

FILED

JUN 22 2009

ACUPUNCTURE BOARD

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8 **BEFORE THE**
ACUPUNCTURE BOARD
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1A-2008-135

12 KISOO SONG
2316 Artesia Blvd, #E
Redondo Beach, California 90278

A C C U S A T I O N

13 Acupuncture License No. AC 7495

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Janelle Wedge (Complainant) brings this Accusation solely in her official
19 capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs
20 (Board).

21 2. On or about September 25, 2000, the Acupuncture Board issued
22 Acupuncture License Number AC 7495 to Kisoo Song (Respondent). The Acupuncture License
23 was in full force and effect at all times relevant to the charges brought herein and will expire on
24 November 30, 2009, unless renewed.

25 **JURISDICTION**

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

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4. Section 4928.1 of the Code states:

“Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.”

5. Section 4937 of the Code states:

“An acupuncturist’s license authorizes the holder thereof:

“(a) To engage in the practice of acupuncture.

“(b) To perform or prescribe the use of oriental massage, acupressure, breathing techniques, exercises, or nutrition, including the incorporation of drugless substances and herbs as dietary supplements to promote health. Nothing in this section prohibits any person who does not possess an acupuncturist’s license or another license as a healing arts practitioner from performing, or prescribing the use of, oriental massage, breathing techniques, exercises, or nutrition, to promote health, so long as those activities are not performed or prescribed in connection with the practice of acupuncture.”

6. Section 4955 of the Code, in pertinent part, provides:

“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:

“... ”

“(b) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

“....”

7. Section 4955.1 of the Code, in pertinent part, provides:

“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:

“... ”

1 (b) Committing a fraudulent or dishonest act as an acupuncturist.

2 (c) Committing any act involving dishonesty or corruption with respect to the
3 qualifications, functions, or duties of an acupuncturist.

4 "...."

5 8. Section 4955.2 of the Code states:

6 "The board may deny, suspend, revoke, or impose probationary conditions upon
7 the license of any acupuncturist if he or she is guilty of committing any one of the
8 following:

9 (a) Gross negligence.

10 (b) Repeated negligent acts.

11 (c) Incompetence."

12 9. Section 4956 of the Code states:

13 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
14 made to a charge which is substantially related to the qualifications, functions, or duties
15 of an acupuncturist is deemed to be a conviction within the meaning of this chapter.

16 "The board may order a license suspended or revoked, or may deny a license, or
17 may impose probationary conditions upon a license, when the time for appeal has
18 elapsed, or the judgment of conviction has been affirmed on appeal, or when an order
19 granting probation is made suspending the imposition of sentence irrespective of a
20 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing the
21 person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting
22 aside the verdict of guilty, or dismissing the accusation, complaint, information, or
23 indictment.""

24 10. Section 4959 of the Code states:

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

1 “(b) The costs to be assessed shall be fixed by the administrative law judge
2 and shall not in any event be increased by the board. When the board does not
3 adopt a proposed decision and remands the case to an administrative law judge,
4 the administrative law judge shall not increase the amount of any costs assessed in
5 the proposed decision.

6 “(c) When the payment directed in the board's order for payment of costs
7 is not made by the licensee, the board may enforce the order for payment in the
8 superior court in the county where the administrative hearing was held. This right
9 of enforcement shall be in addition to any other rights the board may have as to
10 any licensee directed to pay costs.

11 “(d) In any judicial action for the recovery of costs, proof of the board's
12 decision shall be conclusive proof of the validity of the order of payment and the
13 terms for payment.

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

17 **FIRST CAUSE FOR DISCIPLINE**

18 **(Criminal Conviction--Sexual Battery)**

19 11. Respondent is subject to disciplinary action under Business and
20 Professions Code section 4955, subdivision (b), in that Respondent has sustained a criminal
21 conviction for an offense substantially related to the qualifications, functions, or duties of an
22 acupuncturist—namely, sexual battery, in violation of Penal Code section 243.4,¹ as follows:

23 _____
24 1. Penal Code section 243.4 provides:

25 “a) Any person who touches an intimate part of another person while that person is
26 unlawfully restrained by the accused or an accomplice, and if the touching is against the will of
27 the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual
28 abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment
in a county jail for not more than one year, and by a fine not exceeding two thousand dollars
(\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not
exceeding ten thousand dollars (\$10,000).

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2 “(b) Any person who touches an intimate part of another person who is institutionalized
3 for medical treatment and who is seriously disabled or medically incapacitated, if the touching
4 is against the will of the person touched, and if the touching is for the purpose of sexual arousal,
5 sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision
6 is punishable by imprisonment in a county jail for not more than one year, and by a fine not
7 exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three,
8 or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

9 “(c) Any person who touches an intimate part of another person for the purpose of
10 sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of
11 the nature of the act because the perpetrator fraudulently represented that the touching served a
12 professional purpose, is guilty of sexual battery. A violation of this subdivision is punishable by
13 imprisonment in a county jail for not more than one year, and by a fine not exceeding two
14 thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years,
15 and by a fine not exceeding ten thousand dollars (\$10,000).

16 “(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual
17 abuse, causes another, against that person's will while that person is unlawfully restrained either
18 by the accused or an accomplice, or is institutionalized for medical treatment and is seriously
19 disabled or medically incapacitated, to masturbate or touch an intimate part of either of those
20 persons or a third person, is guilty of sexual battery. A violation of this subdivision is
21 punishable by imprisonment in a county jail for not more than one year, and by a fine not
22 exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three,
23 or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

24 “(e) (1) Any person who touches an intimate part of another person, if the touching
25 is against the will of the person touched, and is for the specific purpose of sexual arousal,
26 sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable
27 by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail
28 not exceeding six months, or by both that fine and imprisonment. However, if the
defendant was an employer and the victim was an employee of the defendant, the
misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand
dollars (\$3,000), by imprisonment in a county jail not exceeding six months, or by both
that fine and imprisonment. Notwithstanding any other provision of law, any amount of a
fine above two thousand dollars (\$2,000) which is collected from a defendant for a
violation of this subdivision shall be transmitted to the State Treasury and, upon
appropriation by the Legislature, distributed to the Department of Fair Employment and
Housing for the purpose of enforcement of the California Fair Employment and Housing
Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government
Code), including, but not limited to, laws that proscribe sexual harassment in places of
employment. However, in no event shall an amount over two thousand dollars (\$2,000) be
transmitted to the State Treasury until all fines, including any restitution fines that may
have been imposed upon the defendant, have been paid in full. (2) As used in this
subdivision, ‘touches’ means physical contact with another person, whether accomplished
directly, through the clothing of the person committing the offense, or through the
clothing of the victim.

 “(f) As used in subdivisions (a), (b), (c), and (d), ‘touches’ means physical contact with
the skin of another person whether accomplished directly or through the clothing of the person
committing the offense.

 “(g) As used in this section, the following terms have the following meanings: (1)

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2 A. On or about and between September 1 and October 16, 2007, M.S.,
3 a male, presented to Respondent for treatment on nine (9) different occasions.
4 During the course of the seventh and eighth treatment sessions, Respondent
5 touched M.S.'s testicles. During the course of the ninth treatment session,
6 Respondent stroked M.S.' penis for approximately two minutes.

7 B. On October 16, 2008, M.S. contacted the Redondo Beach, California,
8 police department and filed a complaint against Respondent. On December 14, 2007, in
9 the matter entitled *People of the State of California v. Kisoo Song*, Los Angeles County
10 Superior Court No. 7SY10811, Respondent was charged with sexual battery in that he
11 "willfully and unlawfully touch[ed an intimate part of another person, which was against
12 the will of the other person touched and such touching was for the specific purpose of
13 sexual arousal, sexual gratification, or sexual abuse," in violation of Penal Code section
14 243.4, subdivision (e), subparagraph (1), a misdemeanor.

15 C. On or about April 16, 2008, in the matter entitled *People of the State of*
16 *California v. Kisoo Song*, Los Angeles County Superior Court No. 7SY10811,
17 Respondent entered a plea of *nolo contendere* to the charge of sexual battery. Thereafter,
18 proceedings were suspended. Respondent was placed on summary probation for 36
19

20 'Intimate part' means the sexual organ, anus, groin, or buttocks of any person, and the breast of
21 a female. (2) 'Sexual battery' does not include the crimes defined in Section 261 or 289. (3)
22 'Seriously disabled' means a person with severe physical or sensory disabilities. (4) 'Medically
23 incapacitated' means a person who is incapacitated as a result of prescribed sedatives,
24 anesthesia, or other medication. (5) 'Institutionalized' means a person who is located
25 voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care
26 facility, or mental hospital. (6) 'Minor' means a person under 18 years of age. (h) This section
27 shall not be construed to limit or prevent prosecution under any other law which also proscribes
28 a course of conduct that also is proscribed by this section. (i) In the case of a felony conviction
for a violation of this section, the fact that the defendant was an employer and the victim was an
employee of the defendant shall be a factor in aggravation in sentencing. (j) A person who
commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a
prior felony conviction for a violation of this section shall be guilty of a felony, punishable by
imprisonment in the state prison for two, three, or four years and a fine not exceeding ten
thousand dollars (\$10,000)." (Emphases added.)

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months.

SECOND CAUSE FOR DISCIPLINE

(Dishonest or Corrupt Act)

12. Respondent is subject to disciplinary action under Business and Professions Code section 4955.1, subdivisions (b) and (c), in that Respondent committed a sexual battery upon a patient, as follows:

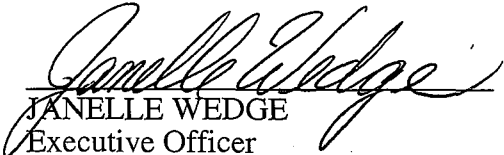
A. Complainant refers to and, by this reference, incorporates herein paragraph 11, above, as though fully set forth.

PRAYER

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

- 1. Revoking or suspending Acupuncture License Number AC 7495, issued to Kisoo Song Kisoo Song.
- 2. Ordering Kisoo Song to pay the 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: JUN 22 2009


 JANELLE WEDGE
 Executive Officer
 Acupuncture Board
 Department of Consumer Affairs
 State of California
 Complainant

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50430288.wpd

DECLARATION OF SERVICE BY MAIL

In the Matter of the Accusation filed Against:

KISOO SONG

Case No. 1A-2008-135

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause; my business address is 444 N. 3rd Street, Suite 260, Sacramento, CA 95814-0226. I served a true copy of the attached:

**STATEMENT TO RESPONDENT, ACCUSATION,
REQUEST FOR DISCOVERY, NOTICE OF DEFENSE (2),
GOVERNMENT CODE SECTIONS 11507.5, 11507.6 and 11507.7**

by certified/regular mail on each of the following, by placing same in an envelope(s) addressed (respectively) as follows:

NAME and ADDRESS

CERTIFIED MAIL NO.

Kisoo Song, AC 7495
2316 Artesia Blvd., #E
Redondo Beach, CA 90278

7008 3230 0001 0938 6204

Richard Marino, Deputy Attorney General
California Department of Justice
Office of the Attorney General, HQE
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

regular mail

Paul C. Ament, Supervising Attorney General
California Department of Justice
Office of the Attorney General, HQE
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

regular mail

Each said envelope was, on June 22, 2009, sealed and deposited in the U.S. mail box at Sacramento, California, the county in which I am employed, with the postage thereon fully prepaid for attempt at service on Respondent.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 22, 2009, at Sacramento, California.



DECLARANT