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

In the Matter of the Accusation Against: ) Case No. 1A-2010-93

JOHN YONG CHO, L.AC. )
12846 Newhope St. )
Garden Grove, CA 92840 )
Acupuncture License No. AC 10258 )
Respondent. )

DECISION AND ORDER

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

This Decision shall become effective on MAY 02, 2013.

It is so ORDERED APR 02, 2013.

ANYORK LEE, Chair
Acupuncture Board
Department of Consumer Affairs
State of California
IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Terri Thorfinnson (Complainant) is the Executive Officer of the Acupuncture Board (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 E. A. Jones III, Supervising Deputy Attorney General.

2. Respondent John Yong Cho (Respondent) is represented in this proceeding by attorney Simon H. Langer of 3325 Wilshire Boulevard, Suite 1350, Los Angeles, California 90010.

3. On or about April 6, 2005, the Board issued Acupuncturist License number AC 10258 to John Yong Cho (Respondent). That license was in full force and effect at all times relevant to the charges brought in Accusation number 1A-2010-93 and will expire on February 28.
28, 2015, unless renewed.

JURISDICTION

4. Accusation No. 1A-2010-93 was filed before the Board and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 5, 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 1A-2010-93 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation number 1A-2010-93. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including his right to a hearing on the charges and allegations in the Accusation; his right to be represented by counsel at his own expense; his right to confront and cross-examine the witnesses against him; his right to present evidence and to testify on his own behalf; his right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; his 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.

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

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Accusation No. 1A-2010-93.

10. Respondent agrees that his Acupuncturist 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.
RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Acupuncture Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. This stipulation shall be subject to approval by the Acupuncture Board. Respondent understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. 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.

13. 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.

14. 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 Acupuncturist License number AC 10258 issued to Respondent John Yong Cho is publicly reproved as follows:

PUBLIC REPROVAL

Pursuant to Business and Professions Code section 495, you are hereby publicly reproved. On May 25, 2010, you plead guilty to, and you were convicted of, failing to secure payment of workers’ compensation as required by Labor Code section 3700. You
are admonished that, as an acupuncturist licensed in the State of California, you have a duty to operate your acupuncture clinic in conformity with the laws of the State of California.

IT IS HEREBY FURTHER ORDERED THAT Respondent John Yong Cho must complete an ethics course and pay the costs of investigation and enforcement of this case as follows:

Respondent shall take and successfully complete an ethics course of not less than six (6) hours to be completed within six months of the effective date of this order. The required coursework must be in addition to any continuing education courses that may be required for license renewal.

Within 60 days of the effective date of this decision, Respondent shall submit a plan for the Acupuncture Committee’s prior approval for meeting the above educational requirement. All costs of the coursework shall be borne by the Respondent. Respondent shall submit a certification of successful completion to the Acupuncture Committee not later than 15 calendar days after successfully completing the coursework.

Respondent shall pay to the Acupuncture Committee its costs of investigation and enforcement in the amount of $2,610.00 within 60 days of the effective date of this order.

Failure to comply with this order in any respect shall constitute unprofessional conduct and may result in the filing of an accusation against Respondent.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Simon H. Langer, Esq. I understand the stipulation and the effect it will have on my Acupuncturist 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 Acupuncture Board.

DATED: 1-8-12

[Signature]

JOHN YONG CHO
Respondent
I have read and fully discussed with Respondent John Yong Cho the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/6/12

SIMON H. LANGER
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

Dated: 11/13/12

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California

E. A. JONES III
Supervising Deputy Attorney General
Attorneys for Complainant

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Exhibit A

Accusation No. 1A-2010-93
BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

Case No. 1A-2010-93

In the Matter of the Accusation Against:

JOHN YONG CHO, L.Ac.
12846 Newhope Street
Garden Grove, California 92840

Acupuncturist License No. AC 10258

Respondent.

Complainant alleges:

PARTIES

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

2. On or about April 6, 2005, the Acupuncture Board issued Acupuncturist License Number AC 10258 to John Yong Cho, L.Ac. (Respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on February 28, 2011, unless renewed.

JURISDICTION

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

4. 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:

"(a) Using or possessing any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

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

"(c) False or misleading advertising.

"(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.

"(e) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate
consistency in the implementation of this subdivision.

"The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

"(f) The use of threats or harassment against any patient or licensee for providing evidence in a disciplinary action, other legal action, or in an investigation contemplating a disciplinary action or other legal action.

"(g) Discharging an employee primarily for attempting to comply with the terms of this chapter.

"(h) Disciplinary action taken by any public agency for any act substantially related to the qualifications, functions, or duties of an acupuncturist or any professional health care licensee.

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

"(j) The violation of any law or local ordinance on an acupuncturist's business premises by an acupuncturist's employee or a person who is working under the acupuncturist's professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

"(k) The abandonment of a patient by the licentiate without written notice to the patient that treatment is to be discontinued and before the patient has had a reasonable opportunity to secure the services of another practitioner.

"(l) The failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which he or she is licensed as an individual to practice acupuncture."

5. Section 4956 of the Code states:
"A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, or duties of an acupuncturist is deemed to be a conviction within the meaning of this chapter.

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

6. Section 4959 of the Code states:

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

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

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

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

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

7. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in Petropoulos v. Department of Real Estate (2006) 142 Cal.App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

8. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within
the department pursuant to law to deny an application for a license or to suspend or revoke a
license or otherwise take disciplinary action against a person who holds a license, upon the
ground that the applicant or the licensee has been convicted of a crime substantially related to the
qualifications, functions, and duties of the licensee in question, the record of conviction of the
crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
and the board may inquire into the circumstances surrounding the commission of the crime in
order to fix the degree of discipline or to determine if the conviction is substantially related to the
qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

9. Section 3700 of the Labor Code states in relevant part:
   "Every employer except the state shall secure the payment of compensation in one or
more of the following ways:
   "(a) By being insured against liability to pay compensation by one or more insurers
duly authorized to write compensation insurance in this state.

   ["..."]

10. Section 3700.5 of the Labor Code states in relevant part:
    "(a) The failure to secure the payment of compensation as required by this article
by one who knew, or because of his or her knowledge or experience should be reasonably
expected to have known, of the obligation to secure the payment of compensation, is a
misdemeanor punishable by imprisonment in the county jail for up to one year, or by a fine
of up to double the amount of premium, as determined by the court, that would otherwise
have been due to secure the payment of compensation during the time compensation was
not secured, but not less than ten thousand dollars ($10,000), or by both that imprisonment
and fine.

   ["..."]
FIRST CAUSE FOR DISCIPLINE
(Conviction of a Crime)

11. Respondent is subject to disciplinary action under section 4955, subdivision (b), of the Code in that Respondent was convicted of a crime substantially related to the practice of acupuncture. The circumstances are as follows:

   A. In or around April 2010, Respondent owned and operated an acupuncture clinic under the name of "Joy Acupuncture" at 3865 Brockton Avenue, Riverside, California.

   B. On or about April 21, 2010, an investigator with the Riverside County District Attorney's Office, Bureau of Investigation, conducted a Labor Code compliance check at Joy Acupuncture. Three employees were interviewed regarding their employment at Joy Acupuncture. The investigator spoke to Respondent by phone. Respondent indicated that he did not have workers' compensation insurance for his employees at Joy Acupuncture. Arrangements were made for an in person interview of Respondent.

   C. On or about April 22, 2010, Respondent met with the investigator. Respondent was asked if he had workers compensation insurance for his employees at Joy Acupuncture. Respondent stated that he did not have such insurance for his employees. Respondent was issued a Notice to Appear at the Riverside Hall of Justice on May 25, 2010, to answer for his failure to provide proof of workers compensation insurance in contravention of Labor Code section 3700.5.

   D. On or about May 7, 2010, a misdemeanor complaint was filed in The People of the State of California v. John Yong Cho, Riverside County Superior Court Case No. RIM10005957. Count 1 of the complaint alleged that Respondent committed a violation of Labor Code section 3700.5, a misdemeanor, in that on or about April 22, 2010, Respondent willfully and unlawfully failed to secure payment of workers' compensation as required by Labor Code section 3700 and knew and because of knowledge and experience should have been reasonably expected to have known of the obligation to secure the payment of workers' compensation.

   E. On or about May 25, 2010, Respondent plead guilty to and was convicted of
Count 1 of the misdemeanor complaint in The People of the State of California v. John Yong Cho, Riverside County Superior Court Case No. RIM10005957. Summary probation was granted for 36 months under terms requiring Respondent to obey all laws; pay a fine of $10000.00 to the Court for the Workers' Compensation Fraud Account (all but $1000.00 of the fine was suspended on condition that Respondent maintain continuous workers' compensation insurance coverage); pay the costs of investigation in the amount of $210.00; maintain full and proper workers' compensation coverage; pay all employees only by check with a pay stub itemizing payroll deductions; submit to a search with or without probable cause by law enforcement; pay any and all fees by any state agency; and provide by mail each month written proof of continuous workers' compensation insurance.

F. The above conviction is substantially related to the qualifications, functions and duties of an acupuncturist inasmuch as Respondent, as an acupuncturist licensed in the State of California, had a duty to operate his acupuncture clinic in conformity with the laws of the State of California.

SECOND CAUSE FOR DISCIPLINE
(Unprofessional Conduct)

12. Respondent is subject to disciplinary action under section 4955 of the Code in that Respondent engaged in unprofessional conduct. The circumstances are as follows:

A. The facts and circumstances alleged in paragraph 11 above are incorporated here 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 issue a decision:

1. Revoking or suspending Acupuncturist License Number AC 10258, issued to John Yong Cho, L.Ac.;

2. Ordering John Yong Cho, L.Ac. to pay the Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959;
3. Taking such other and further action as deemed necessary and proper.

DATED: JUN 5 2012

Panelle Wedge  
Executive Officer  
Acupuncture Board  
Department of Consumer Affairs  
State of California  
Complainant

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