XAVIER BECERRA
Attorney General of California
ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
MICHAEL J. YUN
Deputy Attorney General
State Bar No. 292587
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 738-9453
Facsimile: (619) 645-2061

Attorneys for Complainant

FILED
APR 19 2018
ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First Amended Accusation Against: **BYUNG MO AHN, AC** 13112 Magnolia Street Apt. F13 Garden Grove, CA 92844 **Acupuncturist License No. AC 12114,** Respondent.	Case No. 1A-2017-150 OAH No. 2018020455 **FIRST AMENDED ACCUSATION**

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 November 1, 2007, the Acupuncture Board of California (Board) issued Acupuncturist License No. AC 12114 to Byung Mo Ahn, AC (respondent). The Acupuncturist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2019, unless renewed.

JURISDICTION

3. This First Amended Accusation is brought before the Board, 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:

"(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.

"...

"(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.

"..."

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."

COST RECOVERY

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."

///

///

///

FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime Substantially Related to the Qualifications, Functions or Duties of an Acupuncturist)

7. Respondent's Acupuncturist License No. AC 12114 is subject to disciplinary action under section 4955, as defined by sections 4955, subdivision (b), and 4956 of the Code, in that he has been convicted of crimes substantially related to the qualifications, functions, or duties of an acupuncturist, as more particularly alleged hereinafter:

August 19, 2016 DUI Conviction

8. On or about January 17, 2016, at approximately 3:50 a.m., Officer B.B. of Los Alamitos Police Department was dispatched to the area of Katella Avenue and Bloomfield Street regarding a male subject, later determined to be respondent, passed out in his car that was stuck on the center median of Katella Avenue.

9. When Officer B.B. arrived on scene, he saw respondent's car stopped on the raised center median of Katella Avenue. When Officer B.B. approached respondent's car on the driver's side, he saw respondent sitting in the driver's seat, slumped over the driving wheel, and sleeping. Respondent was the only occupant of the car.

10. When Officer B.B. knocked on the driver's side window, respondent woke up and opened the door. When Officer B.B. asked him if he was ok and if he needed any medical attention, respondent replied, "I was not driving. What happened?"

11. Respondent had bloodshot watery eyes, slurred speech, and the strong odor of an alcoholic beverage emanating from his person. Officer B.B. had to grab respondent's left arm and assist him out of the car. As they were walking over to the south curb of Katella Avenue, Officer B.B. had to hold respondent up and assist him in walking forward.

12. Officer B.B. requested Orange County Fire Authority ("OCFA") to the scene to check if respondent had any injuries or needed any medical assistance. When the paramedics who arrived on scene had respondent stand in order to evaluate him, respondent had a heavy sway and almost fell into them. Respondent could not stand on his own. The OCFA paramedics concluded respondent was without injury.

13. When Officer B.B. asked respondent standard Driving Under the Influence ("DUI") questions, respondent could not answer him. When Officer B.B. asked respondent simple questions to obtain basic information, respondent was still unable to answer his questions. Instead, respondent continued to tell Officer B.B. that he was not driving. At one point, respondent pointed at his car and stated, "That is my car," and began to cry while stating, "I was good!"

14. When Officer B.B. asked respondent if he was not going to answer his questions, respondent said, "No." When Officer B.B. proceeded to the standardized Field Sobriety Tests ("FSTs") phase of the DUI investigation and attempted to have respondent perform them, respondent refused to perform any of the tests. Based on his stopping his car in the center median of a roadway, sleeping in the driver's seat of his car, and his objective signs and symptoms of alcohol intoxication, respondent was arrested for a violation of California Vehicle Code section 23152, subdivision (a) [Driving Under the Influence of Alcohol].

15. After being transported to the police station, respondent provided two breath samples for the evidentiary chemical test and blew a Blood Alcohol Content ("BAC") of 0.19% and 0.18%.

16. On or about January 28, 2016, in the Superior Court of California, County of Orange, in the case entitled *The People of the State of California v. Byung Mo Ahn*, Superior Court Case No. 16WM01366, the Orange County District Attorney's Office charged respondent with, in Count 1, a misdemeanor violation of Vehicle Code section (VC) 23152(a) [Driving Under the Influence of Alcohol], and in Count 2, a misdemeanor violation of VC 23152(b) [Driving with Blood Alcohol .08% or More]. As to Counts 1 and 2, it was alleged that respondent at the time of his driving a motor vehicle had BAC of 0.15% or higher in violation of VC 23578. As to Counts 1 and 2, it was further alleged that respondent suffered a prior conviction of a misdemeanor violation of VC 23152(b) [Driving with Blood Alcohol .08% or More] on May 15, 2007 in the Superior Court of California, County of Orange.

17. On or about August 19, 2016, in the Superior Court of California, County of Orange, in the case entitled *The People of the State of California v. Byung Mo Ahn*, Superior Court Case

No. 16WM01366, respondent pled Guilty to all counts, admitted the special allegations of his prior DUI conviction and of having a BAC of 0.15% or higher, and was convicted of Counts 1 and 2, violating VC 23152, subdivisions (a) and (b). Respondent was sentenced to five (5) years formal probation, 364 days in jail to be served by supervised electronic confinement (244 days of which were stayed on condition of completion of DUI Court), ordered to attend and complete the 18 months Multiple Offender Alcohol Program as well as Victim Impact Counseling, and to pay fines and fees. As part of his sentence, the Court designated respondent as a "Habitual Traffic Offender."

September 27, 2012 DUI Conviction

18. On or about June 13, 2012, at approximately 3:14 a.m., Officer M.N. of Gardena Police Department ("GPD") was in his police car traveling south on Normandie Avenue and approaching the intersection with Marine Avenue in Gardena, California. The traffic light for south-and-north-bound traffic was red at the time. Officer M.N. saw a Hyundai Sonata, later determined to driven by respondent, in the northbound number two lane of Normandie Avenue, waiting for the green light. There were no other cars around the intersection at the time. Respondent's car suddenly moved north through the intersection when the traffic light was still red in violation of Vehicle Code section 21453, subdivision (a).

19. Officer M.N. conducted a traffic stop of respondent's car for the observed vehicle code violation. He contacted the driver and lone occupant of the car, later identified as respondent Byung Mo Ahn. While talking to respondent, Officer M.N. could smell a strong odor of an alcoholic beverage emitting from respondent's person. When he asked respondent how much he had to drink that night, he replied he had four (4) beers. Respondent was asked to get out of the car for a DUI investigation and he complied.

20. Officer B. of GPD arrived on scene to assist with the DUI investigation. Officer M.N. administered the standard Field Sobriety Tests ("FSTs") and respondent failed to perform the FSTs as instructed. During the "Walk-and-Turn Test," respondent could not stand still while he was receiving the verbal instruction. Respondent repeatedly asked Officer M.N. questions about how many steps he must take during the "Walk-and-Turn Test" even though he explained the test

to respondent several times. After respondent's several unsuccessful attempts at maintaining his balance, Officer M.N. terminated this test for respondent's safety. Respondent provided two (2) breath samples for the Preliminary Alcohol Screening device which returned results of Blood Alcohol Content ("BAC") at 0.174% and 0.171%.

21. Respondent was arrested for a violation of California Vehicle Code section 23152, subdivision (a) [Driving Under the Influence of Alcohol]. He consented to the blood test and was transported to Bayside Medical for a blood draw. After his blood draw was completed, respondent was transported to GPD jail where he was booked for DUI.

22. On or about August 9, 2012, in the Superior Court of California, County of Los Angeles, in the case entitled *The People of the State of California v. Byung Mo Ahn*, Superior Court Case No. 2SY05973, the Los Angeles County District Attorney's Office charged respondent with, in Count 1, a misdemeanor violation of Vehicle Code section (VC) 23152(a) [Driving Under the Influence of Alcohol], and in Count 2, a misdemeanor violation of VC 23152(b) [Driving with Blood Alcohol .08% or More]. As to Counts 1 and 2, it was alleged that respondent at the time of his driving a motor vehicle had BAC of 0.15% or higher in violation of VC 23578. As to Counts 1 and 2, it was further alleged that respondent suffered a prior conviction of a misdemeanor violation of California Vehicle Code section 23152(a) [DUI] on May 15, 2007 in the Superior Court of California, County of Orange, Case No. 07NM03.

23. On or about September 27, 2012, in the Superior Court of California, County of Los Angeles, in the case entitled *The People of the State of California v. Byung Mo Ahn*, Superior Court Case No. 2SY05973, respondent pled Guilty to Count 2, admitted the special allegations of his prior DUI conviction and of having a BAC of 0.15% or higher, and was convicted of Count 2, violating VC 23152, subdivision (b). Respondent was sentenced to three (3) years summary probation, four (4) days in county jail, feeds and fines, and was ordered to attend and complete the 18-months DUI program. Respondent was advised and understood that being under the influence of alcohol impairs his ability to safely operate a motor vehicle, and that it is extremely dangerous to human life to drive while under the influence of alcohol. Respondent was further advised that

///

if he continues to drive while under the influence of alcohol and as a result of his driving, someone is killed, he can be charged with murder.

May 15, 2007 DUI Conviction

24. On or about February 26, 2007, at approximately 12:41 a.m., Officer C.T. of Fullerton Police Department ("FPD") was on patrol in a marked patrol car, in full uniform, and had just stopped for a red traffic signal in the number one lane in the eastbound Orangethorpe Avenue at the intersection with Euclid Street in Fullerton, California. Officer C.T. saw a car making a left turn from the southbound left turn lane on Euclid Street at a high rate of speed. He then saw the car drive through a red light in violation of Vehicle Code section ("VC") 21453, subdivision (a), at the intersection of Richman Avenue and Orangethorpe Avenue. The car, later determined to be driven by respondent, made several unsafe lane changes without signaling and almost caused several accidents in violation of VC 22107. As respondent's car approached Highland Avenue, it made a right turn at the intersection without signaling in violation of VC 22107. Officer C.T. positioned his patrol car directly behind respondent's. He then activated the patrol car's overhead forward red lights to initiate an enforcement stop, respondent's car slowed down and pulled over.

25. Officer C.T. exited the patrol car, contacted the driver, advised him of the reason for the stop, and through the driver's license he was handed identified the driver as respondent. When Officer C.T. spoke with respondent, he smelled the odor of an alcoholic beverage emitting from within respondent's car. In the middle of Officer C.T.'s conversation with him, respondent got out of his car without being asked to do so. When Officer C.T. asked him why he did not stop at the traffic signal at Richman Avenue and Orangethorpe Avenue, respondent was unable to coherently answer the question. Officer C.T. soon smelled the odor of an alcoholic beverage emitting from respondent's breath. When he asked respondent what type of alcoholic beverages he drank during the evening, respondent replied he drank four (4) beers in Buena Park, California.

26. Within minutes after Officer C.T.'s enforcement stop of respondent, Officer K.E. of FPD arrived at the scene to assist with the DUI investigation. As he was speaking with respondent, Officer K.E. could smell a strong odor of an alcoholic beverage emitting from respondent's breath and person and he noticed that respondent's eyes were bloodshot, red and

watery. When he asked respondent if he had anything to drink that night, respondent replied he had four (4) beers.

27. In Officer C.T.'s presence, Officer K.E. explained and demonstrated FPD's Field Coordination Tests ("FCT") and had respondent attempt them to determine if he had been operating his car with a level of impairment. During the "Nystagmus Test," respondent's eyes displayed a lack of smooth pursuit and displayed vertical nystagmus with deviation. During the "Modified Position of Attention Test," respondent estimated 60 seconds in his head as 30 seconds. During the "Teel to Toe Walk," respondent had a hard time maintaining his balance on a flat leveled surface and lost his balance three (3) times. During the first walk, respondent missed his heel to toe between steps four and five (4, 5), and on his walk back, he missed his heel to toe between steps one, two, six, and seven (1, 2, 6, 7). During the "Finger to Nose Test," respondent touched the tip of his finger to the tip of his nose on two out of six (2 / 6) attempts. Respondent refused to blow into the PAS device.

28. Based on respondent's driving, his objective symptoms of intoxication, and his unsatisfactory performance on the FCTs, the two officers formed the opinion that respondent was driving his car while under the influence of alcohol. Respondent was arrested for a violation of VC 23152, subdivision (a) [DUI]. Respondent was advised of VC 23612 [Implied Consent Law], but he refused both the blood and the breath test.

29. Officer C.T. transported respondent to the FPD Station for booking. Upon arrival, a blood test was administered to respondent by an LVN.

30. On or about April 2, 2007, in the Superior Court of California, County of Orange, in the case entitled *The People of the State of California v. Byung Mo Ahn*, Superior Court Case No. 07NM03900, the Orange County District Attorney's Office charged respondent with, in Count 1, a misdemeanor violation of Vehicle Code section (VC) 23152(a) [Driving Under the Influence of Alcohol], and in Count 2, a misdemeanor violation of VC 23152(b) [Driving with Blood Alcohol .08% or More]. As to Counts 1 and 2, it was alleged that respondent willfully and unlawfully refused a peace officer's request to submit to, and willfully and unlawfully failed to complete, the chemical test pursuant to California Vehicle Code section 23612.

31. On or about May 15, 2007, in the Superior Court of California, County of Orange, in the case entitled *The People of the State of California v. Byung Mo Ahn*, Superior Court Case No. 07NM03900, respondent pled Guilty to all counts and admitted his BAC at the time of his driving his car to be 0.12%. The special allegation regarding his refusal to submit to chemical test was dismissed. Respondent was sentenced to three (3) years informal probation, 20 days of community service in lieu of jail, ordered to attend and complete the 3 months 1st Offender Program as well as attend Mothers Against Drunk Driving ("MADD"), and to pay fines and fees.

SECOND CAUSE FOR DISCIPLINE

(Use of Alcohol to an Extent or in a Manner Dangerous to Himself, Others, or Public)

32. Respondent's Acupuncturist License No. AC 12114 is further subject to disciplinary action under section 4955, as defined by sections 4955, subdivision (a), of the Code, in that he has used alcoholic beverages to an extent or in a manner dangerous or injurious to himself or others, as more particularly alleged in paragraphs 8 through 31, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

THIRD CAUSE FOR DISCIPLINE

(Violation of a Provision or Provisions of the Acupuncture Licensure Act)

33. Respondent's Acupuncturist License No. AC 12114 is further subject to disciplinary action under section 4955, as defined by sections 4955, subdivision (d), of the Code, in that he has violated a provision or provisions of the Acupuncture Licensure Act, as more particularly alleged in paragraphs 7 through 32, above, which are hereby incorporated by reference and realleged as if fully set forth herein.

///

///

///

///

///

///

///

PRAYER

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

1. Revoking or suspending Acupuncturist License No. AC 12114, issued to respondent Byung Mo Ahn, AC;

2. Ordering respondent Byung Mo Ahn, AC to pay the Acupuncture Board of California 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: APR 19 2018

BENJAMIN BODEA
Executive Officer
Acupuncture Board
State of California
Complainant

SD2017802760
71425299.doc