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

12 In the Matter of the Accusation Against:

Case No. 1A-2018-180

13 SUNG HEAN LEE, L.Ac.

14 1554 Navarro Avenue
Pasadena, California 91103

15 Acupuncturist License No. AC 16123,

16 Respondent.

17 **A C C U S A T I O N**

18 **PARTIES**

19 1. Benjamin Bodea (“Complainant”) brings this Accusation solely in his official
20 capacity as the Executive Officer of the California Acupuncture Board (“Board”).

21 2. On May 30, 2014, the Board issued Acupuncturist License Number AC 16123 to
22 Sung Hean Lee, L.Ac. (“Respondent”). That license was in full force and effect at all times
23 relevant to the charges brought herein and will expire on June 30, 2021, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board under the authority of the following
26 provisions of the California Business and Professions Code (“Code”) unless otherwise indicated.

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- (a) Gross negligence.
- (b) Repeated negligent acts.
- (c) Incompetence.

8. Section 4961 of the Code states:

(a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Board, the licensee's place of practice, or, if the licensee has more than one place of practice, all of the places of practice. If the licensee has no place of practice, the licensee shall notify the board of that fact. A person licensed by the board shall register within 30 days after the date of his or her licensure.

(b) An acupuncturist licensee shall post his or her wall license in a conspicuous location in his or her place of practice at all times. If an acupuncturist has more than one place of practice, he or she shall obtain from the board a duplicate wall license for each additional location and post the duplicate wall license at each location.

(c) Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee fails to notify the board of any change in the address of a place of practice within the time prescribed by this section, the board may deny renewal of licensure. An applicant for renewal of licensure shall specify in the application whether or not there has been a change in the location of the licensee's place of practice and, if so, the date of that change. The board may accept that statement as evidence of the change of address.

9. Section 726 of the Code states:

(a) The commission of any act of sexual abuse, misconduct, or relations with a patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this or under any initiative act referred to in this division.

(b) This section shall not apply to consensual sexual contact between a licensee and his or her spouse or person in an equivalent domestic relationship when that licensee provides medical treatment, to his or her spouse or person in an equivalent domestic relationship.

REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1399.453, states:

An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including progress made as a result of the acupuncture treatments.

COST RECOVERY

11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of

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1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
3 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
4 included in a stipulated settlement.

5 12. Section 4959 of the Code states:

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

11 (b) The costs to be assessed shall be fixed by the administrative law judge and
12 shall not in any event be increased by the board. When the board does not adopt a
13 proposed decision and remands the case to an administrative law judge, the
14 administrative law judge shall not increase the amount of any costs assessed in the
15 proposed decision.

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

21 (d) In any judicial action for the recovery of costs, proof of the board's decision
22 shall be conclusive proof of the validity of the order of payment and the terms for
23 payment.

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

26 **DEFINITIONS**

27 13. Section 4927, subdivision (d), of the Code states:

28 As used in this chapter, unless the context otherwise requires: . . .

(d) "Acupuncture" means the stimulation of a certain point or points on or near
the surface of the body by the insertion of needles to prevent or modify the perception
of pain or to normalize physiological functions, including pain control for the
treatment of certain diseases or dysfunctions of the body, and includes the techniques
of electroacupuncture, cupping, and moxibustion.

29 **FACTUAL ALLEGATIONS**

30 **Sexual Misconduct in the Treatment of Patient N**

31 14. In late 2018, the California Acupuncture Board began an investigation into
32 Respondent after receiving a complaint on November 5, 2018 that Respondent inappropriately

1 touched Patient N¹ during a treatment on October 22, 2018. Subsequent investigation indicated
2 that Respondent practiced at two Pasadena treatment facilities at or around the time of the
3 incident: Raymond Spa at 54 South Raymond Avenue, Pasadena CA 91105 and Kang Eastern
4 Medicine at 137 West California Boulevard, Pasadena, CA 91105. Despite legal requirements
5 that Respondent notify the Board of any location of practice, as recently as December 31, 2019,
6 the Board did not have either of these addresses on record as locations where Respondent
7 practiced.

8 15. On October 28, 2018, Patient N visited Raymond Spa for treatment of her neck strain.
9 In preparation for the treatment, Patient N undressed and laid on the table completely nude.
10 Respondent performed acupuncture treatment on her neck, shoulder and right hip.

11 16. After the acupuncture treatment, Respondent applied oil to his hands and gave Patient
12 N a full body massage. During the massage, Respondent touched her breasts, including her
13 nipples, as well as her labia. Respondent massaged Patient N's labia for about 20 seconds.
14 Patient N responded by trying to cover herself with a towel and told Respondent "Please stop,
15 please stop." Respondent stopped massaging Patient N, apologized, and asked if she was okay.
16 Respondent told her that it was hard to control himself and commented on her body being "so
17 muscular." Patient N stopped the massage, quickly dressed herself, and went to the cash register.
18 Respondent followed her, asking "Will you come back and see me?"

19 17. Without medical necessity, Respondent massaged Patient N's breasts and labia while
20 she was nude. An informed consent from Patient N allowing for such procedures to take place
21 was not present in her records. The performance of massage by a male provider of the nude
22 breasts and/or genital areas of a female patient constitutes an extreme departure from the standard
23 of care.

24 **Failure to Keep Adequate Records**

25 18. Throughout the course of its investigation, the California Acupuncture Board
26 received a number of records, including an undated ledger of Patient N's treatments by
27 Respondent and other providers, including Patient N's unsigned acupuncture progress notes from

28 ¹ The name of the patient is omitted to protect the patient's privacy.

1 Respondent for dates of service June 28, 2018 and October 22, 2018, and payment receipts for
2 Patient N. These records indicate that progress notes were unsigned and undated. Lack of
3 signatures and dates on acupuncture patient progress notes constitute a simple departure from the
4 standard of care.

5 19. Respondent's records lack progress notes documenting any massage treatments that
6 occurred, despite the regular practice of providing massage. This corresponded to Respondent's
7 interview with an investigator for the Board, in which Respondent explained that he maintains
8 records for acupuncture treatments, but not massage treatments. The complete lack of records of
9 massage treatments represents a simple departure from the standard of care.

10 **FIRST CAUSE FOR DISCIPLINE**

11 (Gross Negligence)

12 20. Respondent is subject to disciplinary action under Code section 4955.2, subdivision
13 (a), in that he committed gross negligence while providing acupuncture and massage treatment to
14 Patient N. The circumstances are as follows:

15 21. The acts and allegations in Paragraphs 14 through 19, above, are incorporated by
16 reference and re-alleged as if full set forth herein.

17 22. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 19,
18 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
19 gross negligence under Code section 4955.2, subdivision (a). Therefore, cause for discipline
20 exists.

21 **SECOND CAUSE FOR DISCIPLINE**

22 (Repeated Negligent Acts)

23 23. Respondent is subject to disciplinary action under Code section 4955.2, subdivision
24 (b), in that he committed repeated negligent acts while providing acupuncture and massage
25 treatment to Patient N. The circumstances are as follows:

26 24. The acts and allegations in Paragraphs 14 through 19, above, are incorporated by
27 reference and re-alleged as if full set forth herein.

28 25. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 19,

1 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
2 repeated negligent acts under Code section 4955.2, subdivision (b). Therefore, cause for
3 discipline exists.

4 **THIRD CAUSE FOR DISCIPLINE**

5 (Sexual Misconduct)

6 26. Respondent is subject to disciplinary action under Code sections 726 and 4955,
7 subdivision (d), in that he engaged in sexual misconduct while providing acupuncture and
8 massage treatment to Patient N. The circumstances are as follows:

9 27. The facts and allegations in Paragraphs 14 through 19, above, are incorporated by
10 reference and re-alleged as if full set forth herein.

11 28. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 19,
12 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
13 sexual misconduct under Code sections 726 and 4955, subdivision (d). Therefore, cause for
14 discipline exists.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 (Failure to Keep Adequate and Accurate Records)

17 29. Respondent is subject to disciplinary action under Code section 4955.1, subdivision
18 (e), and California Code of Regulations, title 16, section 1399.453 in that he failed to keep
19 complete and accurate records regarding his provision of acupuncture and massage treatment to
20 Patient N. The circumstances are as follows:

21 30. The facts and allegations in Paragraphs 14 through 19, above, are incorporated by
22 reference and re-alleged as if full set forth herein.

23 31. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 19,
24 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
25 the failure to keep complete and accurate records regarding the provision of acupuncture and
26 massage treatment under Code section 4955.1, subdivision (e), and California Code of
27 Regulations, title 16, section 1399.453. Therefore, cause for discipline exists.

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1 **FIFTH CAUSE FOR DISCIPLINE**

2 (Failure to Notify the Board of All Practice Locations)

3 32. Respondent is subject to disciplinary action under Code section 4961, subdivision (a),
4 in that he failed to notify the Board of all practice locations. The circumstances are as follows:

5 33. The facts and allegations in Paragraphs 14 through 19, above, are incorporated by
6 reference and re-alleged as if full set forth herein.

7 34. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 19,
8 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
9 the failure to notify the Board of all practice locations under Code section 4961, subdivision (a).
10 Therefore, cause for discipline exists.

11 **SIXTH CAUSE FOR DISCIPLINE**

12 (Violation of Acupuncture Licensure Act or Regulation)

13 35. Respondent is subject to disciplinary action under Code section 4955, subdivision (d),
14 in that he violated the terms of the Acupuncture Licensure Act, or a regulation adopted by the
15 Board pursuant to the Acupuncture Licensure Act. The circumstances are as follows:

16 36. The facts and allegations in Paragraphs 14 through 19, above, are incorporated by
17 reference and re-alleged as if full set forth herein.

18 37. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 19,
19 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute a
20 violation of the terms of the Acupuncture Licensure Act, or a regulation adopted by the Board
21 pursuant to the Acupuncture Licensure Act under Code section 4955, subdivision (d). Therefore,
22 cause for discipline exists.

23 **SEVENTH CAUSE FOR DISCIPLINE**

24 (Unprofessional Conduct)

25 38. Respondent is subject to disciplinary action under Code section 4955, subdivision (d),
26 in that he engaged in unprofessional conduct by breaching the rules or ethical code of conduct of
27 the profession of acupuncture, or by engaging in conduct unbecoming to an acupuncturist in good
28 standing in the profession and which demonstrates an unfitness to practice acupuncture. The

1 circumstances are as follows:

2 39. The facts and allegations in Paragraphs 14 through 37, above, are incorporated by
3 reference and re-alleged as if full set forth herein.

4 40. Respondent's acts and/or omissions as set forth in Paragraphs 14 through 37,
5 inclusive above, whether proven individually, jointly, or in any combination thereof, constitute
6 unprofessional conduct under Code section 4955, subdivision (d). Therefore, cause for discipline
7 exists.

8 **PRAYER**

9 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the Board issue a decision:

11 1. Revoking or suspending Acupuncturist's License Number AC 16123, issued to
12 Respondent Sung Hean Lee, L.Ac.;

13 2. Ordering Respondent to pay the Acupuncture Board the reasonable costs of the
14 investigation and enforcement of this case, pursuant to Business and Professions Code section
15 4959;

16 3. If placed on probation, ordering Respondent to pay the Acupuncture Board the costs
17 of probation monitoring; and,

18 4. Taking such other and further action as deemed necessary and proper.

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21 DATED: February 20, 2020

Original Signature on File
22 BENJAMIN BODEA
23 Executive Officer
24 Acupuncture Board
25 Department of Consumer Affairs
26 State of California

Complainant

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