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10 **BEFORE THE**
11 **CALIFORNIA ACUPUNCTURE BOARD**
12 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

13 In the Matter of the Accusation Against:

Case No. 1A-2014-164

14 **HENRY DAVID LEE, L.AC.**
8878 Warner Avenue
15 Fountain Valley, CA 92708

A C C U S A T I O N

16 **Acupuncture License No. AC 8254**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Benjamin Bodea (complainant) brings this Accusation solely in his official capacity
22 as the Interim Executive Officer of the Acupuncture Board.

23 2. On or about March 20, 2002, the California Acupuncture Board (Board), Department
24 of Consumer Affairs, State of California, issued Acupuncture License No. AC 8254 to Henry
25 David Lee, L.Ac. (respondent). The Acupuncture License will expire on May 31, 2017, unless
26 renewed.

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JURISDICTION

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2 3. This Accusation is brought before the California Acupuncture Board, under the
3 authority of the following laws. All section references are to the Business and Professions Code
4 (Code) unless otherwise indicated.

5 4. Section 4955 of the Code states, in pertinent part:

6 “The board may deny, suspend, or revoke, or impose probationary conditions
7 upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct.

8 “Unprofessional conduct shall include, but not be limited to, the following:

9 “...

10 “(d) [...] [V]iolating [...] the terms of this chapter or any regulation adopted by
11 the board pursuant to this chapter.

12 “...”

13 5. Section 4955.1 of the Code states, in pertinent part:

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

17 “...

18 “(e) Failing to maintain adequate and accurate records relating to the provision
19 of services to their patients.”

20 6. Section 4955.2 of the Code states, in pertinent part:

21 “The board may deny, suspend, revoke, or impose probationary conditions upon
22 the license of any acupuncturist if he or she is guilty of committing any one of the
23 following:

24 “(a) Gross negligence.

25 “...”

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

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

5 8. Section 726 of the Code states, in pertinent part:

6 “The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
7 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
8 licensed under this division, under any initiative act referred to in this division and under Chapter
9 17 (commencing with Section 9000) of Division 3.”

10 **COST RECOVERY**

11 9. Section 4959 of the Code states, in pertinent part:

12 “(a) The board may request the administrative law judge, under his or her
13 proposed decision in resolution of a disciplinary proceeding before the board, to direct
14 any licensee found guilty of unprofessional conduct to pay to the board a sum not to
15 exceed actual and reasonable costs of the investigation and prosecution of the case.

16 “... ”

17 “(c) When the payment directed in the board’s order for payment of costs is not
18 made by the licensee, the board may enforce the order for payment in the superior
19 court in the county where the administrative hearing was held. This right of
20 enforcement shall be in addition to any other rights the board may have as to any
21 licensee directed to pay costs.

22 “(d) In any judicial action for the recovery of costs, proof of the board’s
23 decision shall be conclusive proof of the validity of the order of payment and the
24 terms for payment.

25 “(e) All costs recovered under this section shall be considered a reimbursement
26 for costs incurred and shall be deposited in the Acupuncture Fund.”

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Sexual Misconduct Against A Patient)**

3 10. Respondent has subjected his Acupuncture License No. AC 8254 to disciplinary
4 action under section 726 of the Code, in that he committed an act of sexual abuse or misconduct
5 against patient R.Z., as more particularly alleged hereinafter:

6 11. On or about January 7, 2014, patient R.Z. first presented to respondent for massage
7 therapy and acupuncture, in order to treat her acute and chronic pain conditions. Her referring
8 complaints were hypochondriac pain of three days duration, fibromyalgia of three (3) years
9 duration, and low back pain of two (2) years duration. Patient R.Z. received a total of eleven (11)
10 treatments from January 7, 2014, to August 18, 2014, at respondent's business, Acupuncture and
11 Herbs, located in Fountain Valley, California. She received treatment from respondent for her
12 fibromyalgia, depression and a liver condition.

13 12. In the medical history form ("Health Questionnaire") from the initial visit to
14 respondent on January 7, 2013, no chief complaint was identified. The form was also unsigned.
15 The chart notes from the initial visit documented three (3) chief complaints: "[p]ain at the
16 hypochondriac area radiating toward the inside of her back alternating in between sharp and dull
17 pain since 5 days;" "[f]ibromyalgia since 3 years ago diagnosed... pain illegible perhaps eye,
18 elbow, wrist, upper neck[,] shoulders and middle back;" and "[t]he pain of lower back, pain begin
19 at lower back radiating downwards illegible ankle joint of Rt side through lateral aspect since
20 about 2 years ago."

21 13. In the chart notes, no documentation of a clear history of present illness of the
22 referring complaints existed. Also, there was no indication in the notes as to which side of the
23 body patient R.Z.'s hypochondriac pain was located. There was no Review of Systems ("ROS")¹
24 in the Health Questionnaire or in the chart notes. There was no record of a physical examination
25 of patient R.Z., particularly for her gastro intestinal pain (hypochondriac pain) and for her two (2)
26 musculo-skeletal (fibromyalgia and low back pain), both of which had been articulated to

27 ¹ ROS is an inventory of body systems obtained through a series of questions seeking to identify
28 signs and/or symptoms that the patient may be experiencing or has experienced.

1 respondent as some of her chief complaints. Respondent's medical record pertaining to his
2 treatment of patient R.Z. lacked provider's signature for each of the documented visits.

3 14. Also documented in patient R.Z.'s Health Questionnaire was information that at the
4 time, she was taking six (6) medications, four (4) of which were for pain. In the course of
5 providing care to patient R.Z., respondent dispensed herbs to her on nine (9) different occasions
6 between dates, January 7, 2014, and August 18, 2014. According to patient R.Z.'s medical
7 record, patient R.Z. was receiving multiple drugs including diclofenac, diltiazem, aspirin,
8 oxycodone, gabapentin, and lamotrigine. Dispensing of herbs to a patient who is receiving
9 multiple drug therapy is a concern because of potential herb interactions. This concern is not
10 addressed in respondent's medical record of patient R.Z.

11 15. The treatments that respondent received consisted of anterior and posterior
12 acupuncture and massage therapy with liniment. Patient R.Z. received one or more treatments
13 each week for approximately 7 weeks and has been going approximately once each month since
14 in or about May 2014. Respondent dispensed herb decoctions to her on nine (9) of the eleven
15 (11) visits.

16 16. A typical session with respondent consisted of acupuncture with needles on patient
17 R.Z.'s back first and then on various points on her front torso, legs, and feet. This procedure took
18 approximately one hour. Respondent then massaged patient R.Z.'s back followed by a massage
19 of her front torso and extremities. Prior to the treatments, patient R.Z. removed her clothing, but
20 left her bra and underwear on and put on a gown that was open in the front. When respondent
21 began the acupuncture treatments, he removed the gown leaving patient R.Z. wearing only her bra
22 and underwear for the remainder of the acupuncture treatment and massage.

23 17. Prior to the incident, patient R.Z. had sometimes felt uncomfortable when respondent
24 massaged patient R.Z.'s buttocks under her underwear, but she dismissed her discomfort as being
25 embarrassed rather than perceiving it as respondent doing something inappropriate. On several
26 occasions, patient R.Z.'s mother was seated in the small treatment room while patient R.Z.
27 received her treatment. Even when her mother was present in the room, respondent massaged
28 patient R.Z.'s buttocks under her underwear.

1 18. Patient R.Z. had been a victim of sexual abuse in the distant past and she saw a
2 therapist on a regular basis to deal with lingering fears, insecurities and emotional pain related to
3 that period in her life. As a result, patient R.Z. feels particularly vulnerable being unclothed in the
4 presence of a male.

5 19. On or about August 18, 2014, patient R.Z. was receiving a similar treatment described
6 above. Her mother was not with her in the treatment room on this day. After the acupuncture
7 treatment and back massage, patient R.Z. turned onto her back as she always did. Respondent
8 began massaging patient R.Z.'s shoulders and then her upper chest. Respondent then moved his
9 hands under patient R.Z.'s bra and fondled her breasts. Respondent moved the bra straps off her
10 shoulders and pulled her bra down exposing her breasts. Respondent continued fondling patient
11 R.Z.'s breasts for several seconds.

12 20. Respondent then moved his hands to patient R.Z.'s vagina. Respondent slipped his
13 hand under patient R.Z.'s underwear and inserted his fingers into the upper opening of the vagina
14 and rubbed the clitoris and the area around it. After several seconds, respondent tried to spread
15 patient R.Z.'s legs, but she resisted and kept them together. Respondent fondled patient R.Z.'s
16 clitoris again, inserting his fingers into the upper opening of the vagina.

17 21. Respondent told patient R.Z., "I know what you need." Respondent reached across
18 patient R.Z.'s body, placing his left hand under her right shoulder, and pulled her upper torso and
19 head toward him. Respondent then kissed patient R.Z. on the mouth. Respondent continued
20 fondling patient R.Z.'s breast and vaginal area under her underwear for several more seconds.
21 Respondent once again reached across patient R.Z. and pulled her toward him. Respondent
22 kissed patient R.Z. on the mouth again and tried to put his tongue into her mouth, but she held her
23 lips closed.

24 22. Patient R.Z. felt frozen in fear when respondent groped and fondled her. She kept her
25 body stiff and closed her eyes, but said nothing and did not push respondent away or attempt to
26 leave. Patient R.Z. related this incident to her previous experience of being sexually abused.
27 Initially, she was in disbelief when respondent began to touch her breasts. It took her several

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1 seconds to process what was happening. Patient R.Z. reflexively stiffened her body and mentally
2 shut down. She did not tell respondent to stop because she “just wanted it to be over.”

3 23. After several minutes, respondent exited the room without saying anything. Patient
4 R.Z. dressed and exited to the outer lobby area. Respondent’s wife worked at the front counter as
5 receptionist and bookkeeper. While Patient R.Z. was waiting to pay, respondent came into the
6 reception area and said loudly, “I helped you, I helped you.” Patient R.Z. noticed respondent had
7 never done this in the past. She thought respondent did this to make sure she did not say anything
8 to his wife about what happened. Patient R.Z. was charged for respondent’s services and she paid
9 for the session.

10 24. Patient R.Z. has not been back to respondent and has not spoken with him since this
11 incident. She spoke with her therapist a few days after the incident about what had happened.

12 25. On or about October 8, 2014, Department of Consumer Affairs Investigator Autumn
13 Holmes interviewed patient R.Z. regarding respondent’s alleged sexual misconduct. In her
14 interview, patient R.Z. described how, on August 18, 2014, respondent made repeated attempts to
15 sexually arouse her which included: “groping [her] breast,” “pull[ing] [her] bra down to expose
16 [her] boobs,” “twist[ing] [her] nipples,” and “groping [her] left boob with his right hand while
17 moving his left hand down to [her] underwear and touching [her] clitoris area and mov[ing] his
18 fingers in a circle.”

19 26. Respondent further provided the following information to Investigator Holmes:

20 “[Respondent] was trying to get [her] legs open, but [she] was stiff. [...] He put
21 his arm around [her] and lifted [her] upper body and tried to kiss [her ...] twice. The
22 second time [respondent] tried to kiss her, he tried to put his tongue in [her] mouth.
23 [...] [Respondent] went back to touching [her] in [her] vaginal area and it hurt. He
24 was rubbing hard.”

25 27. On or about October 30, 2014, patient R.Z. participated in a covert telephone call to
26 respondent at the request of Officer D. Steele of Fountain Valley Police Department.

27 28. When patient R.Z. dialed the number to the business office of respondent’s clinic,
28 respondent’s wife answered the phone. Patient R.Z. asked to speak with respondent and his wife

1 handed him to the phone. Patient R.Z. started the conversation with respondent and asked him to
2 acknowledge what he did to her and then apologize for his actions. Respondent refused to
3 acknowledge the allegations and told her that he would call her back either later that same day or
4 the day after. Patient R.Z. insisted that he speak with her at that current time and attempt to
5 resolve the issues.

6 29. When patient R.Z. confronted respondent with the prior incident which resulted in his
7 acupuncture license being disciplined, respondent did not respond. When patient R.Z. asked
8 respondent why he inserted his fingers into her vaginal area, respondent did not answer.

9 30. Patient R.Z. explained to respondent that she needed an apology, so she would have
10 closure to the situation and be able to move forward with her life. Respondent told her that he
11 would pray for her. Respondent told patient R.Z. that he needed to go and terminated the phone
12 call.

13 **SECOND CAUSE FOR DISCIPLINE**

14 **(Gross Negligence)**

15 31. Respondent has further subjected his Acupuncture License No. AC 8254 to
16 disciplinary action under section 4955.2, subdivision (a), of the Code, in that he was grossly
17 negligent in his care, treatment, and management of patient R.Z., as set forth in paragraphs 10
18 through 30, above, which are incorporated herein by reference as if fully set forth herein.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Failing to Maintain Adequate and Accurate Records
21 Relating to the Provision of Services to Patients)**

22 32. Respondent has further subjected his Acupuncture License No. AC 8254 to
23 disciplinary action under section 4955.1, subdivision (e), of the Code, and Title 16, section
24 1399.453, of the California Code of Regulations, in that during his care, treatment, and
25 management of patient R.Z., he failed to maintain adequate and accurate record, as set forth in
26 paragraphs 10 through 30, above, which are incorporated herein by reference as if fully set forth
27 herein.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 33. Respondent has further subjected his Acupuncture License No. AC 8254 to
4 disciplinary action under section 4955 of the Code, in that he engaged in unprofessional conduct
5 in his care, treatment, and management of patient R.Z., as set forth in paragraphs 10 through 32,
6 above, which are incorporated herein by reference as if fully set forth herein.

7 **FIFTH CAUSE FOR DISCIPLINE**

8 **(Violation of the Acupuncture Licensure Act)**

9 34. Respondent is subject to disciplinary action under section 4955, subdivision (d), of
10 the Code, in that he violated the terms of the Acupuncture Licensure Act, as set forth in
11 paragraphs 10 through 33, above, which are incorporated herein by reference as if fully set forth
12 herein.

13 **FACTOR IN AGGRAVATION**

14 35. To determine the degree of discipline, if any, to be imposed on Respondent,
15 Complainant alleges that on or about April 28, 2009, in a prior disciplinary action entitled *In the*
16 *Matter of the First Amended Accusation Against Henry David Lee, L.Ac.* before the Acupuncture
17 Board, in Case No. 1A-2007-31. Respondent's license was placed on probation for three (3)
18 years with the effective date of February 6, 2009, for repeated sexual misconduct/relations with a
19 patient in respondent's office. That decision is now final and is incorporated by reference as if
20 fully set forth.

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PRAYER

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

1. Revoking or suspending Acupuncture License No. AC 8254, issued to respondent Henry David Lee, L.Ac.;
2. Ordering respondent Henry David Lee, L.Ac. to pay the California Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and
3. Taking such other and further action as deemed necessary and proper.

DATED: SEP 19 2016


BENJAMIN BODEA
Interim Executive Officer
Acupuncture Board
State of California
Complainant

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