

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 WENDY WIDLUS
Deputy Attorney General
4 State Bar No. 82958
California Department of Justice
5 300 South Spring Street, Suite 1702
Los Angeles, California 90013
6 Telephone: (213) 897-2867
Facsimile: (213) 897-9395
7 E-mail: Wendy.Widlus@doj.ca.gov
Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. 1A-2010-211

12 KEVIN K. CHOE, L.Ac.

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

13 646 North Arden Boulevard
14 Los Angeles, California 90004

15 Acupuncture License number AC9328,

16 Respondent.

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 PARTIES

21 1. Terri Thorfinnson (Complainant) is the Executive Officer of the Acupuncture Board.
22 She brought this action solely in his official capacity and is represented in this matter by Kamala
23 D. Harris, Attorney General of the State of California, by Wendy Widlus, Deputy Attorney
24 General.

25 2. Respondent KEVIN CHOE, L.Ac. (Respondent) is represented in this proceeding by
26 attorney Claire H. Kim, whose address is:
27
28

1 Claire H. Kim, Attorney at Law, 3600 Wilshire Boulevard, Suite 1220, Los Angeles, CA 90004

2 3. On or about October 17, 2003, the Acupuncture Board issued Acupuncture License
3 number AC9328 to KEVIN CHOE, L.Ac. (Respondent). The Acupuncture License was in full
4 force and effect at all times relevant to the charges brought in Accusation No. 1A-2010-211 and
5 will expire on March 31, 2013, unless renewed.

6 JURISDICTION

7 4. Accusation No. 1A-2010-211 was filed before the Acupuncture Board (Board),
8 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
9 and all other statutorily required documents were properly served on Respondent on May 22,
10 2012. Respondent timely filed his Notice of Defense contesting the Accusation.

11 5. A copy of Accusation No. 1A-2010-211 is attached as exhibit A and incorporated
12 herein by reference.

13 ADVISEMENT AND WAIVERS

14 6. Respondent has carefully read, fully discussed with counsel, and understands the
15 charges and allegations in Accusation No. 1A-2010-211. Respondent has also carefully read,
16 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
17 Disciplinary Order.

18 7. Respondent is fully aware of his legal rights in this matter, including the right to a
19 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
20 his own expense; the right to confront and cross-examine the witnesses against him; the right to
21 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
22 the attendance of witnesses and the production of documents; the right to reconsideration and
23 court review of an adverse decision; and all other rights accorded by the California
24 Administrative Procedure Act and other applicable laws.

25 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
26 every right set forth above.

1 CULPABILITY

2 9. Respondent admits the truth of each and every charge and allegation in Accusation
3 No. 1A-2010-211.

4 10. Respondent agrees that his Acupuncture License is subject to discipline and he agrees
5 to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

6 CONTINGENCY

7 11. This stipulation shall be subject to approval by the Acupuncture Board. Respondent
8 understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may
9 communicate directly with the Board regarding this stipulation and settlement, without notice to
10 or participation by Respondent or his counsel. By signing the stipulation, Respondent
11 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
12 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
13 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or
14 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,
15 and the Board shall not be disqualified from further action by having considered this matter.

16 12. The parties understand and agree that facsimile copies of this Stipulated Settlement
17 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and
18 effect as the originals.

19 13. In consideration of the foregoing admissions and stipulations, the parties agree that
20 the Board may, without further notice or formal proceeding, issue and enter the following
21 Disciplinary Order:

22 DISCIPLINARY ORDER

23 IT IS HEREBY ORDERED that Acupuncture License No. AC 9328 issued, to Respondent
24 KEVIN CHOE, L.Ac. (Respondent) is revoked. However, the revocation is stayed and
25 Respondent is placed on probation for six (6) years on the following terms and conditions.

26 1. ACTUAL SUSPENSION As part of probation, Respondent is suspended from the
27 practice of acupuncture for thirty days beginning with the effective date of this decision.

28 2. PRACTICE MONITOR Within 90 days of the effective date of this decision,

1 Respondent shall submit to the Board for its prior approval, the name and qualifications of one or
2 more California licensed acupuncturists whose license is clear (no record of complaints) and
3 current and who has agreed to serve as a practice monitor. Once approved, the monitor shall
4 submit to the Board a plan by which Respondent's practice shall be monitored. The monitor's
5 education and experience shall be in the same field of practice as that of the Respondent. The
6 monitor shall submit written reports to the Board on a quarterly basis verifying that monitoring
7 has taken place and providing an evaluation of Respondent's performance. It shall be
8 Respondent's responsibility to assure that the required reports are filed in a timely fashion. The
9 Respondent shall provide access to the monitor of Respondent's fiscal and client records and shall
10 be permitted to make direct contact with patients. Further, the monitor shall have no prior
11 business, professional, personal or other relationship with Respondent. Respondent shall execute
12 a release authorizing the monitor to divulge any information that the Board may request.

13 Respondent shall notify all current and potential patients of any term or condition of
14 probation which will affect their treatment or the confidentiality of their records (such as this
15 condition which requires a practice monitor). Such notification shall be signed by each patient
16 prior to continuing or commencing treatment.

17 If the monitor quits or is otherwise no longer available, Respondent shall not practice until a
18 new monitor has been approved by the Board. All costs of monitoring shall be borne by the
19 Respondent. Monitoring shall consist of at least one hour per week of individual face to face
20 meetings.

21 3. REIMBURSEMENT FOR PROBATION MONITORING Respondent shall
22 reimburse the Board for the hourly costs it incurs in monitoring the probation to ensure
23 compliance for the duration of the probation period.

24 4. COURSEWORK Respondent shall take and successfully complete not less than
25 twenty (20) semester units or thirty (30) quarter units of coursework in the following area(s)
26 Ethics. All coursework shall be taken at the graduate level at a school approved by the Board.
27 Classroom attendance must be specifically required. Course content shall be pertinent to the
28 violation and all coursework must be completed within the first 3 years of probation. The

1 required coursework must be in addition to any continuing education courses that may be
2 required for license renewal.

3 Within 90 days of the effective date of this decision, Respondent shall submit a plan for the
4 Board's prior approval for meeting the educational requirements. All costs of the coursework
5 shall be borne by the Respondent.

6 5. COMMUNITY SERVICE Respondent shall provide 500 hours of community service
7 as a condition of probation. Respondent shall provide professional acupuncture services at no
8 charge through the auspices of the *Young Saeng Presbyterian Church of Associate Reformed*
9 *Presbyterian Church, (Young Saeng)* a non-profit corporation, tax exempt entity under the
10 Internal Revenue Code regulations.

11 Respondent shall be available at his clinic or place of business two (2) to seven (7) days a
12 week to provide free acupuncture services. Senior Pastor Dr. Hae Soung Kim will monitor
13 Respondent's acupuncture community service obligation. Dr. Kim will provide a written
14 certification on a weekly basis of the days and hours provided by Respondent until Respondent
15 completes the 500 hours of acupuncture community service. Respondent shall provide the Board
16 with written evidence of Dr. Kim's monitoring on a monthly basis.

17 If during Respondent's probationary period *Young Saeng* and/or Dr. Kim can no longer
18 continue to monitor Respondent's acupuncture community services as stated above, Respondent
19 shall notify the Board within 48 business hours. Within seven (7) days of this notification
20 Respondent shall submit to the Board or its designee for prior approval a community service plan
21 in which Respondent shall provide the remainder of his 500 hours of free acupuncture community
22 service obligation to a community or non-profit organization. Respondent's remaining
23 community service hours must be completed not later than six (6) months prior to the completion
24 of probation.

25 6. OBEY ALL LAWS Respondent shall obey all federal, state and local laws and
26 all regulations governing the practice of acupuncture in California. A full and detailed account of
27 any and all violations of law shall be reported by the Respondent to the Board in writing within
28 seventy-two 72 hours of occurrence.

1 6. QUARTERLY REPORTS Respondent shall submit quarterly declarations under
2 penalty of perjury on forms provided by the Board, stating whether there has been compliance
3 with all the conditions of probation.

4 7. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Respondent shall appear in
5 person for interviews with the Board or its designee upon request at various intervals and with
6 reasonable notice.

7 8. CHANGES OF EMPLOYMENT Respondent shall notify the Board in writing,
8 through the assigned probation surveillance compliance officer of any and all changes of
9 employment, location and address within 30 days of such change.

10 9. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event
11 Respondent should leave California to reside or to practice outside the State, Respondent must
12 notify the Board in writing of the dates of departure and return. Periods of residency or practice
13 outside California will not apply to the reduction of this probationary period.

14 10. EMPLOYMENT AND SUPERVISION OF TRAINEES Respondent shall not
15 employ or supervise or apply to employ or supervise acupuncture trainees during the course of
16 this probation. Respondent shall terminate any such supervisory relationship in existence on the
17 effective date of this probation.

18 11. COST RECOVERY Respondent shall pay to the Board its costs of investigation and
19 enforcement in the amount of \$3,612.5

20 12. VIOLATION OF PROBATION If Respondent violates probation in any respect, the
21 Board may, after giving Respondent notice and the opportunity to be heard, revoke probation and
22 carry out the disciplinary order that was stated. If an accusation or petition to revoke probation is
23 filed against Respondent during probation, the Board shall have continuing jurisdiction until the
24 matter is final, and the period of probation shall be extended until the matter is final. No petition
25 for modification or termination of probation shall be considered while there is an accusation or
26 petition to revoke probation pending against Respondent.

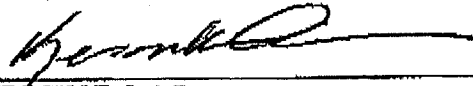
27 13. COMPLETION OF PROBATION Upon successful completion of probation,
28 Respondent's license will be fully restored.

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 2 matter is final, and the period of probation shall be extended until the matter is final. No petition
 3 for modification or termination of probation shall be considered while there is an accusation or
 4 petition to revoke probation pending against Respondent.

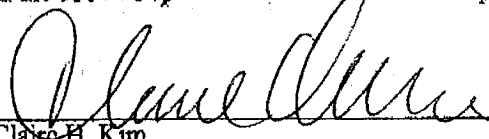
5 14. COMPLETION OF PROBATION Upon successful completion of probation,
 6 Respondent's license will be fully restored.

7 ACCEPTANCE

8 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
 9 discussed it with my attorney, Claire H. Kim. I understand the stipulation and the effect it will
 10 have on my Acupuncture license. I enter into this Stipulated Settlement and Disciplinary Order
 11 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
 12 Acupuncture Board.

13
 14 DATED: 10/29/2012 
 15 KEVIN CHOE, L.A.C.
 Respondent

16 I have read and fully discussed with Respondent KEVIN CHOE, L.Ac. the terms and
 17 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
 18 I approve its form and content.

19 DATED: 10/29/2012 
 20 Claire H. Kim
 Attorney for Respondent

22 ENDORSEMENT

23 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
 24 submitted for consideration by the Acupuncture Board of the Department of Consumer Affairs.

25
 26
 27
 28

Exhibit A

Accusation No. 1A-2010-211

MAY 22 2012

ACUPUNCTURE BOARD

1 KAMALA D. HARRIS
 Attorney General of California
 2 ROBERT MCKIM BELL
 Supervising Deputy Attorney General
 3 WENDY WIDLUS
 Deputy Attorney General
 4 State Bar No. 82958
 California Department of Justice
 5 300 South Spring Street, Suite 1702
 Los Angeles, California 90013
 6 Telephone: (213) 897-2867
 Facsimile: (213) 897-9395
 7 E-mail: Wendy.Widlus@doj.ca.gov
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 12 In the Matter of the Accusation Against:

Case No. 1A-2010-211

13 KEVIN K. CHOE, L.Ac.

ACCUSATION

14 646 North Arden Boulevard
 15 Los Angeles, California 90004

16 Acupuncture License number AC9328,

17 Respondent.

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