before the conclusion of his probationary term.

B. Respondent met with Division of Investigation Senior Investigator Mark Felton, who thoroughly reviewed with Respondent each and every term and condition of his probation, on the following dates during the following years:

2006	2008
February 15, 2006	February 15, 2008
May 18, 2006	May 8, 2008
August 18, 2006	August 12, 2008
November 29, 2006	November 17, 2008
2007	2009
May 15, 2007	February 12, 2009
September 7, 2007	May 13, 2009
November 21, 2007	August 5, 2009
	November 5, 2009
	2010
	February 10, 2010
	May 26, 2010
	July 21, 2010

During all of the aforementioned interviews, Senior Investigator Felton discussed with Respondent the requirements of the Order set forth in paragraph A above. Further, Respondent informed Senior Investigator Felton during each and every meeting that he was aware that he was required to reimburse the Board a total of $11,278 for its investigation and enforcement costs by the end of his probationary term. From February 2006 through August 19, 2010, Respondent paid $3,000 towards his cost recovery obligation. However, to date, there is an outstanding balance of $8,278.00 that Respondent has failed to pay. Respondent's probationary term ends on September 21, 2010. He has failed to comply with each and every term and condition of probation, thereby violating the Order.

GROUNDS FOR REVOCATION OF PROBATION

FIRST CAUSE FOR REVOCATION OF PROBATION

(Failure to pay Costs)

7. At all times after the effective date of Respondent's probation, Condition 9 of the Order stated, inter alia: "Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $11,278. However, Respondent may make payments in installments upon written request to, and written approval, by the Board."

Respondent's probation is subject to revocation because he failed to comply with Probation Condition 9, referenced above. The facts and circumstances regarding this violation are as follows:

A. The facts and circumstances set forth above in paragraph 6 are incorporated here as if fully set forth.

DISCIPLINE CONSIDERATIONS

8. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about August 23, 2005, effective September 21, 2005, in a prior disciplinary action entitled, "In the Matter of the Accusation Against Jason Young Mo Kim," before the Board, in Case Number 1A-2002-5, Respondent's license was revoked. However, revocation was stayed and Respondent was suspended for 30 days and placed on probation for five years. That decision is now final and is incorporated by reference as if fully set forth.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Acupuncture Board of California issue a decision:

1. Revoking or suspending Acupuncture License number AC 8104, issued to Respondent Jason Young Mo Kim;

2. Revoking the probation that was granted by the Acupuncture Board in Case No. 1A-2002-5 and imposing the disciplinary order that was stayed, thereby revoking Acupuncture License number AC 8104 issued to Respondent Jason Young Mo Kim;

3. Ordering Respondent Jason Young Mo Kim, if placed on probation, to pay the Board the costs of probation monitoring;

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

DATED: SEP 20 2010

JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

LA2010504145

Exhibit A

Decision and Order

Acupuncture Board Case No. D2-2002-5

FILED

AUG 25 2005

ACUPUNCTURE BOARD

COPY

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	Case No. 1A-2002-5 OAH No. L-2005030444
JASON YOUNG MO KIM 14954 Chase Street Van Nuys, CA 91402	
Acupuncture License No. AC-8104	
Respondent.	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in the above-entitled matter.

This Decision shall become effective SEP 21 2005.

IT IS SO ORDERED AUG 23 2005.

Shari Asplund
Chair
Acupuncture Board
Department of Consumer Affairs
State of California

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: JASON YOUNG MO KIM 14954 Chase Street Van Nuys, CA 91402 Acupuncture License No. AC-8104 Respondent.	Case No. 1A-2002-5 OAH No. L2005030444

PROPOSED DECISION

This matter was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings, on July 5 and 6, 2005, in Los Angeles, California. Complainant was represented by John E. DeCure, Deputy Attorney General. Jason Young Mo Kim (Respondent) was present and was represented by Sung Park, Attorney at Law.

At the hearing, the Accusation was amended as follows:

In paragraphs 7 through 12, under the First Cause for Discipline,[1] at page 4, lines 16, 17, 18, 19 and 23, and page 5, lines 1, 2, 5, 6, 7, 9, 12, 14, 16, 17, 18, 19, 20, 21, 22, 24 and 26, the name "Ross" was changed to "Moss."

In paragraph 19, page 7, line 8, the date "April 15" was changed to "April 18."

Paragraph 20 was stricken.

Oral and documentary evidence was received and argument was heard. The record was held open until July 13, 2005, to allow Respondent to submit additional evidence regarding his license status and to permit Complainant to respond. Respondent timely submitted a copy of a pocket license, which was marked as Respondent's Exhibit E. Complainant having filed no response, Respondent's Exhibit E was admitted. On July 13, 2005, the record was closed and the matter was submitted for decision.

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[1] The paragraphs in the Accusation were consecutively numbered, but repeated numbers 6, 7 and 8 under the First Cause for Discipline.

FACTUAL FINDINGS

1. On October 13, 2004, Complainant Marilyn Nielsen filed the Accusation while acting in her official capacity as the Executive Officer of the Acupuncture Board (Board), Department of Consumer Affairs, State of California.

2. On September 18, 2001, the Board issued Acupuncture License No. AC-8104 to Respondent. That license is in full force and effect and will expire on May 31, 2007, unless renewed.

3. Respondent moved to the United States from his native Korea in 1982. That year, he began serving as a preacher with the Korean American Presbyterian Church and is currently the senior pastor at the Los Angeles Calvary Korean Church, which he founded in 1997. Respondent began studying acupuncture in 1998 because he wanted to help churchgoers with their "fleshly suffering" and because he wanted to be prepared for future missionary service outside the United States.

4. In 2001, Respondent became aware that S.K., one of his church members and a licensed acupuncturist, was in need of employment. Respondent accompanied S.K. to Artesia Health Therapy (AHT), located at 6693 Downey Avenue in Long Beach, for an interview arranged in response to a Korean newspaper advertisement seeking an acupuncturist. At AHT, they were met by a woman who told them that the acupuncturist whose license was on the wall, Tae Ho Park, was not feeling well and needed help. S.K. accepted employment at AHT for four days per week, and Respondent agreed to work one day per week. Respondent's part-time employment allowed him to gain acupuncture experience while freeing him to take care of his church for the remainder of the week.

5. Respondent began working at AHT in November of 2001. His shift at AHT ran from 2:00 p.m. to 8:00 p.m., originally on Tuesdays, but later changed to Thursdays.[2] On a typical shift, Respondent treated only one or two patients and sometimes no patients at all. During most of his shift, he stayed in his office and read his Bible or studied his Chinese medicine books. He occasionally left his office and took naps in his van. For his services, Respondent was paid $70 to $100 a day, in cash, which was tendered by the receptionist when Respondent ended his shift.

6. During his employment at AHT, Respondent did not interact with other employees. He left his office only to go to his van or to use the restroom which was down a hallway, along which "patient" rooms were located. When he left his office on these occasions, he saw female employees who were dressed in white nurses' outfits with short

[2] Respondent originally testified that he began working on Thursdays and later switched to Tuesdays. However, on cross examination, he admitted that he was confused and that he may have started working Tuesdays and then changed to Thursdays. This later testimony was corroborated by Respondent's presence at AHT on a Thursday during the later part of his employment, as set forth in Factual Finding 11.

skirts. He never saw female patients in the waiting area. Throughout his entire employment with AHT, he personally treated 20 to 40 patients, only one of whom was female.

7. The parties stipulated to the following facts:

(a) As set forth in the Accusation, paragraph 7 under the First Cause for Discipline:

> On or about November 20, 2001,[3] Long Beach Police Department Detectives went to the Artesia Health Therapy facility to conduct an undercover investigation. Detective Moss (Moss) entered the premises and after being greeted at the front desk, was led down a hallway into room 7. There, Moss paid three $20 pre-marked bills for a 45 minute massage and was asked if he was interested in an Asian or Latina girl. Moss asked for an Asian girl and was told he could take a shower if he so desired. After taking a shower, Moss sat on a bed located in the room and waited. Shortly thereafter, Y.K.[4] entered the room and shut the door after her.

(b) As set forth in the Accusation, paragraph 8 under the First Cause for Discipline:

> Y.K. was wearing a see-through nurse's outfit that was approximately mid-thigh in length. Y.K. led Moss to a bed where he laid face-down. Y.K. straddled Moss and began massaging him on his shoulders, neck, back, and legs. After approximately 10 minutes Y.K. turned Moss around to face her.

(c) As set forth in paragraph 9 of the Accusation:

> As Moss was looking at Y.K., she took her left hand and made a circle with her left thumb and left forefinger. Y.K. then took her right forefinger which was pointed straight and began putting it in and out of the circle she had made with her left hand. Understanding that this was a common signal for sexual intercourse, Moss asked Y.K. how much it was going to cost. Y.K. then took her left hand and grabbed Moss's left hand and palpated the numbers 1-3-0 in his palm. Moss got off the bed and went over to his belongings, where he removed seven $20 pre-marked bills and handed them to Y.K. She then left the room with the money and came back approximately one minute later. She walked over to the light and

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[3] The Administrative Law Judge (ALJ) takes official notice that November 20, 2001 was a Tuesday.

[4] To protect the privacy of witnesses, only their initials are used.

dimmed it, and Moss gave a pre-arranged signal to the assisting detectives.

(d) As set forth in paragraph 10 of the Accusation:

Y.K. then started taking her dress and underwear off. With her underwear in hand, she attempted to put it inside Moss's underwear. He stopped her from placing the underwear inside his and she proceeded to throw her underwear on the floor. Y.K. then stuck her tongue out and flicking [sic] it back and forth in an effort to kiss Moss. He told her he was not interested in kissing her. Y.K. then removed her bra and kneeled on the bed with her buttocks in the air towards Moss. After about 5 seconds, she rolled around and pulled her legs under her. Y.K. then started to rub her genital area while signaling Moss to come toward her.

(e) As set forth in paragraph 11 of the Accusation:

Moss stood up and said he needed to get a condom from his jeans. While looking through the pockets, Y.K. approached Moss and showed him an unwrapped condom she had in her hands. She then knelt down in front of Moss and attempted to take off his underwear.

(f) As set forth in paragraph 12 of the Accusation:

Moss then said he had to urinate and went into the shower stall. Fearing that the other detectives had not received his pre-arranged signal, Moss went to his clothes and took out his cell phone. He called another detective while Y.K. began to get suspicious and tried to stop him. Y.K. then put on her clothes and ran out of the room. With the door open, Moss observed two other females running out of rooms 5 and 6. He also noticed Hispanic males lying on the beds in both rooms. Moss left the room and was greeted by the other detectives. They arrested Y.K. for prostitution.

(g) As set forth in paragraph 13 of the Accusation:

Subsequent to the arrest, detectives found that all the other girls present were also wearing see-through nurse's outfits. Inside the "doctor's office" on the premises was a male Asian wearing a white doctor's robe, identified as S.K. He produced an acupuncture board card for the detectives. In the doctor's office, the detectives also found two other acupuncturists' certificates posted on the wall. One of those certificates belonged to Jason Young Mo Kim, the respondent.

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///

(h) Pursuant to stipulation of the parties at the administrative hearing:

The names of the other acupuncturists whose certificates were found on the wall on November 20, 2001, were Suh Kyung Kim and Tae Ho Park.

(i) Pursuant to stipulation of the parties at the administrative hearing:

On January 11, 2002, Y.K. was convicted in Los Angeles Superior Court, in Case Number 1LM08904, of having violated Penal Code section 647, subdivision (b) (solicitation of/agreement to engage in prostitution), on November 20, 2001, a misdemeanor.

(j) As set forth in paragraph 14 of the Accusation:

On or about January 3, 2002,[5] the Long Beach Police Department conducted another undercover investigation at Artesia Health Therapy. Detective Covarubias (Covarubias) entered Artesia Health Therapy and was led down the hallway into room number 9. He paid eighty dollars (four pre-marked $20 bills) for a sixty-minute massage. Covarubias was then asked what type of girl he wanted, Asian or Latina, to which he answered Asian. A few minutes later a female identified as H.Y. entered the room.

(k) As set forth in paragraph 15 of the Accusation:

H.Y. asked Covarubias if he wanted a shower. After he answered yes, he was instructed to remove his clothing and put on a towel. H.Y. then led Covarubias down the hall and into the shower room where a bed was present near the north end. Covarubias was instructed to remove his towel and underwear, and lie on the bed. H.Y. proceeded to give Covarubias a bed bath which lasted approximately 5 minutes.

(l) As set forth in paragraph 16 of the Accusation:

After the bed bath, Covarubias put the towel on again and was led back down the hall into room 9, then lay down on a bed per H.Y.'s instructions. H.Y. straddled him and began giving him a massage. After approximately 5 minutes, H.Y. turned Covarubias around and asked him if he wanted "everything." After Covarubias asked how much "everything" was going to cost, they negotiated a price of $100 dollars and Covarubias handed five pre-marked $20 bills to H.Y. H.Y. counted the money and then briefly left the room.

[5] The ALJ takes official notice that January 3, 2002 was a Thursday.

(m) As set forth in paragraph 17 of the Accusation:

> When she reappeared, H.Y. had a tissue paper in hand which she placed on the end table. She proceeded to dim the lights and take off the nurse's uniform she was wearing. When she was completely naked, H.Y. straddled Covarubias. In an attempt to get H.Y. to stop touching him, Covarubias asked her to stand on the table end. She asked if he wanted her to dance. When he replied yes, she told him it would cost another $40, which Covarubias paid with two marked $20 bills.

8a. On January 3, 2002, Detective Thomas Brown (Brown) assisted Covarubias with the undercover operation. When detectives entered the building to make arrests, Brown found Respondent in the office at the front of AHT and saw Respondent's acupuncture license hanging on the wall. Upon Brown's request, Respondent presented his identification. Brown displayed his badge and told Respondent that he was conducting an investigation regarding prostitution at AHT. Brown told Respondent to stay in the office, and Respondent complied. Respondent did not witness any arrests made on January 3, 2002, nor did Brown ever tell Respondent that anyone was arrested that day. Brown communicated with Respondent with the interpretation assistance of another AHT employee.

8b. Respondent testified that he was not told why the police officers had come to AHT and that he believed the officers were merely checking to make sure he had an acupuncture license. However, Respondent's testimony was not persuasive. Since Respondent's testimony was generally vague and marked with his inability to recall specifics,[6] the more precise recollection of Brown was more convincing. Furthermore, it appeared that Respondent understood the translated information Brown conveyed to him, since Respondent complied with Brown's order to remain in the office on January 3, 2002.

9a. With regard to the police operation at AHT on January 3, 2002, paragraph 18 of the Accusation alleges:

> . . . The respondent was wearing a white doctor's coat and told the officers that it was his first day working at Artesia Health Therapy. . . .

This allegation was not proven by clear and convincing evidence.

9b. During Respondent's testimony, he stated that he was not worried when Brown asked to see his license, because he was "only working there one day." It was apparent from the context of Respondent's testimony that he meant that he was only working at AHT one day per week. If Respondent had used the same wording when speaking to

[6] For example, Respondent did not recall the date or even the month he met with police at AHT; he did not recall the name of the officer with whom he met; he did not recognize Detective Brown at the administrative hearing; and he could not recount specifically what was discussed during their meeting.

Brown on January 3, 2002 as he used in his testimony at hearing, there may have been a misinterpretation by Brown that Respondent meant it was his first day of work. Since there was no evidence regarding the specific words Respondent used on January 3, 2002, it was not proven that Respondent specifically told Brown it was his "first day" of work at AHT.

10. Respondent quit his employment with AHT in April of 2002. He terminated his employment because the commute from his home was too long and because "police were coming into the business" and he thought that something "bad" was going on there. Respondent's testimony indicated that he noticed some police activity at AHT in April of 2002.

11a. Paragraph 19 of the Accusation alleges:

> On or about April 18, 2002, officers made an undercover investigation of Artesia health Therapy. Their investigation led to the arrest of a woman calling herself "BeBe" for prostitution. The officers also found the respondent present at Artesia Health Therapy when they made the arrest.[7]

This allegation was not proven by clear and convincing evidence.

11b. While it was established that Respondent worked at AHT until some point in April of 2002, it was not proven by clear and convincing evidence that Respondent was present at AHT on April 18, 2002.

12. AHT was a prostitution operation that was shut down in late 2002, after a two-year investigation by the Long Beach Police Department vice division involving several undercover operations. Former Sergeant McAuley, who supervised the vice investigation and visited AHT over 100 times, never saw a female patient at AHT. Additionally, he observed that the female employees, whose ages ranged from their early 20s to age 41, wore white nurses' outfits transparent enough to see through.[8]

13. During the time Respondent was employed at AHT, massage therapists at AHT were soliciting, agreeing to engage in, and performing acts of prostitution in violation of Penal Code section 647, subdivision (b).[9]

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[7] The Administrative Law Judge takes official notice that April 18, 2002 was a Thursday.

[8] Sergeant McAuley testified that the female employees stopped wearing the transparent nurses' outfits at the beginning of 2002.

[9] As defined by Penal Code section 647, subdivision (b), "prostitution" includes "any lewd act between persons for money or other consideration."

14b. Respondent disavowed any knowledge of the prostitution activity at AHT. He stated that he did not know exactly what the female employees did, but that he believed they were providing acupressure. He denied having any suspicion or concern about his lack of patients or about what he observed at AHT, stating that he did not pay attention to what was happening because he was reading the Bible, studying his Chinese medicine books and napping in his van.

14b. Respondent's testimony is credible regarding his lack of direct knowledge of prostitution. However, Respondent did have constructive knowledge of the prostitution activity at AHT (see Legal Conclusion 10.)

15. Respondent never hired anyone to work at AHT. He never gave instructions to, nor did he exercise any control over, any of the female workers.

16a. Respondent failed to report to the Board his practice of acupuncture at AHT, located at 6693 Downey Avenue, Long Beach, California.

16b. Respondent explained that, since he only worked part-time at AHT and since it was not "his business;" he was not aware he was required to report his employment at AHT. This reasoning was erroneous and does not excuse him the reporting requirement.

17. Complainant submitted evidence of the following costs of investigation and prosecution of this matter:

(a) The investigator from the Division of Investigation (DOI), Department of Consumer Affairs, assigned by the Board to investigate this case, prepared and executed a declaration, documenting the time he billed for this case. The declaration stated that, for the fiscal year 2002/2003, he spent 9 hours at a rate of $120 per hour, and for the fiscal year 2003/2004, he spent 22 hours at $120 per hour, for a total investigation cost of $3,720. Paragraph 4 of his declaration specified his tasks as follows:

> The total time I spent working on this case to date consisted of the following activities:
>
> A. 17.5 Hours of Investigation which included:
> (1) Review and preparation of assignment upon receipt.
> (2) Communicating with client agency personnel.
> (3) Contacting and interviewing victim(s), witness(es) and the subject.[10]
> (4) Collecting, organizing and evaluating documentation and other physical evidence.[11]

[10] The investigator's testimony indicated that he interviewed one witness once and Respondent twice.

[11] These consisted of three police reports and a photo lineup.

(5) Research.
(6) Conferring with supervisor.

B. 0.5 Hours of Travel which included time traveling to and from the locations necessary to conduct the activities set forth above.

C. 13.0 Hours of Report Preparation which included case file organization, preparing attachments, editing and preparing and transmitting final report.

(b) The Deputy Attorney General submitted a declaration, documenting the time he billed for this case. The declaration stated that, for the fiscal year 2003/2004, he billed 2.50 hours @ $132 (subtotal $330). These costs included 2.00 hours of case evaluation/ assessment and .50 hours of research. For the fiscal year 2004/2005, he billed 52 hours @ $139 (subtotal $7,228). These costs included: .25 hours of case evaluation/assessment; 8 hours of pleading preparation; .25 hours of client communication; 1.00 hour of document preparation; 2.00 hours of case management; 1.75 hours of communication with other party; 1.75 hours for prehearing conference; 29.50 hours trial preparation; and 7.50 hours of witness related preparation. The total Attorney General costs billed to the Board were: $7,558.00.

18. There was no evidence that any of the costs were unreasonable.

19. The evidence established that Complainant incurred total costs of $11,278 in the investigation and prosecution of this matter, all of which were reasonable.

LEGAL CONCLUSIONS

1. Cause exists to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 731, subdivision (a), on the grounds that Respondent aided and abetted prostitution on his work premises, as set forth in Factual Findings 4, 5, 6, 7, 8, 10, 12, 13 and 14, and Legal Conclusions 7, 8, 9, 10 and 11.

2. Cause exists to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 4955, subdivision (j), for unprofessional conduct in that the violation of a law substantially related to the qualifications, functions and duties of an acupuncturist occurred on Respondent's business premises by a person who was working under Respondent's acupuncturist license, as set forth in Factual Findings 4, 5, 6, 7, 8, 10, 12 and 13.

3. Cause exists to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 4955, subdivision (j), in conjunction with section 119, on the grounds that Respondent knowingly permitted the unlawful use of his acupuncture license to facilitate the crime of prostitution, as set forth in Factual Findings 4, 5, 6, 7, 8, 10, 12, 13 and 14, and Legal Conclusions 7, 8, 9, 10 and 11.

4. Cause exists to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 4955, subdivision (d), on the grounds that Respondent violated the terms of chapters 1 and 12 of the Business and Professions Code or regulations adopted by the Board, as set forth in Factual Findings 4, 5, 6, 7, 8, 10, 12, 13 and 14, and Legal Conclusions 7, 8, 9, 10 and 11.

5. Cause exists to revoke or suspend Respondent's acupuncture license, pursuant to Business and Professions Code section 4961, on the grounds that Respondent failed to register with the Board his place of practice at Artesia Health Therapy, as set forth in Factual Findings 5 and 16.

6. Pursuant to Business and Professions Code section 125.3, Complainant is entitled to recover reasonable costs of investigation and prosecution of this matter in the amount of $11,278, as set forth in Factual Findings 17, 18 and 19.

Discussion:

7a. Relying on *Khan v. Medical Board* (1993) 12 Cal.App.4th 1834, Complainant argued that, even if Respondent did not have knowledge that prostitution was occurring, he is subject to discipline under Business and Professions Code section 731 because the statutory language "aids or abets," in the disjunctive, means that knowledge is not a prerequisite. Complainant's argument is faulty.

7b. In *Barrett v. Board of Osteopathic Examiners* (1935) 4 Cal.App.2d 135, the Court of Appeal interpreted statutory language which defined unprofessional conduct, in part, as "aiding or abetting any unlicensed person to practice any system or mode of treating the sick or afflicted." (4 Cal.App.2d at 138-139.) The *Barrett* Court reasoned:

> The use of the words 'aiding' and 'abetting' in the disjunctive, if the statute is to receive literal interpretation, would permit the conviction of a physician who had no knowledge that his employee was doing acts in violation of the law. The word 'aid' imputes no knowledge or notice of the unlawful act or purpose, whereas the word 'abet' presupposes a guilty knowledge upon the part of the one accused. It is clear that the statute should not be given such an interpretation as would admit of the conviction of one who has no guilty knowledge or willful intent respecting the commission of the prohibited act. Such construction manifestly would be utterly unreasonable and would render the provision nugatory, as an unwarranted and arbitrary assumption of legislative authority. If such had been the intention of the legislature the word 'abet' would not have been used at all and while it cannot be assumed that the terms were intended to be used in the conjunctive, it must be assumed that it was not the intention

of the legislature to make the mere 'aiding' in the act a violation of the law unless such aid be wrongfully and knowingly extended.

(*Id.* at 139.)

Therefore, in order to discipline a licensee for "aiding or abetting" an unlawful act, there must be knowledge of the unlawful act so as to impute to the licensee consent to or acquiescence to the unlawful act. (*Id.* at 140.)

7c. In *Khan*, *supra*, the Court held that, apart from the "aiding or abetting" language, the imposition of discipline for employing an unlicensed person (under Business and Professions Code sections 2234 and 2264) did not require a licensee's knowledge that his employee was unlicensed. The *Khan* Court reasoned:

> The Legislature's failure to include "knowingly" or "intentionally" or other qualifying words signals that it did not intend either guilty knowledge or intent to be elements of the unprofessional conduct of violating section 2264 by employing an unlicensed person. [Citations.]

(12 Cal.App.4th at 1844 - 1845.)

The *Khan* Court distinguished the *Barrett* decision, noting:

> The *Barrett* court stated that there was no evidence that the unlicensed person in that case was "employed to render any treatment for the sick or afflicted." (4 Cal.App.2d at p. 138.) Therefore, the court had to determine whether, alternatively, the revocation of the license of the medical practitioner could be sustained on the theory that he aided or abetted the unlicensed practitioner in giving treatments. (*Ibid.*)
>
> . . . As it happened, the court found that the evidence did not support a finding of intent which was required in order to affirm under an aiding or an abetting theory. (4 Cal.App.2d at 140.) However, *Barrett* does not compel reversal in this case, where the evidence strongly supports the finding that appellant employed [the unlicensed person] to engage in the practice of medicine, and there is no need to rely on an aiding or abetting theory to affirm the trial court's ruling.

(12 Cal.App.4th at 1843.)

8a. Here, like *Barrett* and unlike *Khan*, the question is not whether Respondent employed unlicensed persons, but whether Respondent "aided or abetted" unlawful activity (i.e. the violation of Penal Code section 647) occurring on his work premises. Under *Barrett's* reasoning, in order to impose discipline upon Respondent for violation of Business

and Professions Code section 731, he must have had knowledge of the prostitution activity such that he permitted or acquiesced to its occurrence at AHT while he was employed there.

8b. In this case, the analysis under Business and Professions Code section 731 is similar to the analysis under Business and Professions Code section 119, subdivision (e), regarding whether Respondent knowingly permitted the unlawful use of his license. Under both analyses, Respondent must have had knowledge of the prostitution and permitted its occurrence on premises at which he utilized his license.

9. Actual or constructive knowledge is required before a licensee can be found to have "permitted" unlawful conduct on licensed premises. (See, *Laube v. Stroh* (1992) 2 Cal.App.4th 364.)[12] With constructive knowledge as a criterion for determining whether a licensee "permitted" unlawful acts to occur on site, a licensee is thereby prevented from "turning a blind eye" or deliberately attempting to avoid actual knowledge of the prohibited conduct. Constructive knowledge is established if the person charged with having knowledge "had notice of facts sufficient to put a prudent man upon inquiry and if so, whether an inquiry, reasonably conducted, would have disclosed to him the true state of affairs. (Citations.)" (*Sime v. Malouf* (1949) 95 Cal.App.2d 82.)

10a. In this case, Respondent had constructive knowledge of prostitution activity occurring at AHT during the time he worked as one of the clinic's acupuncturists. Respondent was aware that (1) AHT's clientele was virtually exclusively male; (2) the "acupressure" therapists were all female; (3) the female employees wore see-through nurses' uniforms; (4) all except one of the patients he treated were male; (5) he was paid only in cash; (6) even though he sometimes treated no patients on his shift, he was always paid $75 to $100; and (7) police came to investigate prostitution at AHT in January of 2002. His awareness of these facts was sufficient to put a prudent man on inquiry, and it would have taken minimal effort for Respondent to learn that acts of prostitution were being performed at AHT.

10b. However, Respondent made no inquiry. He chose instead to sequester himself in the acupuncturist office or his van and to refrain from interacting with any of the female "therapists" whom he encountered in the hallway on his way to the restroom. Most significantly, he continued his evasion of actual knowledge after January of 2002, ignoring the information from Detective Brown regarding the prostitution investigation. Respondent cannot now shield himself from license discipline through his deliberate inaction and intentional ignorance of the facts.

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[12] Although *Laube* involved liquor licensees purportedly permitting drug sales on their premises, as opposed to a professional licensee such as an acupuncturist permitting prostitution on his work premises, that distinction is insufficient to disregard the Court's ruling on what type of knowledge, if any, is necessary before one can be deemed to have "permitted" prohibited conduct.

11a. When prostitution is practiced on the premises where a professional license is used, the licensee "permits" the prostitution at those premises by either failing to ensure its termination or by continuing to use the license on the premises. Thus, if the licensee lacks the authority to stop the prostitution, he/she can still comply with Board rules and regulations by terminating his/her professional services at those premises.

11b. Despite Respondent's constructive knowledge of the prostitution activity, he continued work under his license at AHT until April of 2002. In doing so, Respondent permitted prostitution to occur at his work premises and at a location where he utilized his license. Since Respondent was an employee of AHT, he could not have terminated the prostitution at AHT even if he had been so inclined. Nevertheless, he could have, and was duty bound to have, complied with Business and Professions Code sections 731 and 119, subdivision (e), by terminating his relationship with AHT, thereby refusing to permit the use of his acupuncture license at premises where prostitution was occurring.

12. As factors in mitigation, it is noted that Respondent neither owned nor operated AHT. He had no supervisory function at AHT, and he was not directly involved with the prostitution occurring there. His wrongdoing was limited to purposefully "looking the other way," thereby violating Board rules and regulations. Given the facts of this case, outright revocation would be overly harsh and punitive and is therefore unjustified. A properly conditioned probationary period is more appropriate and should serve to adequately protect the public health, safety, welfare and interest. However, Respondent should be separated from his practice for a brief time to afford him the opportunity to contemplate the impropriety and seriousness of his conduct and to enable him to establish a plan for the future that will include strict compliance with the laws and rules governing the practice of acupuncture.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Acupuncture License No. AC-8104, issued to Respondent Jason Young Mo Kim is revoked. However, the revocation is stayed for a period of five (5) years, and Respondent is placed on probation under the following terms and conditions:

1. Actual Suspension

As part of the probation, Respondent is suspended from the practice of acupuncture for thirty (30) days beginning with the effective date of this decision.

2. Obey All Laws

Respondent shall obey all federal, state and local laws and all regulations governing the practice of acupuncture in California. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence.

3. Quarterly Reports

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

4. Surveillance Program

Respondent shall comply with the Board's probation surveillance program and shall, upon reasonable notice, report to the assigned investigative district office. Respondent shall contact the assigned probation surveillance monitor regarding any questions specific to the probation order. Respondent shall not have any unsolicited or unapproved contact with (1) Board members or members of its staff; or (2) persons serving the Board as expert examiners.

5. Interview with the Board or Its Designee

Respondent shall appear in person for interviews with the Board or its designee upon request at various intervals and with reasonable notice.

6. Changes of Employment

Respondent shall notify the Board in writing, through the assigned probation surveillance compliance officer of any and all changes of employment, location and address within 30 days of such change.

7. Tolling for Out-of-State Practice or Residence

In the event Respondent should leave California to reside or to practice outside the State, Respondent must notify the Board in writing of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

8. Employment and Supervision of Trainees

Respondent shall not employ or supervise or apply to employ or supervise acupuncture trainees during the course of this probation. Respondent shall terminate any such supervisorial relationship in existence on the effective date of this probation.

9. Cost Recovery

Respondent shall pay to the Board its costs of investigation and enforcement in the amount of $11,278. However, Respondent may make payments in installments upon written request to, and written approval by, the Board.

10. Violation of Probation

If Respondent violates probation in any respect, the Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final. No

petition for modification or termination of probation shall be considered while there is an accusation or petition to revoke probation pending against Respondent.

11. Completion of Probation

Upon successful completion of probation, Respondent's license will be fully restored.

DATED: July 29, 2005

JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings