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

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In the Matter of the Accusation Against:

Case No. 1A-2010-110

Eun Young Shim 3810 Wilshire Blvd., #608 Los Angeles, CA 90010

Acupuncture License No. AC-12076

Respondent.

DECISION AND ORDER

The attached Default Decision and Order is hereby adopted by the California Acupuncture Board, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on

DEC 0 6 2013

IT IS SO ORDERED

NOV 0 6 2013

Michael Shi, L.Ac., Chair Acupuncture Board Department of Consumer Affairs State of California

1	KAMALA D. HARRIS Attorney General of California ROBERT MCKIM BELL Supervising Deputy Attorney General		
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7	BEFORE THE		
8	ACUPUNCTURE BOARD DEPARTMENT OF CONSUMER AFFAIRS		
9	STATE OF CALIFORNIA		
10	In the Matter of the Accusation Against: Case No. 1A-2010-110		
11	EUN YOUNG SHIM, L.AC.		
12	3810 Wilshire Blvd. #608Los Angeles, CA 90010DEFAULT DECISION		
13	Acupuncturist License No. AC 12076 AND ORDER		
14	Respondent. [Gov. Code, §11520]		
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17	<u>FINDINGS OF FACT</u>		
18	1. On or about February 22, 2013, Complainant Terri Thorfinnson, in her official		
20	capacity as the Executive Officer of the Acupuncture Board, filed Accusation No. 1A-2010-110		
20	 against Eun Young Shim, L.Ac. (Respondent) before the Acupuncture Board. 2. On or about October 23, 2007, the Acupuncture Board (Board) issued Acupuncturist 		
22	License No. AC 12076 to Respondent. The Acupuncturist License was in full force and effect at		
23	all times relevant to the charges brought herein and expired on January 31, 2013. A true and		
24	correct copy of the Certificate of Licensure setting forth Respondent's address of record and		
25	licensing history is attached hereto as Exhibit A and is incorporated herein by reference.		
26	3. On or about February 27, 2013, Kristine Brothers, an employee of the Complainant		
27	Agency, served by Certified Mail a copy of the Accusation No. 1A-2010-110, Statement to		
28	Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5,		
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	DEFAULT DECISION & ORDER (1A-2010-110)		

11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 3810 1 2 Wilshire Blvd. #608, Los Angeles, California 90010. This package was given a Certified Mail number ending in the digits 1400. A certified copy of the Accusation, the related documents, and 3 4 Declaration of Service are attached as Attachments 1 and 2 to the Declaration of Kristine 5 Brothers (Dec. Brothers), Exhibit B, and are incorporated herein by reference.

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4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. On or about March 12, 2013, the aforementioned documents were returned by the 8 U.S. Postal Service marked "Unknown." A copy of the envelope and unsigned Certified Mail 9 Return Receipt, both with the number ending in 1400, which were returned by the post office, is 10 attached as Attachment 3 to Exhibit B. 11

6. On or about March 20, 2013, Kristine Brothers again served by Certified Mail a second 12 copy of the aforementioned documents to Respondent's address of record with the Board. This 13 package was given a Certified Mail number ending in the digits 1424. The Declaration of Service 14 is attached as Attachment 4 to Exhibit B. 15

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7. On or about April 2, 2013, the Certified Mail Tag Return Receipt with the number ending in 1424 was returned by the U.S. Postal Service. A copy of the receipt is attached as 17 Attachment 5 to Exhibit B. 18

8. On or about April 16, 2013, notwithstanding the aforementioned Certified Mail Tag 19 Return Receipt, the envelope and documents that Kristine Brothers sent on or about March 20, 20 21 2013, were returned by the U.S. Postal Service marked "Returned to Sender". A copy of the returned envelope with the number ending in 1424 is attached as Attachment 6 to Exhibit B. 22

9. On or about March 20, 2013, Kristine Brothers also served by Certified Mail a courtesy 23 copy of the aforementioned documents to Respondent's prior address of record, which was 138 24 N. Beaudry Ave., #227, Los Angeles, California 90010. This package was given a Certified Mail 25 number ending in 1431. The Declaration of Service of the courtesy copy is attached as 26 Attachment 7 to Exhibit B. 27

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10. On or about April 23, 2013, the package with the Certified Mail number ending in 1431 was returned by the U.S. Postal Service marked "RTS". A copy of the returned envelope with the number ending in 1424 is attached as **Attachment 8 to Exhibit B**.

11. To date, no Notice of Defense has been received by the Office of the AttorneyGeneral. The Declaration of Deputy Attorney General Steve Diehl is attached as Exhibit C, andis incorporated herein by reference.

A copy of the June 18, 2010, arrest report relating to Respondent is attached as 7 12. Exhibit D, and is incorporated herein by reference. A certified copy of the misdemeanor 8 complaint filed against Respondent on October 19, 2010, is attached as Exhibit E and is 9 incorporated herein by reference. A certified copy of the minute order reflecting Respondent's 10 February 9, 2011, conviction for a misdemeanor violation of Gardena Municipal Code Section 11 5.48.070(A), operating a massage establishment without a permit/certificate, is attached as 12 Exhibit F, and is incorporated herein by reference. A certified copy of the August 9, 2001, arrest 13 report relating to Respondent is attached as **Exhibit G**, and is incorporated herein by reference. 14 A certified copy of the misdemeanor complaint filed against Respondent on August 20, 2001, is 15 attached as Exhibit H and is incorporated herein by reference. A certified copy of the minute 16 order reflecting Respondent's January 3, 2002, conviction for a misdemeanor violation of Penal 17 Code Section 415(1), fighting in public, is attached as **Exhibit I**, and is incorporated herein by 18 reference. 19

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13. Government Code section 11506 states, in pertinent part:

"(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

Respondent failed to file a Notice of Defense within 15 days after service upon her of the
Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 1A-2010110.

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14. California Government Code section 11520 states, in pertinent part:

"(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent."

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Pursuant to its authority under Government Code section 11520, the Board finds 15. Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibits A through I, finds that the allegations in Accusation No. 1A-2010-110 are true.

The Board further finds that pursuant to Business and Professions Code section 4959, 16. the costs of investigation and enforcement of the case prayed for in the Accusation total \$2337.50, based on the Certification of Costs contained in Exhibit J. 10

DETERMINATION OF ISSUES

Based on the foregoing findings of fact, Respondent Eun Young Shim, L.Ac. has 1. subjected her Acupuncturist License No. AC 12076 to discipline.

A true and correct copy of Respondent's licensing history is attached as Exhibit A. 2. 15 The Declaration of Kristine Brothers with attached certified copies of the Accusation, related 16 documents, Declaration of Service, and certified mail card are attached as Exhibit B. The 17 Declaration of Deputy Attorney General Steve Diehl is attached as Exhibit C. A copy of the 18 June 18, 2010, arrest report relating to Respondent is attached as Exhibit D. A certified copy of 19 the misdemeanor complaint filed against Respondent on October 19, 2010, is attached as Exhibit 20 E. A certified copy of the minute order reflecting Respondent's February 9, 2011, conviction for 21 a misdemeanor violation of Gardena Municipal Code Section 5.48.070(A), operating a massage 22 establishment without a permit/certificate, is attached as Exhibit F. A certified copy of the 23 August 9, 2001, arrest report relating to Respondent is attached as Exhibit G. A certified copy of 24 the misdemeanor complaint filed against Respondent on August 20, 2001, is attached as Exhibit 25 H. A certified copy of the minute order reflecting Respondent's January 3, 2002, conviction for a 26 misdemeanor violation of Penal Code Section 415(1), fighting in public, is attached as Exhibit I. 27 A certification of costs is attached as Exhibit J. 28

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3.

The agency has jurisdiction to adjudicate this case by default.

The Acupuncture Board is authorized to revoke Respondent's Acupuncturist License 4. 2 based upon the following violations alleged in the Accusation: 3

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Respondent is subject to disciplinary action under sections 490 and 4955, a. subdivision (b), of the Business and Professions Code in that she was convicted of a crime substantially related to the qualifications, functions, or duties of an acupuncturist. Paragraph 10 of the Accusation is incorporated here by reference. (Exhibit B, Dec. Brothers, Att.1, pp. 5-6.)

Respondent is subject to disciplinary action under section 4955, subdivision (i), b. 8 in that she engaged in conduct that would have warranted the denial of the acupuncture license. 9 Paragraph 11 of the Accusation is incorporated here by reference. (Exhibit B, Dec. Brothers, 10 Att.1, p. 6.) 11

Respondent is subject to disciplinary action under section 731, subdivision (a), c. 12 in that Respondent engaged in conduct that violated subdivision (b) of Section 647 of the Penal 13 Code which occurred in the work premises of, or work area under the direct professional 14 supervision or control of, Respondent. Paragraph 12 of the Accusation is incorporated here by 15 reference. (Exhibit B, Dec. Brothers, Att.1, p. 7.) 16

Respondent is subject to disciplinary action under section 4955, subdivision (j), d. 17 in that Respondent, on her acupuncturist's business premises, violated a law or local ordinance 18 substantially related to the qualifications, functions, or duties of an acupuncturist. Paragraph 13 19 of the Accusation is incorporated here by reference. (Exhibit B, Dec. Brothers, Att.1, p. 7.) 20

Respondent is hereby ordered to pay the above costs of investigation and enforcement 5. of this action. 22

ORDER

IT IS SO ORDERED that Acupuncturist License No. AC 12076, heretofore issued to 24 Respondent Eun Young Shim, L.Ac., is revoked. 25

Respondent is ordered to reimburse the Acupuncture Board the amount of \$2337.50 for its 26 investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieve 27 Respondent of her responsibility to reimburse the Board for its costs. Respondent's Acupuncture 28

1	License may not be renewed or reinstated unless all costs ordered under Business and Professions
2	Code section 4959 have been paid.
3	Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
4	written motion requesting that the Decision be vacated and stating the grounds relied on within
5	seven (7) days after service of the Decision on Respondent. The agency in its discretion may
6	vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.
7	This Decision shall become effective on DEC 0 6 2013.
8.	It is so ORDERED NOV 0 6 2013
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11	FOR THE ACCUPUNCTURE BOARD
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	DEFAULT DECISION & ORDER (1A-2010-110)