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9
10 **BEFORE THE**
ACUPUNCTURE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA
12

13 In the Matter of the Accusation Against:

Case No. 1A-2019-161

14 **SUNG SUK CHO, L.Ac.**
15 **P.O. Box 7197**
Big Bear Lake, CA 92315
16 **Acupuncturist License No. AC 5469,**

ACCUSATION

17 Respondent.
18

19 **PARTIES**

20
21 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity
22 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

23 2. On or about August 6, 1996, the Acupuncture Board issued Acupuncturist License
24 Number AC 5469 to Sung Suk Cho (Respondent). The Acupuncturist License was in full force
25 and effect at all times relevant to the charges brought herein and will expire on September 30,
26 2021, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Acupuncture Board (Board), under the

1 authority of the following laws. All section references are to the Business and Professions Code
2 (Code) unless otherwise indicated.

3 4. Section 4928.1 of the Code states:

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

8 5. Section 4955 of the Code states:

9 The board may deny, suspend, or revoke, or impose probationary conditions
10 upon, the license of any acupuncturist who is guilty of unprofessional conduct.

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

12 ...

13 (d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the
14 violation of the terms of this chapter or any regulation adopted by the board pursuant
15 to this chapter.

16 ...

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

19 ...

20 6. Section 492 of the Code states:

21 Notwithstanding any other provision of law, successful completion of any
22 diversion program under the Penal Code, or successful completion of an alcohol and
23 drug problem assessment program under Article 5 (commencing with section
24 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
25 agency established under Division 2 ([Healing Arts] commencing with Section 500)
26 of this code, or any initiative act referred to in that division, from taking disciplinary
27 action against a licensee or from denying a license for professional misconduct,
28 notwithstanding that evidence of that misconduct may be recorded in a record
pertaining to an arrest.

This section shall not be construed to apply to any drug diversion program
operated by any agency established under Division 2 (commencing with Section 500)
of this code, or any initiative act referred to in that division.

7. Section 731, subdivision (a), of the Code states:

Any person licensed, certified, registered, or otherwise subject to regulation
pursuant to this division who engages in, or who aids or abets in, a violation of
Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of,
the Penal Code occurring in the work premises of, or work area under the direct

1 professional supervision or control of, that person, shall be guilty of unprofessional
2 conduct. The license, certification, or registration of that person shall be subject to
denial, suspension, or revocation by the appropriate regulatory entity under this
division.

3 8. California Penal Code Section 647 states, in pertinent part:

4 Except as provided in paragraph (5) of subdivision (b) and subdivision (l),
5 every person who commits any of the following acts is guilty of disorderly conduct, a
misdemeanor:

6 ...

7 (b)(1) An individual who solicits, or who agrees to engage in, or who engages
8 in, any act of prostitution with the intent to receive compensation, money, or anything
of value from another person. An individual agrees to engage in an act of
9 prostitution when, with specific intent to so engage, he or she manifests an acceptance
of an offer or solicitation by another person to so engage, regardless of whether the
10 offer or solicitation was made by a person who also possessed the specific intent to
engage in an act of prostitution.

11 (2) An individual who solicits, or who agrees to engage in, or who engages in,
12 any act of prostitution with another person who is 18 years of age or older in
exchange for the individual providing compensation, money, or anything of value to
13 the other person. An individual agrees to engage in an act of prostitution when, with
specific intent to so engage, he or she manifests an acceptance of an offer or
14 solicitation by another person who is 18 years of age or older to so engage, regardless
of whether the offer or solicitation was made by a person who also possessed the
15 specific intent to engage in an act of prostitution.

16 ...

17 (4) A manifestation of acceptance of an offer or solicitation to engage in an act
of prostitution does not constitute a violation of this subdivision unless some act, in
18 addition to the manifestation of acceptance, is done within this state in furtherance of
the commission of the act of prostitution by the person manifesting an acceptance of
19 an offer or solicitation to engage in that act. As used in this subdivision,
"prostitution" includes any lewd act between persons for money or other
20 consideration.

21 ...

22 9. California Penal Code Section 602 states, in pertinent part:

23 Except as provided in subdivisions (u), (v), and (x), and Section 602.8, every
24 person who willfully commits a trespass by any of the following acts is guilty of a
misdemeanor:

25 ...

26 (m) Entering and occupying real property or structures of any kind without
27 the consent of the owner, the owner's agent, or the person in lawful possession.

28 ...

1 10. California Code of Regulations, title 16, section 1399.469.2 states:

2 In addition to the conduct described in Section 4955 of the Business and
3 Professions Code, “unprofessional conduct” also includes but is not limited to the
4 following:

5 ...

6 (d) Failure to report to the board within 30 days any of the following:

7 ...

8 (2) The arrest of the licensee.

9 ...

10 **COST RECOVERY**

11 11. Section 4959 of the Code states:

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

17 (b) The costs to be assessed shall be fixed by the administrative law judge and
18 shall not in any event be increased by the board. When the board does not adopt a
19 proposed decision and remands the case to an administrative law judge, the
20 administrative law judge shall not increase the amount of any costs assessed in the
21 proposed decision.

22 (c) When the payment directed in the board's order for payment of costs is not
23 made by the licensee, the board may enforce the order for payment in the superior
24 court in the county where the administrative hearing was held. This right of
25 enforcement shall be in addition to any other rights the board may have as to any
26 licensee directed to pay costs.

27 (d) In any judicial action for the recovery of costs, proof of the board's decision
28 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 ALLEGATIONS

12. On or about March 12, 2015, a male Los Angeles Police Department officer¹
participated in an investigation of *Gold Massage* and went to the establishment in an undercover

¹ For privacy purposes witnesses in this Accusation are referred to by number. The names will be provided to Respondent upon written request for discovery.

1 capacity, posing as a customer. The officer paid \$60.00 to receive a one-hour massage. The
2 officer was taken to a room wherein he disrobed and lay face down on the massage table, with a
3 towel covering his buttocks.

4 13. Respondent entered the room, massaged his back and legs for approximately twenty
5 minutes and instructed him to turn over onto his back and massaged his chest and legs.

6 14. Respondent grabbed the officer's hand and squirted massage oil on his palm. Then
7 Respondent pointed to his groin area and shook her clenched fist, simulating manual stimulation
8 of the penis. The officer asked how much but Respondent did not respond with a price.
9 However, Respondent completely closed the massage room door and whispered, "You do it."
10 The officer twice asked how much it would be for Respondent to manually stimulate his penis
11 and Respondent said, "Fifty is okay."

12 15. The officer stated, "Fifty for you to give me a hand job?" Respondent stated, "yes."
13 The officer asked for some water and when Respondent returned to the room he counted his
14 money in front of her and then gave Respondent \$50.00 which Respondent placed on top of a
15 cabinet in the room. The officer then surreptitiously alerted other officers who entered *Gold*
16 *Massage* and arrested Respondent.

17 16. Respondent was later convicted of trespass in connection with the events of March
18 12, 2015. However, she entered a diversion program and based on successful completion of
19 diversion, the criminal case was dismissed.

20 17. Respondent failed to report her March 12, 2015, arrest to the Board within 30 days of
21 the arrest.

22 **FIRST CAUSE FOR DISCIPLINE**

23 (Unprofessional Conduct Of Licensee Who Engages In
24 Enumerated Penal Code Violations In The Work Premises)

25 18. Respondent is subject to disciplinary action under section 731, subdivision (a), of the
26 Code in that she engaged in a violation of Penal Code section 647, subdivision (b), occurring in
27 the work area under her direct professional supervision or control. The circumstances are as
28 follows:

1 19. Complainant alleges the facts and circumstances in paragraphs 13 through 15, as
2 incorporated by reference as if set forth in full herein.

3 20. Respondent's acts and/or omissions set forth in paragraphs 13 through 15, inclusive,
4 above whether proven individually, jointly, or in any combination thereof, constitute
5 unprofessional conduct pursuant to section 731, subdivision (a) of the Code. Therefore, cause for
6 discipline exists.

7 **SECOND CAUSE FOR DISCIPLINE**

8 (Unprofessional Conduct By Licensee Whose Behavior Warrants Denial Of An Acupuncture
9 License)

10 21. Respondent is subject to disciplinary action under section 4955, subdivisions (d), and
11 (i), of the Code and California Code of Regulations, title 16, section 1399.469.2 in that she
12 committed unprofessional conduct when she solicited or agreed to engage in an act of
13 prostitution, conduct which would have warranted denial of licensure. The circumstances are as
14 follows:

15 22. Complainant alleges the facts and circumstances paragraphs 13 through 15, as
16 incorporated by reference as if set forth in full herein.

17 23. Respondent's acts and/or omissions set forth in paragraphs 13 through 15, inclusive,
18 above whether proven individually, jointly, or in any combination thereof, constitute
19 unprofessional conduct pursuant to section 4955, subdivisions (d), and (i), of the Code.
20 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 AC 5469, issued to Sung Suk Cho, L.Ac.;
- 2. Ordering Sung Suk Cho 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 her 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: October 21, 2020

Original Signature on File
BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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