BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: PHILLIP MANKEUN SHON, L.A.C. 4711 Oakwood #207 Los Angeles, California 90005 Acupuncturist License No. AC9186, Respondent.	Case No.: 1A-2010-179 OAH No.: 2011061468

DECISION

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

This Decision shall become effective APR 13 2012.

IT IS SO ORDERED MAR 14 2012.

ACUPUNCTURE BOARD
STATE OF CALIFORNIA

By _____
ANYORK LEE, Chair

ref

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PROPOSED DECISION

Administrative Law Judge N. Gregory Taylor, Office of Administrative Hearings, State of California, heard this matter in Los Angeles, California on January 30, 2012.

Randall R. Murphy, Deputy Attorney General, represented Janelle Wedge (Complainant) Executive Officer of the Acupuncture Board (Board), Department of Consumer Affairs, State of California.

Phillip Mankeun Shon, L.AC. was present and represented himself.

Oral and documentary evidence was received, and the matter was argued

The case was submitted for decision on January 30, 2012.

PARTIES

1. Complainant filed the Accusation and First Amended Accusation in this proceeding solely in her official capacity.

2. On September 3, 2003, the Board issued Acupuncturist License number AC 9186 to Phillip Mankeun Shon (Respondent). That license was in full force and effect at all times relevant to the charges brough herein and will expire on March 31, 2013, unless renewed.

JURISDICTION

3. This Amended Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Code section 4955 states:

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

(a) Securing a license by fraud or deceit.
(b) Committing a fraudulent or dishonest act as an acupuncturist.
(c) Committing any act involving dishonesty or corruption with respect to the qualification, function, or duties of an acupuncturist.
(d) (d) Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record.
(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients.

5. Code section 4961 states:

(a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee has no place of practice, he or she shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure.
(b) An acupuncturist licensee shall post his or her license in a conspicuous location in his or her place of practice at all times. If an acupuncturist has more than one place of practice, he or she shall obtain from the board a duplicate license for each additional location and post the duplicate license at each location.

(c) Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure. An applicant for renewal of licensure shall specify in his or her application whether or not there has been a change in that location of his or her place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address.

6. Code section 731, subdivision (a) states:

Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aides or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriated regulatory entity under this division.

FINDINGS

7. On May 5, 2010, Respondent was cited for a violation of Labor Code section 3700.5, operating a business without having a Workers' Compensation policy, a misdemeanor. Respondent failed to pay the fine levied for the misdemeanor violation and a bench arrest warrant was issued for his for his arrest.

8. On November 2, 2010, in the California Superior Court, County of Riverside, in Case No. RIM10006787, Respondent, upon his guilty plea, was convicted of violating Labor Code section 3700.5 failure to have a Workers' Compensation policy of insurance, a misdemeanor, and Penal Code section 853.7, failure to appear, both misdemeanors. The court placed Respondent on summary probation for a period of 36 months upon certain terms and conditions including serving 45 days in the Riverside County Sheriff's work release program and ordered to pay fines and assessments of $8,309.00.

9. On July 6, 2011, in the California Superior Court, County of Los Angeles, in Case No. 1EA01930, Respondent, upon his nolo contendere plea, Respondent was convicted of violating section 17.28.020 (A)(I) of the City of Montebello Municipal Code, operating a massage parlor without first obtaining a conditional use permit, and section 5.48.020 of the Montebello Municipal Code, operating a massage parlor without first obtaining an operator's permit, both misdemeanors. The court suspended the imposition of sentence and placed Respondent on summary probation for a period of 36 months upon certain terms and conditions including not engaging in any form of sexual

activity for money or other consideration, and paying certain fines and fees including a Restitution fine, all totaling $1,129.00. In lieu of the fine, Respondent was offered the option of performing 6 days of community labor.

10. On December 1, 2010, in the California Superior Court, County of Los Angeles, Jin Young Lee, upon her nolo contendere plea, was cited for violating Penal Code section 647, subdivision (b), engaging in an act of prostitution, a misdemeanor, performed at Respondent's business location located at 612 W. Whittier Boulevard, Montebello, California.

11. On February 23, 2011 in the California Superior Court, County of Los Angeles, in Case Number OEA11056, Jin Young Lee, upon her nolo contendere plea, was convicted of violating Penal Code section 647, subdivision (b), engaging in an act of prostitution and doing some act in furtherance of an act of prostitution, a misdemeanor, for acts engaged in at Respondent's practice location.

12. On February 23, 2011, in the California Superior Court, County of Los Angeles, in Case No. OEA11056, Kim Pokmyong Pastrer, upon her nolo contendere plea, was convicted of violating Penal Code section 653.23, subdivision (a) (1), directing, supervising recruiting or otherwise aiding another person in the commission of a crime, to wit, engaging in an act of prostitution and doing some act in furtherance of an act of prostitution, a misdemeanor, at Respondent's practice location.

13. Respondent testified at length in this proceeding attempting to challenge the allegations made against him, without avail. He also testified that he performed acupuncture services for needy persons on a charity basis and is active in his church. Respondent did not offer further evidence of rehabilitation.

14. Respondent failed to establish that he has registered his place of practice at 612 W. Whittier Boulevard, Montebello, California as required by Code section 4961. Although it was established that Respondent has a place of practice at that location, the Board has no evidence of such registration.

LEGAL CONCLUSIONS

1. Respondent's criminal conviction for his failure to have Workers' Compensation Insurance is substantially related to the qualifications, functions and duties of an acupuncturist in that it is required by law.

2. Pursuant to the provisions of Code section 4955, subdivisions (b) and (j) Respondent's acupuncture license is subject to disciplinary action by virtue of his criminal conviction for his failure to have Workers' Compensation Insurance (Factual Findings 7 and 8) and his criminal conviction for failure to comply with the ordinances of the City of Montebello. (Factual Finding 9).

3. Pursuant to the provision of Code section 731, Respondent is subject to disciplinary action for his having allowed prostitution to take place in his Montebello practice location.

4. Respondent failed to register his Montebello place of practice with the Board and consequently is not in compliance with Code section 4961 (a).

BOARD COST BILL

1. Complainant, pursuant to Business and Professions Code Section 125.3, filed a cost bill in the amount of $9,562.50 for the costs of investigation and enforcement of this matter.

2. Pursuant to the authority conferred on the court by Code section 125.3 and the facts and circumstances of this case, the costs sought are reasonable.

ORDER

IT IS HEREBY ORDERED that Acupuncturist License Number AC 9186, issued to Phillip Mankeun Shon and all rights appurtenant thereto are revoked. Respondent shall pay $9,562.50 to Complainant for cost of investigating and enforcement of this case. Said payment shall be made to Complainant's Sacramento Office within 15 days of the effective date of this decision.

Dated: February 22, 2012.

N. GREGORY TAYLOR
Administrative Law Judge
Office of Administrative Hearings