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ACUPUNCTURE BOARD

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

10 In the Matter of the Accusation Against:

Case No. 1A-2010-110

11 **EUN YOUNG SHIM, L.AC.**
12 **3810 Wilshire Blvd. #608**
13 **Los Angeles, CA 90010**
Acupuncturist License No. AC12076

A C C U S A T I O N

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

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

19 2. On or about October 23, 2007, the Acupuncture Board issued Acupuncturist License
20 Number AC12076 to Eun Young Shim, L.Ac. (Respondent). The Acupuncturist License was in
21 full force and effect at all times relevant to the charges brought herein and expired on January 31,
22 2013.

23 **JURISDICTION**

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

27 4. Section 4955 of the Code states:
28

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 "[....]"

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

8 "[....]"

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

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

17 "[....]"

18 5. Section 4959 of the Code states:

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

24 "(b) The costs to be assessed shall be fixed by the administrative law judge and
25 shall not in any event be increased by the board. When the board does not adopt a
26 proposed decision and remands the case to an administrative law judge, the
27 administrative law judge shall not increase the amount of any costs assessed in the
28 proposed decision.

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

6 "(d) In any judicial action for the recovery of costs, proof of the board's
7 decision shall be conclusive proof of the validity of the order of payment and the
8 terms for payment.

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

11 6. Section 490 of the Code states:

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

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

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

26 "(d) The Legislature hereby finds and declares that the application of this section has been
27 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
28 554, and that the holding in that case has placed a significant number of statutes and regulations

1 in question, resulting in potential harm to the consumers of California from licensees who have
2 been convicted of crimes. Therefore, the Legislature finds and declares that this section
3 establishes an independent basis for a board to impose discipline upon a licensee, and that the
4 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
5 constitute a change to, but rather are declaratory of, existing law."

6 7. Section 493 of the Code states:

7 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
8 the department pursuant to law to deny an application for a license or to suspend or revoke a
9 license or otherwise take disciplinary action against a person who holds a license, upon the
10 ground that the applicant or the licensee has been convicted of a crime substantially related to the
11 qualifications, functions, and duties of the licensee in question, the record of conviction of the
12 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
13 and the board may inquire into the circumstances surrounding the commission of the crime in
14 order to fix the degree of discipline or to determine if the conviction is substantially related to the
15 qualifications, functions, and duties of the licensee in question.

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

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

19 "Any person licensed, certified, registered, or otherwise subject to regulation pursuant to
20 this division [Division 2, Healing Arts, commencing with section 500 of the Business and
21 Professions Code] who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315,
22 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work
23 premises of, or work area under the direct professional supervision or control of, that person, shall
24 be guilty of unprofessional conduct. The license, certification, or registration of that person shall
25 be subject to denial, suspension, or revocation by the appropriate regulatory entity under this
26 division."

27 9. Section 647 of the Penal Code states in pertinent part:

28 "Except as provided in subdivision (l), every person who commits any of the following acts

1 is guilty of disorderly conduct, a misdemeanor:

2 “[...]

3 “(b) Who solicits or who agrees to engage in or who engages in any act of prostitution....

4 [P]rostitution includes any lewd act between persons for money or other consideration.”¹

5 FIRST CAUSE FOR DISCIPLINE

6 (Conviction of a Crime)

7 10. Respondent is subject to disciplinary action under sections 490 and 4955, subdivision
8 (b), of the Code in that she was convicted of a crime substantially related to the qualifications,
9 functions, or duties of an acupuncturist. The circumstances are as follows:

10 A. On or about June 18, 2010, at 7:06 p.m. officers of the Gardena Police
11 Department visited Respondent’s business, located in a business strip mall in Gardena,
12 California, to investigate a complaint of possible prostitution activity. The front door of the
13 business was open and a neon “open” sign was illuminated. The officers found Respondent
14 dressed in a long, white trench coat sitting on a sofa just inside. Respondent indicated no
15 one else was on the premises. One of the officers walked through the premises and found
16 an individual who claimed to be present as a customer for a massage. Respondent at first
17 identified the male customer as an employee but, when asked why he was naked, admitted
18 he was a customer. When asked what services were provided at the location, Respondent
19 indicated acupuncture services. When asked why there were not signs reflecting services
20 provided and prices, Respondent had no answer. When asked if there was any other type of
21 activity going on at the location, Respondent stated that under the prior owners there had
22 been prostitution. At first, Respondent stated that the male customer was there only for
23 massage. She then noted that he had asked for a “hand job²” which she had refused. In a
24 separate conversation with the police officers, the male customer admitted that Respondent

25
26 ¹ The terms “lewd” is synonymous with and refer to conduct which involves the touching
27 of the genitals, buttocks, or female breast for the purpose of sexual arousal, gratification,
annoyance or offense. (*Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 256.)

28 ² A “hand job” is a lewd sex act involving the stroking of the penis by hand.

1 had performed the noted sex act on him and was charging him \$40.00 for massage. Upon
2 further questioning, Respondent admitted that she had performed the sex act in question for
3 approximately fifteen minutes. She stated that she had just opened the business and was
4 having financial difficulties so she agreed to give the male customer a "hand job" when he
5 asked for it. Respondent was subsequently arrested for prostitution and failing to have a
6 required city issued certificate of operation for her business.

7 B. On or about October 19, 2010, a misdemeanor complaint was filed in the South
8 Bay Judicial District of the Superior Court for the County of Los Angeles in the matter of
9 *The People of the State of California v. Eun Young Shim*, Case No. 0SY08460. The
10 complaint alleged in Count 1 that the Respondent violated Gardena Municipal Code section
11 5.48.070(A), by failing on or about June 18, 2010, to have permit/certificate to operate a
12 massage establishment. The complaint alleged in Count 2 that on or about June 18, 2010,
13 Respondent engaged in prostitution in violation of Penal Code section 647(b).

14 C. On or about February 9, 2011, in the South Bay Judicial District of the Superior
15 Court for the County of Los Angeles in the matte of *The People of the State of California v.*
16 *Eun Young Shim*, Case No. 0SY08460, Respondent pled guilty to Count 1 of the
17 misdemeanor complaint referenced in paragraph 10.A. above. Count 2 of the complaint
18 was dismissed in the furtherance of justice.

19 SECOND CAUSE FOR DISCIPLINE

20 (Unprofessional Conduct)

21 11. Respondent is subject to disciplinary action under section 4955, subdivision (i), in
22 that she engaged in conduct that would have warranted the denial of the acupuncture license. The
23 circumstances are as follows:

24 A. The facts and circumstances alleged in paragraph 10 above are incorporated
25 here as if fully set forth.

26 B. Engaging in conduct prohibited by Penal Code section 647, subdivision (b), on
27 the premises of an acupuncture clinic is conduct that would have warranted the denial of the
28 acupuncture license.

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2 THIRD CAUSE FOR DISCIPLINE

3 (Use of License to Support Prostitution)

4 12. Respondent is subject to disciplinary action under section 731, subdivision (a), in that
5 Respondent engaged in conduct that violated subdivision (b) of Section 647 of the Penal Code
6 which occurred in the work premises of, or work area under the direct professional supervision or
7 control of, Respondent. The circumstances are as follows:

8 A. The facts and circumstances alleged in paragraph 10 above are incorporated
9 here as if fully set forth.

10 FOURTH CAUSE FOR DISCIPLINE

11 (Violation of Local Ordinance)

12 13. Respondent is subject to disciplinary action under section 4955, subdivision (j), in
13 that Respondent, on her acupuncturist's business premises, violated a law or local ordinance
14 substantially related to the qualifications, functions, or duties of an acupuncturist. The
15 circumstances are as follows:

16 A. The facts and circumstances alleged in paragraph 10 above are incorporated
17 here as if fully set forth.

18 B. Respondent violated the a local law or ordinance (Gardena Municipal Code
19 section 5.48.070(A)) by failing on or about June 18, 2010, to have a permit/certificate to
20 operate a massage establishment.

21 C. The above conduct is substantially related to the qualifications, functions and
22 duties of an acupuncturist inasmuch as Respondent, as an acupuncturist licensed in the State
23 of California, has a duty to operate her acupuncture clinic in conformity with the law.

24 DISCIPLINE CONSIDERATIONS

25 14. To determine the degree of discipline, if any, to be imposed on Respondent,
26 Complainant alleges that on or about January 3, 2002, in a prior criminal proceeding entitled
27 *People of the State of California v. Eun Young Shim* in Santa Clara County Superior Court, Case
28 Number CC120509, Respondent was convicted for unlawful fighting in a public place, in

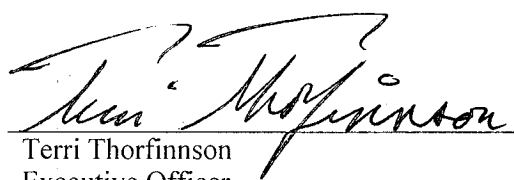
1 connection with an allegation of spousal abuse, in violation of Penal Code section 415(1), a
2 misdemeanor, and was ordered to participate in and complete an anger management course. The
3 record of the criminal proceeding is incorporated as if fully set forth.

4 PRAYER

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

- 7 1. Revoking or suspending Acupuncturist License Number AC12076, issued to Eun
8 Young Shim, L.Ac.;
- 9 2. Ordering Eun Young Shim, L.Ac. to pay the Acupuncture Board the reasonable costs
10 of the investigation and enforcement of this case, pursuant to Business and Professions Code
11 section 4959; and
- 12 3. Taking such other and further action as deemed necessary and proper.

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14
15 DATED: 2/22/13



16 Terri Thorfinnson
17 Executive Officer
18 Acupuncture Board
19 Department of Consumer Affairs
20 State of California
21 Complainant

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