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ACUPUNCTURE BOARD

BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **KYOUNG TEA KIM, L.Ac.** **2248 South Stinson Avenue** **Hacienda Heights, CA 91745** **Acupuncture License No. AC 13341,** Respondent.	Case No. 1A-2016-229 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about September 21, 2009, the Acupuncture Board issued Acupuncture License Number AC 13341 to Kyoung Tea Kim, 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 July 31, 2019, unless renewed.

JURISDICTION

3. This 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 4927 of the Code states, in pertinent part:

". . .

"(d) 'Acupuncture' means the stimulation of a certain point or points on or near the surface of the body by the insertion of needles to prevent or modify the perception of pain or to normalize physiological functions, including pain control, treatment of certain diseases or dysfunctions of the body and includes the techniques of electroacupuncture, cupping, and moxibustion."

6. 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:

". . .

"(i) Any action or conduct that would have warranted the denial of the acupuncture license.

". . ."

7. Section 4955.1 of the Code states, in pertinent part:

"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:

". . .

"(e) Failing to maintain adequate and accurate records relating to the provision of services to their patients."

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8. Section 4955.2 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 any one of the following:

"(a) Gross negligence.

"(b) Repeated negligent acts.

"(c) Incompetence."

9. California Code of Regulations, title 16, section 1399.453 states:

"An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments."

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

(Gross Negligence)

11. Respondent is subject to disciplinary action under Code section 4955.2, subdivison (a), in that he was grossly negligent in his care and treatment of Patient A.[1] The circumstances are as follows:

12. On or about October 27, 2016, the Board received a complaint regarding Respondent's treatment of Patient A. The Board initiated an investigation of the events underlying this complaint.

13. On or about October 13, 2016, patient A received acupuncture treatment at the Fontana Indoor Swap Meet from Respondent who was working as an independent contractor for *Fata Acupuncture*.

14. Patient A told Respondent her upper right back and shoulder areas were tense and laid face down to receive her acupuncture treatment. Respondent forcefully inserted a needle just below Patient A's right shoulder blade. Patient A immediately felt a sharp pain which caused her to scream as a result of the pain. Patient A told Respondent he had inserted the needle too deeply.

15. Respondent then forcefully inserted an acupuncture needle into the right side of A's neck. Patient A felt that the needle in her neck was also inserted too deeply.

16. After receiving the acupuncture treatment Patient A left the swap meet. Patient A began to experience stabbing pain in her back and chest, and became short of breath. Patient A went to urgent care where a physician diagnosed her as suffering a pneumothorax[2] of her right lung post acupuncture. Patient A was admitted into the hospital where she received medical oxygen, and was released the following day.

17. The investigator obtained the chart Respondent created after his acupuncture treatment of Patient A. The chart consisted of a single page, acupuncture intake form that includes minimal

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[1] The names of the patient and/or witnesses are anonymized to protect privacy rights. The names will be provided to Respondent upon written request for discovery.

[2] Pneumothorax is a collection of air or gas in the chest or pleural space that causes part or all of a lung to collapse and can be due to trauma. Pneumothorax is known as the most common serious complication following acupuncture and unless reversed by effective treatment can result in death.

personal and medical information filled by the patient, an informed consent signed by the patient and 2 body diagrams (front and back) with one notation in Korean (not translated) and another in English. On the two pre-printed images of the human body labeled "Front" and "Back" an "X" was placed on the back of the right shoulder diagram and a couple of lines were placed on the upper right shoulder diagram.

18. The investigator interviewed Respondent regarding his acupuncture treatment of patient A. Respondent speaks very limited English and was assisted by an interpreter during the interview.

19. The investigator showed him patient A's chart and Respondent admitted that he had inserted acupuncture needles one inch into Patient A.

20. Respondent stated he marked the line and the X on the image of the shoulder area of the pre-printed images to indicate where he placed the needles during Patient A's acupuncture treatment.

21. Respondent stated that "99% of the time" he concurred with the patient's concerns and therefore does not chart any other details other than needle placement.

22. The investigator asked Respondent additional questions regarding his chart entries which included why Patient A's chart did not reflect Respondent's name, signature, date of the treatment, examination details, treatment type or other significant details, whether another acupuncturist would be able to interpret the treatment based on his charting, whether the chart met the professional standards for recordkeeping, and whether he believed his charting needed improvement.

23. Respondent refused to answer the investigator's additional questions regarding Respondent's chart entries.

24. Respondent admitted that patients have told him he causes pain when he inserts acupuncture needles during his treatments.

25. Respondent told the investigator it took him approximately eight years to graduate from acupuncture school because he was a part-time student. Respondent stated that since he obtained his acupuncture license in 2009 he has held two jobs as an acupuncturist. Respondent

stated in 2015 he worked as an acupuncturist for three months and in 2016 for five months. Respondent stated that his main employment has been as a restaurant cook.

26. The standard of care requires that acupuncture needles be inserted to a depth up to .05 inch into the patient's skin.

27. Respondent's aggressive insertion of the acupuncture needles to a depth of one inch during Patient A's treatment demonstrates a lack of knowledge, and is an extreme departure from the standard of care.

28. The standard of care for record keeping requires the acupuncturist to keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, date of treatment, type of treatments given (needle(s) location, needling depth, use of cupping, massage etc.) and progression or regression made as a result of the acupuncture treatments.

29. Respondent's patient record for his treatment of Patient A did not comprehensively and adequately report the details of Patient A's treatment.

30. Respondent's patient record for Patient A demonstrates an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts)

31. Respondent is subject to disciplinary action under section 4955.2, subdivision (b), of the Code, in that he has committed repeated acts of negligence in the practice of acupuncture. The circumstances are as follows:

32. Complainant refers to, and by reference incorporates herein, paragraphs 11 through 25, inclusive, above.

33. Respondent's care and treatment of Patient A as set forth above includes the following acts and/or omissions which constitute repeated negligent acts:

34. Respondent aggressively inserted the acupuncture needles to a depth of one inch during Patient A's treatment.

35. Respondent failed to comprehensively and adequately report the details of Patient A's

treatment.

THIRD CAUSE FOR DISCIPLINE

(Failure to Maintain Adequate and Accurate Records)

36. Respondent is subject to disciplinary action under section 4955.1, subdivision (e), and California Code of Regulations, title 16, section 1399.453, in that he failed to maintain adequate and accurate records relating to the services he provided to Patient A. The circumstances are as follows:

37. Complainant refers to, and by reference incorporates herein, paragraphs 11 through 25, inclusive, above.

FOURTH CAUSE FOR DISCIPLINE

(Incompetence)

38. Respondent is subject to disciplinary action under Code section 4955.2, subdivision (c), in that he committed unprofessional conduct in his care and treatment of Patient A. The circumstances are as follows:

39. Complainant refers to, and by reference incorporates herein, paragraphs 11 through 25, inclusive, above.

FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

40. Respondent is subject to disciplinary action under section 4955 of the Code in that he committed unprofessional conduct in his care and treatment of Patient A. The circumstances are as follows:

41. Complainant refers to, and by reference incorporates herein paragraphs 11 through 25, inclusive, above.

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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 Acupuncture License Number AC 13341, issued to Kyoung Tea Kim, L.Ac.;

2. Ordering Kyoung Tea Kim, 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. 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 0 4 2018

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

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