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ACUPUNCTURE BOARD

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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-2009-144

12 **BEAU B. KIM, L.Ac.**
13 **24208 Crenshaw Boulevard,**
14 **Torrance, CA 90505**

A C C U S A T I O N

14 **Acupuncturist License No. AC 5000**

15 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about September 30, 1994, the Board issued Acupuncturist License Number
23 AC 5000 to Beau B. Kim, L.Ac. (hereinafter "Respondent"). Respondent's license is presently
24 active, and will expire March 31, 2012.

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JURISDICTION

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

5 4. Section 4928.1 of the Code states:

6 "Protection of the public shall be the highest priority for the Acupuncture
7 Board in exercising its licensing, regulatory, and disciplinary functions. Whenever
8 the protection of the public is inconsistent with other interests sought to be
9 promoted, the protection of the public shall be paramount."

10 5. Section 4955 of the Code states, in relevant part, as follows:

11 "The board may deny, suspend, revoke, or impose probationary conditions
12 upon the license of any acupuncturist if he or she is guilty of unprofessional
13 conduct. Unprofessional conduct shall include, but not be limited to, the
14 following:"

15 "... "

16 “(c) False or misleading advertising.”

17 "...."

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

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

10 6. Section 4955.2 of the Code states, in relevant part, as follows:

11 "The board may deny, suspend, revoke, or impose probationary conditions
12 upon the license of any acupuncturist if he or she is guilty of committing any one
13 of the following:"

14 "(a) Gross negligence."

15 "... "

16 "(b) Repeated negligent acts."

17 "... "

18 7. Section 4959 of the Code states, in relevant part, as follows:

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

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

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

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

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

13 8. California Code of Regulations, Title 16, Section 1399.451, subdivision (e) states,
14 in relevant part, as follows:

15 "In treating a patient, an acupuncturist shall adhere to the following
16 procedures:

17 "..."

18 (e) Any complication, including but not limited to, hematoma,
19 peritonitis or pneumothorax arising out of acupuncture treatment shall be referred
20 immediately to a physician or dentist or podiatrist, if appropriate, if immediate
21 medical treatment is required."

22 9. California Code of Regulations, Title 16, Section 1399.454, states the following:

23 "An Acupuncturist shall use needles labeled for single use only. It shall
24 constitute unprofessional conduct for an Acupuncturist to use a needle more than
25 once."

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FIRST CAUSE FOR DISCIPLINE
(Gross Negligence)

10. Respondent is subject to disciplinary action under section 4955.2 in that his care and treatment of the two patients described below was grossly negligent pursuant to Section 4955.2 of the Code. The circumstances are set forth below:

Patient M.O.K.

11. On or about March of 2009, patient M.O.K.¹ saw an advertisement placed by Respondent in a Korean newspaper, which claimed that his acupuncture treatments could cure a number of eye problems, including glaucoma and redness of the eyes.

12. On or about March 28, 2009, patient M.O.K. began acupuncture treatment with Respondent. Patient M.O.K. had symptoms of glaucoma, redness, and excessive tearing of his eyes. M.O.K. received twenty-one (21) acupuncture treatments for these conditions from Respondent from March 28, 2009, through May 20, 2009.

13. Respondent used "botanical needles" (wooden needles) in the acupuncture treatment of M.O.K. during all treatments from March 28, 2009, through May 20, 2009.

14. Patient M.O.K. described the treatments by Respondent as "very painful" and involving "poking and pressing her inner eye lids with a small wooden stick." M.O.K. stated that on March 31, 2009, Respondent "hit" her left cornea with the wooden stick. She also stated that on April 10, 2009, Respondent "hit" M.O.K. with a needle in her left cornea. Patient M.O.K. developed an infection following these treatments. Due to Respondent's actions, on June 6, 2009, M.O.K. independently and not at Respondent's recommendation sought treatment at the Cerritos Eye Medical Center for "an infection of the cornea of her left eye." Upon examination it was determined by the Cerritos Eye Medical Center that M.O.K.'s injury to her left cornea was "consistent with an injury that occurred anytime within one (1) month to a year previous."

¹ Patient names are abbreviated herein to protect patient confidentiality. Patients' full names will be provided upon receipt of a properly executed and served Request for Discovery.

1 Respondent then recommended yet another series of treatments, which J.W. refused to undergo.
2 J.W. demanded a refund of \$2,000.00, which was the total he paid to the Respondent for the 30
3 treatments (both the first round of eighteen (18) treatments and the second round of twelve (12)
4 treatments). Respondent refused to refund any of the money paid to him by J.W.

5 20. Respondent's treatment and care of patients M.O.K. and J.W. constitute gross
6 negligence, and subject him to discipline within the meaning of Section 4955.2 of the Code in
7 that:

8 A. Respondent used botanical needles that do not meet the requirements of
9 Business and Professions Code section 4955, subdivision (e), and California Code of Regulations,
10 Title 16, section 1399.454, which require the use of sterilized, solid, stainless steel needles
11 labeled as single use needles in acupuncture treatments. Respondent knowingly did not comply
12 with the requirements of Business and Professions Code section 4955, subdivision (e), and
13 California Code of Regulations, Title 16, section 1399.454 by using wooden needles from a
14 "secret tree" which he attempted to sterilize, and appears to have reused in his patients.

15 B. Respondent violated section 4955, subdivision (c), in that he disseminated
16 false and misleading written and oral advertisements. Specifically, he offered a 100% cure rate
17 for dry eyes, and cures for glaucoma and redness of the eyes. Patient J.W. specifically sought out
18 Respondent's services, and paid him \$2,000 for 30 painful and grossly negligent treatments,
19 which did not cure his ailments. Respondent refused to refund the moneys paid to him in reliance
20 of his 100% offer of a cure through his methods of using "secret water" instead of prescription
21 medications, attempting to clear out "fat" from tear ducts, and wooden needles.

22 C. Respondent deviated from the standard of care of acupuncture in the
23 following respects:

24 (1) Respondent used botanical needles that were not sterilized and were
25 not solid, stainless steel needles labeled as single use needles in acupuncture treatments.

26 (2) Respondent knowingly used wooden needles, when he knew wooden
27 needles were not permitted to be used in acupuncture treatment. He subjected patients J.W. and
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1 M.O.K. to unhygienic, and reused wooden needles, which are specifically prohibited for use in
2 acupuncture treatments. He exposed both patients to the risk of permanent eye injury and
3 infections, both of which occurred with patient M.O.K.

4 (3) Respondent disseminated false and misleading written and oral
5 advertisements. Specifically, he offered a 100% cure rate for dry eyes, and cures for glaucoma
6 and redness of the eyes, which he was not able to deliver to patient J.W.

7 (4) He caused injury to a patient M.O.K.'s left cornea due to his use of
8 unaccepted, unsanitary, and dangerous methods of hitting her eye with wooden sticks and
9 needles. He also failed to immediately refer patient M.O.K. to a physician upon the obvious
10 complications resulting from his treatments.

11 (5) He specifically advised patient J.W. to stop using prescribed eye
12 drops, and instead use his "secret water" eye drops, which clearly were not effective and of
13 dubious origin.

14 (6) His continued assurances to patients M.O.K. and J.W. convinced each
15 of them to accept his "professional" recommendations of unaccepted, dangerous, and painful
16 acupuncture treatments, even in the face of the evident failures of his treatments and guaranteed
17 outcomes.

18 D. Respondent violated section 4955.2, subdivision (b), due to his repeated
19 negligent acts, as described above in paragraph C.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(False and Misleading Advertising)**

22 21. Respondent is further subject to disciplinary action under section 4955,
23 subdivision (c), of the Code, by guaranteeing the success rate of his treatments by 100%.

24 The circumstances are as follows:

25 22. Paragraphs 16 through 19, 20 B, and 20 C (3) are hereby incorporated by reference
26 and realleged as if fully set forth.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Infection Control Failure)**

3 23. Respondent is further subject to disciplinary action under section 4955, subdivision
4 (e), of the Code, in that he has failed to comply with infection control guidelines by using
5 needles in the practice of Acupuncture that were not labeled for "single use only." The
6 circumstances are as follows:

7 24. Paragraphs 11 through 19, and 20 C (1), (2), (4), and (6), are hereby incorporated
8 by reference and realleged as if fully set forth.

9 **FOURTH CAUSE FOR DISCIPLINE**

10 **(Referral from Complication)**

11 25. Respondent is further subject to disciplinary action under California Code of
12 Regulations, Title 16, section 1399.451, subdivision (e), in that Respondent failed to refer
13 M.O.K., who was experiencing complications arising out of the acupuncture treatments he
14 performed, immediately to a physician. The circumstances are as follows:

15 26. Paragraphs 11 through 15 are hereby incorporated by reference and realleged as if
16 fully set forth.

17 **FIFTH CAUSE FOR DISCIPLINE**

18 **(Repeated Negligent Acts)**

19 27. Respondent is further subject to disciplinary action under section 4955.2,
20 subdivision (b), of the Code, in that he has committed repeated acts of negligence in the practice
21 of acupuncture. The circumstances are as follows:

22 28. Paragraphs 10 through 26 are hereby incorporated by reference and realleged as if
23 fully set forth.

24 **AGGRAVATING FACTORS**

25 29. On January 28, 2009, Respondent received an administrative citation for
26 inappropriate advertising of using the word "cure," and using wooden needles. On May 14,
27 2009, an informal hearing was held and Respondent appealed the citation. Respondent removed
28 the advertising from circulation, and assured the Board that he would no longer use wooden

1 needles. The fine was modified to \$1,000.00, and a modified decision was issued on May 28,
2 2009.

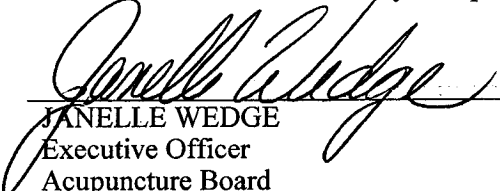
3 **PRAYER**

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

- 6 1. Revoking or suspending Acupuncturist License Number AC 5000, issued to Beau
7 B. Kim;
- 8 2. Ordering Respondent to pay the Acupuncture Board the reasonable costs of the
9 investigation and enforcement of this case, pursuant to Business and Professions Code section
10 4959; and
- 11 3. Taking such other and further action as deemed necessary and proper.

12 DATED: _____

NOV 09 2011



JANELLE WEDGE
Executive Officer
Acupuncture Board
State of California
Complainant

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