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MAY 22 2012

ACUPUNCTURE BOARD

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

11
12 In the Matter of the Accusation Against:

Case No. 1A-2010-211

13 KEVIN K. CHOE, L.Ac.

14 646 North Arden Boulevard
15 Los Angeles, California 90004

16 Acupuncture License number AC9328,

17 Respondent.

ACCUSATION

18
19 Complainant alleges:

20 **PARTIES**

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

23 2. On or about October 17, 2003, the Acupuncture Board issued Acupuncture license
24 number AC 9328 to Kevin Choe, L.Ac. (Respondent). That license was in full force and effect at
25 all times relevant to the charges brought herein and will expire on March 31, 2013, unless
26 renewed.

JURISDICTION

1
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 unless otherwise indicated.

4 4. Section 4955 of the Code states in pertinent part:

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

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

8 " . . .

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

12 "(c) False or misleading advertising.

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

16 " . . .

17 " . . .

18 "(h) Disciplinary action taken by any public agency for any act substantially
19 related to the qualifications, functions, or duties of an acupuncturist or any
20 professional health care licensee.

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

23 " . . ."

24 5. Section 4955.1 of the Code states in pertinent part:

25 "The board may deny, suspend, revoke, or impose probationary conditions upon the license
26 of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be
27 limited to, any of the following:

28 "(a) Securing a license by fraud or deceit.

1 (b) Committing a fraudulent or dishonest act as an acupuncturist.

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

4 " . . .

5 " . . ."

6 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
7 administrative law judge to direct a licentiate found to have committed a violation or violations of
8 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
9 enforcement of the case.

10 7. Section 141 of the Code states:

11 (a) For any licensee holding a license issued by a board under the jurisdiction of the
12 department, a disciplinary action taken by another state, by any agency of the federal government,
13 or by another country for any act substantially related to the practice regulated by the California
14 license, may be a ground for disciplinary action by the respective state licensing board. A
15 certified copy of the record of the disciplinary action taken against the licensee by another state,
16 an agency of the federal government, or another country shall be conclusive evidence of the
17 events related therein.

18 (b) Nothing in this section shall preclude a board from applying a specific statutory
19 provision in the licensing act administered by that board that provides for discipline based upon a
20 disciplinary action taken against the licensee by another state, an agency of the federal
21 government, or another country."

22 8. Section 477 of the Code states:

23 As used in this division:

24 (a) 'Board' includes 'bureau,' 'commission,' 'committee,' 'department,' 'division,'
25 'examining committee,' 'program,' and 'agency.'

26 (b) 'License' includes certificate, registration or other means to engage in a
27 business or profession regulated by this code."

28 9. 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. Any 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 the
14 provisions of Section 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 Senate Bill 797 of the 2007 -08 Regular Session do not
22 constitute a change to, but rather are declaratory of, existing law."

23 10. Section 493 of the Code states:

24 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
25 the department pursuant to law to deny an application for a license or to suspend or revoke a
26 license or otherwise take disciplinary action against a person who holds a license, upon the
27 ground that the applicant or the licensee has been convicted of a crime substantially related to the
28 qualifications, functions, and duties of the licensee in question, the record of conviction of the

1 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
2 and the board may inquire into the circumstances surrounding the commission of the crime in
3 order to fix the degree of discipline or to determine if the conviction is substantially related to the
4 qualifications, functions, and duties of the licensee in question.

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

7 11. Section 498 of the Code states:

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

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Criminal Conviction)**

13 12. Respondent is subject to disciplinary action under sections 4955 (b) and 490 of the
14 Code in that he was convicted of a crime which is substantially related to the qualifications,
15 functions and duties of his license. The circumstance are that, on or about September 29, 2004, in
16 proceedings entitled *UNITED STATES OF AMERICA v. Kevin K. Choe*, in the United States
17 District Court for the Central District of California, Respondent was convicted upon his plea of
18 guilty to a violation of Title 18 U.S.C. section 1341, commonly known as Mail Fraud. On
19 December 13, 2004, as a result of his plea, the District Court sentenced Respondent to five years
20 probation, monetary restitution to State Farm Insurance Company, and the performance of 1,500
21 hours of community service. The circumstances underlying Respondent's guilty plea and
22 sentence as stated above are as follows:

23 13. On or about and between January to December 2003, Respondent was a doctor of
24 chiropractic licensed by the State of California, whose practice was located in Los Angeles,
25 California. Beginning on an unknown date and continuing until on or about January 2004, in Los
26 Angeles County, Respondent, and others knowingly, and with the intent to defraud, devised,
27 participated in, and executed a scheme to defraud private insurance companies, to obtain money
28

1 and property by means of materially false and fraudulent pretenses, representations, and promises,
2 and by the concealment and nondisclosure of material facts.

3 14. Respondent and others carried out the fraudulent scheme in the following manner:
4 Claimants alleging injuries as a result of automobile collisions would hire a law office to
5 represent them by filing, processing, and negotiating claims against insurance companies. An
6 individual who was the law office administrator for that law office would refer claimants to
7 Respondent for medical diagnosis and treatment. In exchange for those referrals, Respondent
8 agreed to pay the law office administrator a monetary kickback. Typically, the kickback would
9 be a predetermined percentage of the amount that the insurance company paid to Respondent for
10 professional services allegedly provided to the claimants. The payment of a monetary kickback
11 by a health care provider, including a doctor of chiropractic, to a law office administrator solely
12 for the referral of patients or claimants to such health care provider was prohibited by law, under
13 California Insurance Code section 750.

14 15. Respondent would then prepare medical reports and bills for treatment he allegedly
15 rendered to the patients/claimants and send those items to the law office in the mail, utilizing the
16 United States Postal Service. In doing so, Respondent would knowingly submit medical bills to
17 the law office that did not accurately reflect the medical services that Respondent had provided to
18 the claimants. Respondent would instruct the law office that the medical bills of the claimants
19 were inflated, although the manner in which Respondent created the medical bills did not reveal
20 either the inflated nature of the bills or the kickback arrangement that existed between
21 Respondent and the law office administrator.

22 16. The law office would then submit Respondent's medical reports and bills to insurance
23 companies in the mail, utilizing the United States Postal Service. The insurance companies used
24 Respondent's medical reports and bills in their evaluation and preparation of appropriate
25 settlement offers to the law firm.

26 17. Respondent knew that the false and fraudulent medical bills he prepared and sent to
27 the law firm would be presented by that law firm to insurance companies for use in settlement
28 negotiations. Respondent's false statements were material in that the insurance companies would

1 not have settled these claims, or would have offered to settle the claims for a lesser amount, had
2 they been aware of the falsified and inflated medical reports and bills.

3 18. In preparing a medical bill that inflated and falsified the amount of the fee for medical
4 services and that failed to disclose the kickback, Respondent knowingly acted with intent to
5 defraud the insurance companies. At the time of their agreement, both Respondent and the law
6 office knew the kickback or referral fee arrangement was in violation of California law, and
7 therefore, would be concealed from the insurance company.

8 **SECOND CAUSE FOR DISCIPLINE**

9 **(Disciplinary Action Taken by the California Board of Chiropractic Examiners against 10 Respondent's License to Practice Chiropractic)**

11 19. Respondent is subject to disciplinary action under section 4955 (h) of the Code in that
12 on or about October 13, 2006, his license to practice chiropractic was revoked in a decision by the
13 Board of Chiropractic Examiners, *In the Matter of the Accusation Against: KEVIN CHOE*,
14 Chiropractic Board Case No. 2006-532. In its decision, the Board of Chiropractic Examiners
15 adopted the decision of an administrative law judge following a hearing on July 25, 2006 (OAH
16 No. L2006040802) and voted to order the revocation of Respondent's license on account of his
17 plea of guilty to a violation of Title 18 U.S.C. 1341 (Mail Fraud) and the underlying facts therein
18 as set forth above in paragraphs 12 through 18.

19 **THIRD CAUSE FOR DISCIPLINE**

20 **(Respondent's Renewal of His Acupuncture License Through Fraud and Deceit Based on 21 His Nondisclosure of the 2006 Revocation of His License to Practice Chiropractic to the 22 Acupuncture Board)**

23 20. Respondent is subject to disciplinary action under section 4955.1 (b) of the Code for
24 renewing his acupuncture license through the use of fraud and deceit. As set forth above, on or
25 about September 29, 2004, he was convicted by his plea of guilty to mail fraud in violation of
26 Title 18 U.S.C. section 1341.

1 21. On or about October 13, 2006, his license to practice chiropractic was revoked in a
2 decision by the Board of Chiropractic Examiners based on his plea of guilty to a violation of Title
3 18 U.S.C. section 1341, commonly known as Mail Fraud.

4 22. On or about March 31, 2007, Respondent sent the Board his application for renewal
5 of his acupuncture license. The Board's application for renewal of license form used by
6 Respondent was printed in January, 2007.

7 The application for renewal of license form asked the applicant to answer the following
8 question:

9 "Since you last renewed your license, have you been convicted of or pled guilty or nolo
10 contendere to any violation of any law of any state, the United States, or a foreign country or had
11 any conviction which has been dismissed under section 1203.4 of the Penal Code (except for
12 minor traffic violations) or had any disciplinary action [excluding citation and fines] taken against
13 you by any licensing/regulatory agency in this or any other state?"

14 Next to this question were two (2) boxes for the applicant to check in response to the
15 question; one for "yes", and one for "no". Respondent responded to the question by checking the
16 "no" box.

17 The form then directed the applicant to sign and date the form as a declaration made under
18 penalty of perjury. Respondent signed the form, and handwrote the date "2/20/06" on the form.
19 By doing so, Respondent made it appear that he executed this renewal of license form a year and
20 eight (8) months prior to the Chiropractic Board's revocation of his license to practice
21 chiropractic, instead of six (6) months after he knew another Board had taken disciplinary action
22 against him. By executing the renewal form in this manner Respondent failed to disclose the
23 revocation of his license to practice chiropractic thereby renewing his acupuncture license
24 through the use of fraud and deceit.

25 DISCIPLINE CONSIDERATIONS

26 23. To determine the degree of discipline, if any, to be imposed on Respondent,
27 Complainant alleges the facts and circumstances in paragraphs 12 through 21 as incorporated by
28 reference as if set forth in full herein.

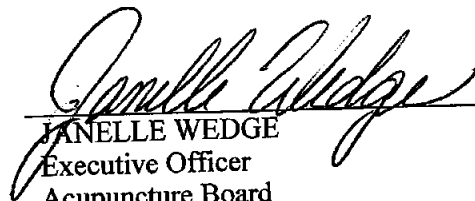
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PRAYER

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 Acupuncture License number AC 9328, issued to Kevin Choe, 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 the costs of probation monitoring;
4. Taking such other and further action as deemed necessary and proper.

DATED: MAY 22 2012



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

Complainant

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