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ACUPUNCTURE BOARD

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

11 In the Matter of the Accusation Against:

Case No. 1A-2010-93

12 **JOHN YONG CHO, L.Ac.**
13 **12846 Newhope Street**
14 **Garden Grove, California 92840**

ACCUSATION

15 **Acupuncturist License No. AC 10258**

Respondent.

16 Complainant alleges:

17 **PARTIES**

18 1. Janelle Wedge (Complainant) brings this Accusation solely in her official capacity as
19 the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

20 2. On or about April 6, 2005, the Acupuncture Board issued Acupuncturist License
21 Number AC 10258 to John Yong Cho, L.Ac. (Respondent). The Acupuncturist License was in
22 full force and effect at all times relevant to the charges brought herein and will expire on February
23 28, 2011, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Acupuncture Board (Board), Department of
26 Consumer Affairs, under the authority of the following laws. All section references are to the
27 Business and Professions Code unless otherwise indicated.

28 4. Section 4955 of the Code states:

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

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

4 "(a) Using or possessing any controlled substance as defined in Division 10
5 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug
6 or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or
7 to any other person, or to the public, and to an extent that the use impairs his or her
8 ability to engage in the practice of acupuncture with safety to the public.

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 "(e) Except for good cause, the knowing failure to protect patients by failing to
17 follow infection control guidelines of the board, thereby risking transmission of
18 blood-borne infectious diseases from licensee to patient, from patient to patient, and
19 from patient to licensee. In administering this subdivision, the board shall consider
20 referencing the standards, regulations, and guidelines of the State Department of
21 Health Services developed pursuant to Section 1250.11 of the Health and Safety Code
22 and the standards, regulations, and guidelines pursuant to the California Occupational
23 Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5
24 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other
25 blood-borne pathogens in health care settings. As necessary, the board shall consult
26 with the Medical Board of California, the California Board of Podiatric Medicine, the
27 Dental Board of California, the Board of Registered Nursing, and the Board of
28 Vocational Nursing and Psychiatric Technicians, to encourage appropriate

1 consistency in the implementation of this subdivision.

2 "The board shall seek to ensure that licensees are informed of the responsibility
3 of licensees and others to follow infection control guidelines, and of the most recent
4 scientifically recognized safeguards for minimizing the risk of transmission of
5 blood-borne infectious diseases.

6 "(f) The use of threats or harassment against any patient or licensee for
7 providing evidence in a disciplinary action, other legal action, or in an investigation
8 contemplating a disciplinary action or other legal action.

9 "(g) Discharging an employee primarily for attempting to comply with the
10 terms of this chapter.

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

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

16 "(j) The violation of any law or local ordinance on an acupuncturist's business
17 premises by an acupuncturist's employee or a person who is working under the
18 acupuncturist's professional license or business permit, that is substantially related to
19 the qualifications, functions, or duties of an acupuncturist. These violations shall
20 subject the acupuncturist who employed the individuals, or under whose
21 acupuncturist license the employee is working, to disciplinary action.

22 "(k) The abandonment of a patient by the licentiate without written notice to the
23 patient that treatment is to be discontinued and before the patient has had a reasonable
24 opportunity to secure the services of another practitioner.

25 "(l) the failure to notify the board of the use of any false, assumed, or fictitious
26 name other than the name under which he or she is licensed as an individual to
27 practice acupuncture."

28 5. Section 4956 of the Code states:

1 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made
2 to a charge which is substantially related to the qualifications, functions, or duties of an
3 acupuncturist is deemed to be a conviction within the meaning of this chapter.

4 "The board may order a license suspended or revoked, or may deny a license, or may
5 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
6 judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code allowing the person to withdraw his or her
9 pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
10 dismissing the accusation, complaint, information, or indictment."

11 6. 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
28 decision shall be conclusive proof of the validity of the order of payment and the

1 terms for payment.

2 "(e) All costs recovered under this section shall be considered a reimbursement
3 for costs incurred and shall be deposited in the Acupuncture Fund."

4 7. Section 490 of the Code states:

5 "(a) In addition to any other action that a board is permitted to take against a licensee, a
6 board may suspend or revoke a license on the ground that the licensee has been convicted of a
7 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
8 or profession for which the license was issued.

9 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
10 discipline a licensee for conviction of a crime that is independent of the authority granted under
11 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
12 of the business or profession for which the licensee's license was issued.

13 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
14 conviction following a plea of nolo contendere. Any action that a board is permitted to take
15 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
16 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
17 made suspending the imposition of sentence, irrespective of a subsequent order under the
18 provisions of Section 1203.4 of the Penal Code.

19 "(d) The Legislature hereby finds and declares that the application of this section has been
20 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
21 554, and that the holding in that case has placed a significant number of statutes and regulations
22 in question, resulting in potential harm to the consumers of California from licensees who have
23 been convicted of crimes. Therefore, the Legislature finds and declares that this section
24 establishes an independent basis for a board to impose discipline upon a licensee, and that the
25 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
26 constitute a change to, but rather are declaratory of, existing law."

27 8. Section 493 of the Code states:

28 "Notwithstanding any other provision of law, in a proceeding conducted by a board within

1 the department pursuant to law to deny an application for a license or to suspend or revoke a
2 license or otherwise take disciplinary action against a person who holds a license, upon the
3 ground that the applicant or the licensee has been convicted of a crime substantially related to the
4 qualifications, functions, and duties of the licensee in question, the record of conviction of the
5 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
6 and the board may inquire into the circumstances surrounding the commission of the crime in
7 order to fix the degree of discipline or to determine if the conviction is substantially related to the
8 qualifications, functions, and duties of the licensee in question.

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

11 9. Section 3700 of the Labor Code states in relevant part:

12 "Every employer except the state shall secure the payment of compensation in one or
13 more of the following ways:

14 "(a) By being insured against liability to pay compensation by one or more insurers
15 duly authorized to write compensation insurance in this state.

16 ["..."]

17 10. Section 3700.5 of the Labor Code states in relevant part:

18 "(a) The failure to secure the payment of compensation as required by this article
19 by one who knew, or because of his or her knowledge or experience should be reasonably
20 expected to have known, of the obligation to secure the payment of compensation, is a
21 misdemeanor punishable by imprisonment in the county jail for up to one year, or by a fine
22 of up to double the amount of premium, as determined by the court, that would otherwise
23 have been due to secure the payment of compensation during the time compensation was
24 not secured, but not less than ten thousand dollars (\$10,000), or by both that imprisonment
25 and fine.

26 ["..."]

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FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

11. Respondent is subject to disciplinary action under section 4955, subdivision (b), of the Code in that Respondent was convicted of a crime substantially related to the practice of acupuncture. The circumstances are as follows:

A. In or around April 2010, Respondent owned and operated an acupuncture clinic under the name of "Joy Acupuncture" at 3865 Brockton Avenue, Riverside, California.

B. On or about April 21, 2010, an investigator with the Riverside County District Attorney's Office, Bureau of Investigation, conducted a Labor Code compliance check at Joy Acupuncture. Three employees were interviewed regarding their employment at Joy Acupuncture. The investigator spoke to Respondent by phone. Respondent indicated that he did not have workers' compensation insurance for his employees at Joy Acupuncture. Arrangements were made for an in person interview of Respondent.

C. On or about April 22, 2010, Respondent met with the investigator. Respondent was asked if he had workers compensation insurance for his employees at Joy Acupuncture. Respondent stated that he did not have such insurance for his employees. Respondent was issued a Notice to Appear at the Riverside Hall of Justice on May 25, 2010, to answer for his failure to provide proof of workers compensation insurance in contravention of Labor Code section 3700.5.

D. On or about May 7, 2010, a misdemeanor complaint was filed in *The People of the State of California v. John Yong Cho*, Riverside County Superior Court Case No. RIM10005957. Count 1 of the complaint alleged that Respondent committed a violation of Labor Code section 3700.5, a misdemeanor, in that on or about April 22, 2010, Respondent willfully and unlawfully failed to secure payment of workers' compensation as required by Labor Code section 3700 and knew and because of knowledge and experience should have been reasonably expected to have known of the obligation to secure the payment of workers' compensation.

E. On or about May 25, 2010, Respondent plead guilty to and was convicted of

1 Count 1 of the misdemeanor complaint in *The People of the State of California v. John*
2 *Yong Cho*, Riverside County Superior Court Case No. RIM10005957. Summary probation
3 was granted for 36 months under terms requiring Respondent to obey all laws; pay a fine of
4 \$10000.00 to the Court for the Workers' Compensation Fraud Account (all but \$1000.00 of
5 the fine was suspended on condition that Respondent maintain continuous workers'
6 compensation insurance coverage); pay the costs of investigation in the amount of \$210.00;
7 maintain full and proper workers' compensation coverage; pay all employees only by check
8 with a pay stub itemizing payroll deductions; submit to a search with or without probable
9 cause be law enforcement; pay any and all fees by any state agency; and provide by mail
10 each month written proof of continuous workers' compensation insurance.

11 F. The above conviction is substantially related to the qualifications, functions and
12 duties of an acupuncturist inasmuch as Respondent, as an acupuncturist licensed in the State
13 of California, had a duty to operate his acupuncture clinic in conformity with the laws of
14 the State of California.

15 SECOND CAUSE FOR DISCIPLINE

16 (Unprofessional Conduct)

17 12. Respondent is subject to disciplinary action under section 4955 of the Code in that
18 Respondent engaged in unprofessional conduct. The circumstances are as follows:

19 A. The facts and circumstances alleged in paragraph 11 above are incorporated
20 here as if fully set forth.

21 PRAYER

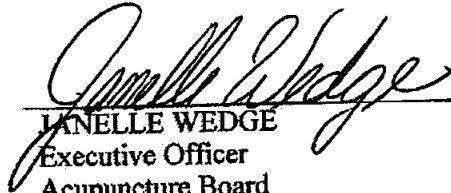
22 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
23 and that following the hearing, the Acupuncture Board issue a decision:

24 1. Revoking or suspending Acupuncturist License Number AC 10258, issued to John
25 Yong Cho, L.Ac.;

26 2. Ordering John Yong Cho, L.Ac. to pay the Acupuncture Board the reasonable costs
27 of the investigation and enforcement of this case, pursuant to Business and Professions Code
28 section 4959;

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

DATED: JUN - 5 2012


LANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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