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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Amended Accusation Against: **SEUNG YUEB HAN, LAc.** **525 S. Berendo St., Unit #301** **Los Angeles, CA 90020** **Acupuncturist No. AC 12521** Respondent.	Case No. 1A-2016-184 **AMENDED A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about August 25, 2008, the Acupuncture Board issued Acupuncturist Number AC 12521 to Seung Yueb Han, L.Ac. (Respondent). The Acupuncture License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2018, unless renewed.

JURISDICTION

3. This Amended 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 4928.1 of the Code states:

"Protection of the public shall be the highest priority for the Acupuncture Board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

5. 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:

"...

"(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.

"..."

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.

"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.

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

9. Section 2052 of the Code states:

"(a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

"(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

"(c) The remedy provided in this section shall not preclude any other remedy provided by law."

COSTS

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.

"(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)

11. Respondent is subject to disciplinary action for unprofessional conduct under Code section 4955 subdivision (b), in that he was convicted of violating Business and Professions Code section 2052, subdivision (a), commonly known as unlicensed practice of medicine, a crime which is substantially related to the qualifications, functions, and duties of an acupuncturist.

The circumstances are as follows:

12. On or about July 28, 2016, in proceedings entitled *People of the State of California v. Seung Yueb Han*, then pending in the Superior Court of California, case number BA442753, after a plea of nolo contendere, Respondent was convicted of Count 1, a violation of Business and Professions Code section 2052, subdivision (a), as a misdemeanor.

13. Following Respondent's plea **of** nolo contendere the Court placed Respondent on three (3) years probation, and ordered him, inter alia, to obey all laws, perform 300 hours of community service, and pay a fine of $222.00.

14. The facts underlying the above conviction are:

15. Respondent was employed part time as a registered nurse at the Regen Medical Clinic located in Los Angeles, California. The clinic provided medical cosmetic services. A licensed physician was the owner of the medical clinic, and performed consultations on the patients, as did Respondent. The licensed physician did not perform procedures at the clinic.

16. On August 4, 2015, an undercover investigator, posing as a patient, entered the Regen Medical Clinic. She was greeted by S.K. an aesthetician who provided a medical form to complete. The investigator told S.K. she was interested in Botox treatment and a mole removal. The investigator was led into an examination room, where Respondent spoke with her. The investigator informed Respondent that she was interested in Botox and mole removal. Respondent examined her face and discussed the benefits of Botox for wrinkles and laser for mole removal. Respondent said he would be the one administering the treatments.

17. On November 10, 2015, the investigator, posing as a patient, returned to Regen Medical Clinic. She was greeted by S.K. and Respondent. There was no physician present in the office. Respondent advised the investigator that he would administer Botox via injection.

18. Respondent's treatment of the investigator constituted the unlicensed practice of medicine.

19. As a result of his plea on July 28, 2016, to a misdemeanor violation of Business and Professions Code section 2052, subdivision (a), Respondent was convicted of an offense substantially related to the qualifications, functions, or duties of an acupuncturist, and cause for discipline exists.

SECOND CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

20. Respondent is subject to disciplinary action under Code section 4955, subdivision (b), in that he engaged in unprofessional conduct. The circumstances are as follows:

21. The facts and circumstances in paragraphs 11 through 19 are incorporated by reference as if set forth in full herein.

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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 AC 12521, issued to Seung Yueb Han, L.Ac.;

2. Ordering Seung Yueb Han 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; and,

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

DATED: SEP 20 2017

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

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