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**BEFORE THE
CALIFORNIA ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the First Amended Accusation
Against:

Case No. 1A-2014-164

OAH No. 2016100337

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

FIRST AMENDED ACCUSATION

Acupuncture License No. AC 8254

Respondent.

Complainant alleges:

PARTIES

1. Benjamin Bodea (complainant) brings this First Amended Accusation solely in his official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs, State of California.

2. On or about March 20, 2002, the California Acupuncture Board (Board) issued Acupuncture License No. AC 8254 to Henry David Lee, L.Ac. (respondent). The Acupuncture License will expire on May 31, 2019, unless renewed.

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JURISDICTION

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

4. 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:

“...

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

“...”

5. 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:

“...

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

6. Section 4955.2 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 any one of the following:

“(a) Gross negligence.

“...”

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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 Patients)**

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 or acts of sexual abuse or
5 misconduct against patients Jane Doe #1, Jane Doe #2, and Jane Doe #3, as more particularly
6 alleged hereinafter:

7 **Jane Doe #1**

8 11. Since September 2014, Jane Doe #1 (Doe-1) was a regular patient at respondent's
9 acupuncture clinic. The acupuncture treatment was always performed by respondent. On
10 average, Doe-1 received an acupuncture treatment from respondent once every two weeks. The
11 acupuncture sessions Doe-1 received typically took approximately two (2) hours. During the
12 treatment sessions, Doe-1 always wore a sports bra, her underwear, and her husband's boxer
13 briefs over her underwear. The sessions she received consisted of acupuncture treatment with
14 needles and pressure point massage techniques all around her body. Respondent did not wear
15 latex gloves during any of Doe-1's treatments.

16 12. On or about September 5, 2016, at approximately 7:30 p.m., Doe-1 went to
17 respondent's clinic to receive a treatment. During this treatment, respondent pulled Doe-1's
18 sports bra up towards her neck and exposed her breast. Respondent then firmly massaged Doe-
19 1's entire breast area including her nipples on her breast for approximately one minute. Doe-1 felt
20 that respondent's touching was wrong, but was not sure if it was part of the treatment.

21 13. On September 19, 2016 at 8:35 p.m., Doe-1 went to respondent's clinic to receive a
22 treatment. Respondent began by pressing his face against Doe-1's face which was unusual and
23 made her feel uncomfortable. During this treatment, respondent pulled her sports bra up towards
24 her neck and exposed her breasts. Respondent firmly massaged her breast including her nipples
25 on her breast.

26 14. Respondent then placed one of his hands under Doe-1's underwear. Respondent used
27 two fingers and inserted them into her vagina. Respondent removed his fingers from her vagina
28 and re-inserted his fingers approximately six to eight (6-8) times. Doe-1 felt "paralyzed" and was

1 physically unable to react. Respondent told Doe-1 to turn over on her stomach and she complied.
2 Respondent inserted a finger inside Doe-1's anus. Doe-1 then reacted and pushed herself off the
3 table. Doe-1 told respondent she had to leave for an emergency.

4 15. During the sexual assault, respondent recited Bible verses.

5 16. Doe-1 waited to report the incident because she was a victim of another unrelated
6 sexual assault in the past. When she eventually told her husband of respondent's sexual assault,
7 her husband encouraged her to report it to the police.

8 17. On or about October 13, 2016, Doe-1, with her husband, went to the Fountain Valley
9 Police Department to report respondent's sexual assault against her. Officer S. Rodriguez of the
10 Fountain Valley Police Department took her report.

11 18. During the interview with Officer Rodriguez, Doe-1 was very emotional and cried as
12 she described respondent's sexual assault.

13 **Jane Doe #2**

14 19. In or about May of 2014, Jane Doe #2 (Doe-2) was referred to respondent by her
15 chiropractor. Doe-2 saw respondent for acupuncture treatment once a week for a total of
16 approximately five (5) times from May to June of 2014. During the first appointment, respondent
17 conducted an intake appointment where he gathered information about her reasons for seeing him
18 and asked if she had ever been to an acupuncturist before. Doe-2 told respondent that she had
19 problems with numbness in her hands, an ovarian cyst, and depression. She also told respondent
20 that she had never seen an acupuncturist before.

21 20. Doe-2's appointments with respondent began with her removing her clothing except
22 for her bra and underwear, and her putting on a hospital style gown. She lay on the table face
23 down and respondent placed small needles in her body. Afterwards, she lay there for
24 approximately 30 minutes before respondent came back and removed the needles. Then,
25 respondent massaged various pressure points on Doe-2's body by applying pressure with his
26 fingertips. The same massaging of pressure points would repeat on the front of her body. The
27 appointments generally took one and a half to two (1.5 – 2) hours. Respondent ended each
28 appointment with a hug and a kiss on the cheeks, which Doe-2 initially thought was sweet.

1 21. During Doe-2's first appointment, respondent appeared to have trouble placing the
2 needles on her back due to a thick sports bra she was wearing. When Doe-2 asked respondent if
3 she should remove her bra, respondent laughed and said, "Yes." During all of the other
4 appointments; however, Doe-2 kept her bra on.

5 22. During Doe-2's first two appointments, respondent's massaging included his pressing
6 into Doe-2's chest and below her breast at the lower bra line. During these two appointments,
7 respondent used only his finger tips to massage these areas. Additionally, during these sessions,
8 respondent massaged Doe-2's pressure points on her lower stomach and along the top waistband
9 of her underwear.

10 23. During Doe-2's third appointment, respondent changed the way he massaged Doe-2's
11 breast area. Instead of just putting pressure at the bra line, respondent cupped Doe-2's entire
12 breast while from a standing position at the top of the table behind Doe-2's head. Respondent
13 used his fingers to press at the bra line while squeezing the entire breast. Respondent then put his
14 hands in through the top of Doe-2's sports bra, to cup her breasts and apply pressure to the bra
15 line. Doe-2 felt that respondent was "playing with her breasts" instead of just massaging the
16 pressure points.

17 24. This made Doe-2 felt uncomfortable and she asked respondent to stay over the
18 clothing, but respondent continued to put his hands inside the bra during the appointment.

19 25. At the end of the third and fourth sessions, respondent gave Doe-2 a short kiss on the
20 lips, which also made Doe-2 uncomfortable.

21 26. During Doe-2's fifth appointment, respondent again placed his hands inside her bra,
22 cupped, and fondled her breasts while pressing his fingertips into the bra line. Doe-2 asked
23 respondent again to stay over the clothing.

24 27. Respondent then moved his hands down to Doe-2's stomach area and applied
25 pressure to her lower belly and at the waist band of her underwear. Instead of stopping at the
26 waistband, he continued to move his hand lower towards Doe-2's pubic area and pushed the
27 fabric of the underwear down with his fingers.

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1 28. Respondent then moved to the side of the table and applied pressure to Doe-2's upper
2 leg and inner thigh. He moved higher and placed his fingers inside Doe-2's underwear through
3 the leg of her underwear, placed one finger partially into her vagina, and pressed as if there was a
4 pressure point there. Doe-2 tensed up and pulled away in order to limit the depth respondent was
5 able to put his finger in her.

6 29. Respondent then pulled his fingers out of her underwear and moved on to pressure
7 points on Doe-2's legs and feet. Respondent ended this final appointment with a longer kiss on
8 Doe-2's lips, which lasted approximately five (5) seconds. This made Doe-2 feel extremely
9 uncomfortable. Doe-2 felt this behavior was inappropriate and she left the appointment very
10 upset. However, she did not want to tell the office manager because she knew that the office
11 manager was respondent's wife. Doe-2 never returned back to respondent's clinic.

12 30. For over two years, Doe-2 never told anyone about respondent's placing his finger
13 into her vagina because she was too ashamed.

14 31. On or about November 15, 2016, Doe-2 went to Fountain Valley Police Department
15 to report respondent's sexual assault against her to Detective G. Scott.

16 **Jane Doe #3**

17 32. On or about January 7, 2014, patient Jane Doe #3 (Doe-3) first presented to
18 respondent for massage therapy and acupuncture, in order to treat her acute and chronic pain
19 conditions. Her referring complaints were hypochondriac pain of three days duration,
20 fibromyalgia of three (3) years duration, and low back pain of two (2) years duration. Doe-3
21 received a total of eleven (11) treatments from January 7, 2014, to August 18, 2014, at
22 respondent's business, Acupuncture and Herbs, located in Fountain Valley, California. She
23 received treatment from respondent for her fibromyalgia, depression and a liver condition.

24 33. In the medical history form ("Health Questionnaire") from the initial visit to
25 respondent on January 7, 2013, no chief complaint was identified. The form was also unsigned.
26 The chart notes from the initial visit documented three (3) chief complaints: "[p]ain at the
27 hypochondriac area radiating toward the inside of her back alternating in between sharp and dull
28 pain since 5 days;" "[f]ibromyalgia since 3 years ago diagnosed... pain illegible perhaps eye,

1 elbow, wrist, upper neck[,] shoulders and middle back;” and “[t]he pain of lower back, pain begin
2 at lower back radiating downwards illegible ankle joint of Rt side through lateral aspect since
3 about 2 years ago.”

4 34. In the chart notes, no documentation of a clear history of present illness of the
5 referring complaints existed. Also, there was no indication in the notes as to which side of the
6 body Doe-3’s hypochondriac pain was located. There was no Review of Systems (“ROS”)¹ in the
7 Health Questionnaire or in the chart notes. There was no record of a physical examination of
8 Doe-3, particularly for her gastro intestinal pain (hypochondriac pain) and for her two (2)
9 musculo-skeletal (fibromyalgia and low back pain), both of which had been articulated to
10 respondent as some of her chief complaints. Respondent’s medical record pertaining to his
11 treatment of Doe-3 lacked provider’s signature for each of the documented visits.

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

20 36. The treatments that respondent received consisted of anterior and posterior
21 acupuncture and massage therapy with liniment. Doe-3 received one or more treatments each
22 week for approximately 7 weeks and has been going approximately once each month since in or
23 about May 2014. Respondent dispensed herb decoctions to her on nine (9) of the eleven (11)
24 visits.

25 37. A typical session with respondent consisted of acupuncture with needles on Doe-3’s
26 back first and then on various points on her front torso, legs, and feet. This procedure took

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 approximately one hour. Respondent then massaged Doe-3's back followed by a massage of her
2 front torso and extremities. Prior to the treatments, Doe-3 removed her clothing, but left her bra
3 and underwear on and put on a gown that was open in the front. When respondent began the
4 acupuncture treatments, he removed the gown leaving Doe-3 wearing only her bra and underwear
5 for the remainder of the acupuncture treatment and massage.

6 38. Prior to the incident, Doe-3 had sometimes felt uncomfortable when respondent
7 massaged Doe-3's buttocks under her underwear, but she dismissed her discomfort as being
8 embarrassed rather than perceiving it as respondent doing something inappropriate. On several
9 occasions, Doe-3's mother was seated in the small treatment room while Doe-3 received her
10 treatment. Even when her mother was present in the room, respondent massaged Doe-3's
11 buttocks under her underwear.

12 39. Doe-3 had been a victim of sexual abuse in the distant past and she saw a therapist on
13 a regular basis to deal with lingering fears, insecurities and emotional pain related to that period in
14 her life. As a result, Doe-3 feels particularly vulnerable being unclothed in the presence of a
15 male.

16 40. On or about August 18, 2014, Doe-3 was receiving a similar treatment described
17 above. Her mother was not with her in the treatment room on this day. After the acupuncture
18 treatment and back massage, Doe-3 turned onto her back as she always did. Respondent began
19 massaging Doe-3's shoulders and then her upper chest. Respondent then moved his hands under
20 patient Doe-3's bra and fondled her breasts. Respondent moved the bra straps off her shoulders
21 and pulled her bra down exposing her breasts. Respondent continued fondling Doe-3's breasts for
22 several seconds.

23 41. Respondent then moved his hands to Doe-3's vagina. Respondent slipped his hand
24 under Doe-3's underwear and inserted his fingers into the upper opening of the vagina and rubbed
25 the clitoris and the area around it. After several seconds, respondent tried to spread Doe-3's legs,
26 but she resisted and kept them together. Respondent fondled Doe-3's clitoris again, inserting his
27 fingers into the upper opening of the vagina.

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1 42. Respondent told Doe-3, "I know what you need." Respondent reached across Doe-3's
2 body, placing his left hand under her right shoulder, and pulled her upper torso and head toward
3 him. Respondent then kissed Doe-3 on the mouth. Respondent continued fondling Doe-3's
4 breast and vaginal area under her underwear for several more seconds. Respondent once again
5 reached across Doe-3 and pulled her toward him. Respondent kissed Doe-3 on the mouth again
6 and tried to put his tongue into her mouth, but she held her lips closed.

7 43. Doe-3 felt frozen in fear when respondent groped and fondled her. She kept her body
8 stiff and closed her eyes, but said nothing and did not push respondent away or attempt to leave.
9 Doe-3 related this incident to her previous experience of being sexually abused. Initially, she was
10 in disbelief when respondent began to touch her breasts. It took her several seconds to process
11 what was happening. Doe-3 reflexively stiffened her body and mentally shut down. She did not
12 tell respondent to stop because she "just wanted it to be over."

13 44. After several minutes, respondent exited the room without saying anything. Doe-3
14 dressed and exited to the outer lobby area. Respondent's wife worked at the front counter as
15 receptionist and bookkeeper. While Doe-3 was waiting to pay, respondent came into the
16 reception area and said loudly, "I helped you, I helped you." Doe-3 noticed respondent had never
17 done this in the past. She thought respondent did this to make sure she did not say anything to his
18 wife about what happened. Doe-3 was charged for respondent's services and she paid for the
19 session.

20 45. Doe-3 has not been back to respondent and has not spoken with him since this
21 incident. She spoke with her therapist a few days after the incident about what had happened.

22 46. On or about October 8, 2014, Department of Consumer Affairs Investigator Autumn
23 Holmes interviewed Doe-3 regarding respondent's alleged sexual misconduct. In her interview,
24 Doe-3 described how, on August 18, 2014, respondent made repeated attempts to sexually arouse
25 her which included: "groping [her] breast," "pull[ing] [her] bra down to expose [her] boobs,"
26 "twist[ing] [her] nipples," and "groping [her] left boob with his right hand while moving his left
27 hand down to [her] underwear and touching [her] clitoris area and mov[ing] his fingers in a
28 circle."

1 47. Respondent further provided the following information to Investigator Holmes:

2 "[Respondent] was trying to get [her] legs open, but [she] was stiff. [...] He put
3 his arm around [her] and lifted [her] upper body and tried to kiss [her ...] twice. The
4 second time [respondent] tried to kiss her, he tried to put his tongue in [her] mouth.
5 [...] [Respondent] went back to touching [her] in [her] vaginal area and it hurt. He
6 was rubbing hard."

7 48. On or about October 30, 2014, Doe-3 participated in a covert telephone call to
8 respondent at the request of Officer D. Steele of Fountain Valley Police Department.

9 49. When Doe-3 dialed the number to the business office of respondent's clinic,
10 respondent's wife answered the phone. Doe-3 asked to speak with respondent and his wife
11 handed him to the phone. Doe-3 started the conversation with respondent and asked him to
12 acknowledge what he did to her and then apologize for his actions. Respondent refused to
13 acknowledge the allegations and told her that he would call her back either later that same day or
14 the day after. Doe-3 insisted that he speak with her at that current time and attempt to resolve the
15 issues.

16 50. When Doe-3 confronted respondent with the prior incident which resulted in his
17 acupuncture license being disciplined, respondent did not respond. When Doe-3 asked
18 respondent why he inserted his fingers into her vaginal area, respondent did not answer.

19 51. Doe-3 explained to respondent that she needed an apology, so she would have closure
20 to the situation and be able to move forward with her life. Respondent told her that he would pray
21 for her. Respondent told Doe-3 that he needed to go and terminated the phone call.

22 52. On or about April 5, 2017, in the Superior Court of California, County of Orange, in
23 the case entitled *The People of the State of California v. Henry Lee*, Superior Court Case No.
24 17WF0711, the Orange County District Attorney's Office charged respondent Henry David Lee
25 with five (5) felony counts of Penal Code section 243.4(C) [Sexual Battery by Fraud] and four (4)
26 Felony counts of Penal Code section 289(d)(4) [Sexual Penetration by Means of Fraudulent
27 Representation of Professional Purpose]. The criminal complaint listed Jane Doe # 2 as the

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1 victim in Counts 1, 2, and 3, listed Jane Doe # 3 as the victim in Counts 4 and 5, and listed Jane
2 Doe #1 as the victim in Counts 6, 7, 8, and 9.

3 53. Respondent was arraigned on his felony charges on April 26, 2017.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Gross Negligence)**

6 54. Respondent has further subjected his Acupuncture License No. AC 8254 to
7 disciplinary action under section 4955.2, subdivision (a), of the Code, in that he was grossly
8 negligent in his care, treatment, and management of patient Jane Doe #3, as set forth in
9 paragraphs 32 through 53, above, which are incorporated herein by reference as if fully set forth
10 herein.

11 **THIRD CAUSE FOR DISCIPLINE**

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

14 55. Respondent has further subjected his Acupuncture License No. AC 8254 to
15 disciplinary action under section 4955.1, subdivision (e), of the Code, and Title 16, section
16 1399.453, of the California Code of Regulations, in that during his care, treatment, and
17 management of patient Jane Doe #3, he failed to maintain adequate and accurate record, as set
18 forth in paragraphs 32 through 53, above, which are incorporated herein by reference as if fully
19 set forth herein.

20 **FOURTH CAUSE FOR DISCIPLINE**

21 **(Unprofessional Conduct)**

22 56. Respondent has further subjected his Acupuncture License No. AC 8254 to
23 disciplinary action under section 4955 of the Code, in that he engaged in unprofessional conduct
24 in his care, treatment, and management of patients Jane Doe #1, Jane Doe #2, and Jane Doe #3, as
25 set forth in paragraphs 10 through 55, above, which are incorporated herein by reference as if
26 fully set forth herein.

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1 **FIFTH CAUSE FOR DISCIPLINE**

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

3 57. Respondent is subject to disciplinary action under section 4955, subdivision (d), of
4 the Code, in that he violated the terms of the Acupuncture Licensure Act, as set forth in
5 paragraphs 10 through 56, above, which are incorporated herein by reference as if fully set forth
6 herein.

7 **FACTOR IN AGGRAVATION**

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

15 **PRAYER**


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

18 1. Revoking or suspending Acupuncture License No. AC 8254, issued to respondent
19 Henry David Lee, L.Ac.;

20 2. Ordering respondent Henry David Lee, L.Ac. to pay the California Acupuncture
21 Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business
22 and Professions Code section 4959; and

23 3. Taking such other and further action as deemed necessary and proper.

24
25 DATED: JUN 19 2017


26 BENJAMIN BODEA
27 Executive Officer
28 Acupuncture Board
State of California
Complainant