

FILED

JUL 13 2011

ACUPUNCTURE BOARD

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-2867
Facsimile: (213) 897-9395
7 E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant
8

9
10 **BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**
11

12 In the Matter of the Accusation Against:

Case No. 1A 2010-83

13 **BONG GOO CHUNG, L.Ac.**

14 500 South Lake Street, Apt. 206
15 Los Angeles, California 90057

ACCUSATION

16 Acupuncture License Number AC12161,

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Janelle Wedge ("Complainant") brings this Accusation solely in her official capacity
22 as the Executive Officer of the Acupuncture Board ("Board").

23 2. On or about November 7, 2007, the Board issued Acupuncture License number
24 AC12161 to Bong Goo Chung, L.Ac. (Respondent). The Acupuncture License expired on
25 January 31, 2011, and has not been renewed.
26
27
28

1 **JURISDICTION**

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

5 4. Section 4955 of the Code states:

6 "The board may deny, suspend, or revoke, or impose probationary conditions upon, the
7 license of any acupuncturist if he or she is guilty of unprofessional conduct.

8 "Unprofessional conduct shall include, but not be limited to, the following:

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

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

16 5. Section 4956 of the Code states:

17 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
18 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
19 is deemed to be a conviction within the meaning of this chapter. The board may order a license
20 suspended or revoked, or may deny a license, or may impose probationary conditions upon a
21 license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on
22 appeal, or when an order granting probation is made suspending the imposition of sentence
23 irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code
24 allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or
25 setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
26 indictment.

27 6. Section 490 of the Code states:

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

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

9 (c) A conviction within the meaning of this section means a plea or verdict of guilty or a
10 conviction following a plea of nolo contendere. An action that a board is permitted to take
11 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
12 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
13 made suspending the imposition of sentence, irrespective of a subsequent order under Section
14 1203.4 of the Penal Code.

15 (d) The Legislature hereby finds and declares that the application of this section has been
16 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
17 554, and that the holding in that case has placed a significant number of statutes and regulations
18 in question, resulting in potential harm to the consumers of California from licensees who have
19 been convicted of crimes. Therefore, the Legislature finds and declares that this section
20 establishes an independent basis for a board to impose discipline upon a licensee, and that the
21 amendments to this section made by Chapter 33 of the Statutes of 2008 do not constitute a change
22 to, but rather are declaratory of, existing law.”

23 7. Section 4959 of the Code states:

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

28

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

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

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

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

13 8. California Vehicle Code Section 23152 states:

14 "(a) It is unlawful for any person who is under the influence of any alcoholic beverage or
15 drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

16 (b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in
17 his or her blood to drive a vehicle. . . ."

18 **FIRST CAUSE FOR DISCIPLINE**
19 **(CONVICTION OF A CRIME IN 2008)**

20 9. Respondent's license is subject to disciplinary action under Business and Professions
21 Code section 4955 for unprofessional conduct pursuant to Code section 4955, subdivision (b), in
22 that he was convicted of violating California Vehicle Code Section 23152 subsection (a),
23 commonly known as driving while under the influence of an alcoholic beverage, a crime which is
24 substantially related to the qualifications, functions, and duties of an acupuncturist. The
25 circumstances are as follows:

26 10. On or about July 2, 2008, in proceedings entitled *People of the State of California v.*
27 *Bong Goo Chung*, then pending in the Superior Court of California, case number 8MP03342,
28 after a plea of nolo contendere, Respondent was convicted of violating Vehicle Code section

1 23152, subsection (a), a misdemeanor, which provides that "It is unlawful for any person who is
2 under the influence of any alcoholic beverage or drug, or under the combined influence of any
3 alcoholic beverage and drug, to drive a vehicle."

4 11. The Court placed Respondent on three (3) years probation, and ordered him, inter
5 alia, to serve one (1) day in county jail, pay a \$390.00 fine plus penalty assessments which totaled
6 \$1,782.00, enroll in and complete a three (3) month alcohol program, and not drive a motor
7 vehicle with any measurable amount of alcohol in his blood.

8 12. The Court also advised Respondent that being under the influence of alcohol or drugs,
9 or both, impairs his ability to safely operate a motor vehicle, and it is extremely dangerous to
10 human life to drive while under the influence of alcohol (emphasis added).

11 13. The Los Angeles Police Department (LAPD) report summarized the facts underlying
12 the above conviction, as follows:

13 a. On Friday, February 29, 2008, at approximately 1:50 a.m., LAPD officers
14 assigned to South Traffic Crime Task Force Driving Under the Influence Enforcement Detail
15 were driving 60-65 miles per hour on the 110 freeway when they noticed Respondent driving at
16 an excessive speed. Respondent's car passed their car and straddled the double yellow lines into
17 oncoming traffic.

18 b. The officers activated their vehicle's emergency lights and siren in an attempt
19 to get Respondent to pull his car over. Respondent continued to drive. After one of the officers
20 used the police vehicle's public address system to order Respondent to cease driving, Respondent
21 pulled over onto the shoulder of an island divider.

22 c. When Respondent got out of his car the officers saw that Respondent displayed
23 objective signs of alcohol intoxication. At first Respondent denied he had been drinking.
24 Respondent then said he had drunk three (3) beers earlier at a restaurant. Officers demonstrated a
25 series of standardized physical field sobriety tests to Respondent, and then asked Respondent to
26 perform them as directed. Respondent was unable to perform the tests in a satisfactory manner.

27 d. Respondent was arrested for being under the influence of alcohol. After being
28 read the chemical test admonition by one of the arresting officers, Respondent chose to provide a

1 sample of his breath to be tested for the presence and amount of alcohol. After the directions to
2 take the breath test were explained to him, Respondent unsuccessfully attempted the breath test
3 eight (8) times, but blew insufficient air into the machine to be tested. Respondent refused to
4 provide a blood sample to test for the presence and amount of alcohol in his system.

5 **SECOND CAUSE FOR DISCIPLINE**
6 **(CONVICTION OF A CRIME IN 2011)**

7 14. Respondent's license is subject to disciplinary action under Business and Professions
8 Code section 4955 for unprofessional conduct pursuant to Code section 4955, subdivision (b), in
9 that he was convicted of violating California Vehicle Code Section 23152 subsection (b),
10 commonly known as driving while under the influence of an alcoholic beverage, a crime which is
11 substantially related to the qualifications, functions, and duties of an acupuncturist. The
12 circumstances are as follows:

13 15. On or about January 25, 2011, after a plea of nolo contendere in proceedings entitled
14 *People of the State of California v. Bong Goo Chung*, then pending in the Superior Court of
15 California, case number OMP06591, Respondent was convicted of violating Vehicle Code section
16 23152, subsection (b), a misdemeanor, which provides that "It is unlawful for any person who has
17 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle." Respondent
18 further admitted that he had sustained a prior misdemeanor conviction for a violation of
19 California Vehicle Code Section 23152 subsection (a) in misdemeanor case number 8MP03342.

20 16. On or about February 14, 2011, the Court placed Respondent on five (5) years
21 probation, and ordered him, inter alia, to serve thirty days in county jail, pay a \$390.00 fine plus
22 penalty assessments which totaled \$1,821.00, enroll in and complete a 18 month, second offender
23 alcohol program, and not drive a motor vehicle with any measurable amount of alcohol in his
24 blood.

25 17. Once again the Court advised Respondent that being under the influence of alcohol or
26 drugs, or both, impairs his ability to safely operate a motor vehicle, and it is extremely dangerous
27 to human life to drive while under the influence of alcohol (emphasis added).
28

1 18. The Los Angeles Police Department (LAPD) report summarized the facts underlying
2 the above conviction, as follows:

3 a. On Friday, May 7, 2010, at approximately 12:27 a.m., LAPD officers assigned
4 to West Traffic Driving Under the Influence Task Force were driving on Wilshire Boulevard
5 when they noticed Respondent driving his car which was repeatedly crossing over the double
6 yellow lines into oncoming traffic lanes.

7 b. The officers initiated a traffic stop to investigate. Respondent told the officers
8 he did not know why he had been stopped. Respondent denied he had been drinking.

9 c. When Respondent got out of his car the officers saw that Respondent displayed
10 objective signs of alcohol intoxication. When questioned by the officer about alcohol usage
11 Respondent again denied he had been drinking. Officers demonstrated a series of standardized
12 physical field sobriety tests to Respondent, and then asked Respondent to perform them as
13 directed. Respondent was unable to perform the tests in a satisfactory manner.

14 d. Respondent was arrested for being under the influence of alcohol. After being
15 read the chemical test admonition by one of the arresting officers, Respondent chose to provide a
16 sample of his breath to be tested for the presence and amount of alcohol. After the directions to
17 take the breath test were explained to him, Respondent completed the breath test. The
18 Intoxometer measured Respondent's blood alcohol content as being .19, over two times the legal
19 limit of alcohol.

20 **THIRD CAUSE FOR DISCIPLINE**
21 **(UNPROFESSIONAL CONDUCT)**

22 19. Respondent's license is subject to disciplinary action under Business and Professions
23 Code section 4955 for unprofessional conduct pursuant to Code section 4955, subdivision (a), in
24 that he used alcoholic beverages to an extent or in a manner dangerous to himself or herself, or to
25 any other person, or to the public, and to an extent that the use impairs his or her ability to engage
26 in the practice of acupuncture with safety to the public. The circumstances are as follows:

27 20. The facts and circumstances in paragraphs 12, 13, 17, and 18 are incorporated by
28 reference as if set forth in full herein.

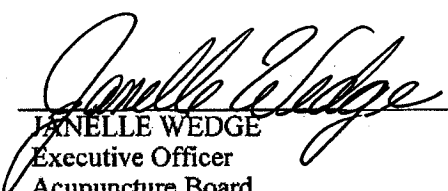
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 AC12161, issued to Bong Goo Chung, L.Ac.
2. Ordering him 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. If placed on probation, ordering him to pay to the Acupuncture Board the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: **JUL 13 2011**



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

Complainant

LA2011502267
50925283.docx