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FILED
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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: YONG BUM BAE, L.AC. 239 South La Cienega Boulevard, #101 Beverly Hills, California 90211 Acupuncturist License No. AC12253, Respondent.	Case No. 1A-2015-7 **ACCUSATION**

Complainant alleges:

PARTIES

1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity as the Acting Executive Officer of the Acupuncture Board, Department of Consumer Affairs (Board).

2. On or about March 13, 2008, the Acupuncture Board issued Acupuncturist License Number AC12253 to Yong Bum Bae, 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 August 31, 2017, unless renewed.

JURISDICTION

3. This Accusation is brought before the Board 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.

". . .

"(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 4955.1 of the Code states:

"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:

". . .

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

". . ."

6. 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.

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"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."

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.

". . ."

9. Section 498 of the Code states:

"A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact."

COST RECOVERY

10. 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.

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"(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."

FACTUAL SUMMARY

11. On May 7, 2015, in the case entitled *The People of the State of California v. Steve Yong Bae*, case number 5MP00441, in the Superior Court of California, County of Los Angeles, Respondent, upon his plea of nolo contendere, was convicted of driving a vehicle while under the influence of an alcoholic beverage in violation of Vehicle Code Section 23152, subdivision (a), a misdemeanor. Accordingly, Respondent was placed on three years probation with the following terms and conditions:

A. Serve thirteen days in the Los Angeles County Jail, or pay $1,777.00 in fines and fees to the Superior Court, or perform thirteen days of community labor;

B. Enroll and participate in and successfully complete a three month licensed first-offender alcohol and other drug education and counseling program;

C. Pay a restitution fine in the amount of $150.00 to the Superior Court;

D. Pay restitution in the amount of $11,936.00 to the victim(s) at the rate of $1,000.00 each month as determined by the Superior Court at a subsequent restitution hearing;

E. Enroll within twenty-one days or within twenty-one days of release from custody in an AB-541 program;

F. Attend ten Alcoholics/Narcotics Anonymous meetings at the rate of one time per week, in addition to those required as part of the alcohol education program;

G. Not drive a motor vehicle without a valid driver's license in his possession or without liability insurance in at least the minimum amounts required by law;

H. Not drive a motor vehicle with a measurable amount of alcohol or drugs in his blood;

I. Not refuse to take and complete any blood alcohol or drug chemical test, any field sobriety test, and any preliminary alcohol screening when requested by any peace officer;

J. Comply with the supplemental terms of probation regarding the installation of an ignition interlock device;

K. Obey all laws and orders of the Superior Court; and

L. Pay any other fines, fees or costs at the direction of the Superior Court.

12. The circumstances leading to Respondent's conviction are as follows:

A. At approximately 3:10 a.m. on January 9, 2015, law enforcement officers with the Los Angeles Police Department (LAPD) were dispatched to a traffic collision near the intersection of Wilshire Boulevard and South Westmoreland Avenue in Los Angeles. The LAPD officers arrived at the crash scene and quickly observed the victim-motorist standing outside of his Jeep vehicle, which had significant damage to the right side. The victim-motorist told the LAPD officers that he was driving his Jeep eastbound on Wilshire Boulevard when he stopped at a red light near the intersection of South Westmoreland Avenue. The victim-motorist reported that a black Mercedes vehicle "sideswiped" his Jeep and then drove away eastbound on Wilshire Boulevard without stopping. A witness to the hit-and-run followed the black Mercedes to a parking lot near Wilshire Boulevard and South Rampart Boulevard. The witness contacted and briefly interacted with the driver of the black Mercedes, later identified as Respondent. The witness later reported to the LAPD officers that Respondent appeared to be "drunk."

B. The LAPD officers located and contacted Respondent near his black Mercedes at the intersection of Wilshire Boulevard and South Rampart Boulevard. The LAPD officers inspected Respondent's black Mercedes and observed fresh damage to the left side of the vehicle. The LAPD officers concluded that the damage to Respondent's vehicle was consistent with the damage to the victim-motorist's vehicle.

C. Respondent told the LAPD officers that he did not recall the traffic crash, but admitted to driving the black Mercedes to the parking lot where he parked his vehicle.

Respondent admitted to drinking "one beer" earlier that evening. During the LAPD officers' contact with Respondent, he displayed symptoms of intoxication, including: the strong odor of alcohol emitting from his breath; bloodshot and watery eyes; slurred speech; a flush, red face; and poor coordination. Respondent agreed to take Standardized Field Sobriety Tests, but he was ultimately unable to perform the tests as explained and demonstrated by the LAPD officers. Consequently, the LAPD officers formed the opinion that Respondent was under the influence of an intoxicant and was unable to operate a motor vehicle safely upon a highway.

C. Respondent was arrested for driving under the influence of an alcoholic beverage and transported to the Olympic Station where he consented to and provided two breath samples. The first sample revealed that Respondent's breath alcohol concentration was approximately 0.17 percent. The second sample revealed that Respondent's breath alcohol concentration was approximately 0.18 percent.

D. Respondent was booked into the Metropolitan Detention Center.

13. Respondent's acupuncturist license was previously due to expire on August 31, 2015. On August 15, 2015, Respondent completed a license renewal application and further certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the license renewal application. In response to the question asking whether Respondent had been convicted of any crime in any state since he last renewed his acupuncturist license, Respondent indicated "no" by checking the appropriate box on the form. Respondent's acupuncturist license was subsequently renewed and is now due to expire on August 31, 2017.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct –Use of an Alcoholic Beverage in a Dangerous Manner)

14. By reason of the facts set forth in paragraphs 12 and 13 above, Respondent's license is subject to disciplinary action under Section 4955, subdivision (a) of the Code, in that Respondent used alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person or to the public.

15. Respondent's acts and/or omissions as set forth in paragraphs 12 and 13 above, whether proven individually, jointly, or in any combination thereof, constitute Respondent's use

of alcoholic beverages to the extent, or in such a manner, as to be dangerous and injurious to himself, or to any other person or to the public pursuant to Section 4955, subdivision (a) of the Code. Therefore, cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Conviction of a Substantially Related Crime)

16. By reason of the facts set forth in paragraphs 12 and 13 above, Respondent's license is subject to disciplinary action under Section 4955, subdivision (b), Section 4956, and Section 490 of the Code, in that Respondent has been convicted of a crime substantially related to the qualifications, functions or duties of an acupuncturist.

17. Respondent's acts and/or omissions as set forth in paragraphs 12 and 13 above, whether proven individually, jointly, or in any combination thereof, constitute the conviction of a crime substantially related to the qualifications, functions or duties of an acupuncturist pursuant to Section 4955, subdivision (b), Section 4956, and Section 490 of the Code. Therefore, cause for discipline exists.

THIRD CAUSE FOR DISCIPLINE

(Unprofessional Conduct - Committing an Act of Dishonesty or Corruption)

18. By reason of the facts set forth in paragraph 14 above, Respondent's license is subject to disciplinary action under Section 4955, subdivision (d), Section 4955.1, subdivision (c), and Section 498 of the Code, in that Respondent committed an act involving dishonesty or corruption with respect to the qualifications, functions or duties of an acupuncturist, and knowingly omitted to state a material fact in securing his renewed acupuncturist license.

19. Respondent's acts and/or omissions as set forth in paragraph 14 above, whether proven individually, jointly, or in any combination thereof, constitute the commission of an act involving dishonesty or corruption with respect to the qualifications, functions or duties of an acupuncturist, and knowingly omitting to state a material fact in securing his renewed acupuncturist license pursuant to Section 4955, subdivision (d), Section 4955.1, subdivision (c), and Section 498 of the Code. Therefore, cause for discipline exists.

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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 AC12253, issued to Yong Bum Bae, L.Ac.

2. Ordering Yong Bum Bae, 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. Ordering Yong Bum Bae, L.Ac., if placed on probation, to pay the Acupuncture Board the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: JUL 26 2016

BENJAMIN BODEA
Acting Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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