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FILED

OCT 6 2011

ACUPUNCTURE BOARD

**BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

PHILLIP MANKEUN SHON, L.Ac.

4711 Oakwood, #207
Los Angeles, California 90005

Acupuncturist License No. AC 9186,

Respondent.

Case No. 1A-2010-179

OAH No. 2011061468

**FIRST AMENDED
ACCUSATION**

Complainant alleges:

PARTIES

1. Janelle Wedge (Complainant) brings this Amended Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board of California ("Board").

2. On or about September 3, 2003, the Board issued Acupuncturist License number AC 9186 to Phillip Mankeun Shon ("Respondent"). That license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2013.

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JURISDICTION

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2 3. This Amended Accusation is brought before the Board under the authority of the
3 following laws. All section references are to the Business and Professions Code unless otherwise
4 indicated.

5 4. Section 4955.1 of the Code states:

6 “The board may deny, suspend, revoke, or impose probationary conditions upon the license
7 of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be
8 limited to, any of the following:

9 “(a) Securing a license by fraud or deceit.

10 “(b) Committing a fraudulent or dishonest act as an acupuncturist.

11 “(c) Committing any act involving dishonesty or corruption with respect to the
12 qualifications, functions, or duties of an acupuncturist.

13 “(d) Altering or modifying the medical record of any person, with fraudulent
14 intent, or creating any false medical record.

15 “(e) Failing to maintain adequate and accurate records relating to the provision
16 of services to their patients.”

17 5. Section 4961 of the Code states:

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

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

27 “(c) Any licensee that changes the location of his or her place of practice shall
28 register each change within 30 days of making that change. In the event a licensee

1 fails to notify the board of any change in the address of a place of practice within the
2 time prescribed by this section, the board may deny renewal of licensure. An
3 applicant for renewal of licensure shall specify in his or her application whether or
4 not there has been a change in the location of his or her place of practice and, if so,
5 the date of that change. The board may accept that statement as evidence of the
6 change of address.”

7 6. Section 731(a) of the Code states:

8 Any person licensed, certified, registered, or otherwise subject to regulation pursuant
9 to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i,
10 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in
11 the work premises of, or work area under the direct professional supervision or control of,
12 that person, shall be guilty of unprofessional conduct. The license, certification, or
13 registration of that person shall be subject to denial, suspension, or revocation by the
14 appropriate regulatory entity under this division.

15 FIRST CAUSE FOR DISCIPLINE

16 (Conviction of a Crime – Operating Without Workers’ Compensation Insurance)

17 7. Respondent is subject to disciplinary action for having been convicted of a crime in
18 violation of Sections 4955, subdivisions (b) and (j), and 4961 subdivision (a) of the Code. The
19 facts and circumstances are as follows:

20 a. On or about May 5, 2010, Respondent was cited for a violation of Labor Code
21 section 3700.5, operating a business without having a Workers’ Compensation policy, a
22 misdemeanor. Respondent failed to pay the fine levied for the misdemeanor violation and a
23 bench arrest warrant was issued for his arrest.

24 b. On or about September 24, 2010, Respondent was interviewed by investigators
25 following up on the bench warrant and a new arrest citation was issued to him pursuant to Penal
26 Code section 853.7 (failure to appear). At the hearing held on or about November 2, 2010, in the
27 Superior Court of the State of California, County of Riverside, Case No. RIM10006787,
28 Respondent pled guilty to violating Labor Code section 3700.5 (Count 1), and Penal Code section

1 853.7 (Count 2). Respondent received three years of probation, was ordered to serve forty-five
2 days in the Riverside County Sheriff's work release program, and was ordered to pay total fines
3 and assessments amounting to \$8390.00, with additional terms and conditions, including that he
4 not be involved in any business that involves prostitution.

5 8. Respondent's failure to maintain Workers' Compensation insurance as required is
6 substantially related to the qualifications, functions and duties of his profession. First, the offense
7 arose from his failure to maintain Worker's Compensation insurance at one or more of his
8 acupuncture offices in the State of California. Second, the duty breached is a fundamental one
9 whose protection is deemed important enough to be enshrined in the California Constitution. In
10 the acupuncturist setting, failing to maintain the appropriate policies places his employees at risk
11 in a dangerous environment where, as a function of the profession, acupuncture needles are in
12 constant use. Thus, Respondent breached his professional duties in violating this fundamental
13 requirement of his duty as an employer and a licensed professional.

14 SECOND CAUSE FOR DISCIPLINE

15 (Conviction of Crimes Related to Operation of Massage Parlor)

16 9. Respondent is subject to disciplinary action for having been convicted of numerous
17 crimes in violation of Sections 4955, subdivisions (b) and (j), and 4961 subdivision (a) of the
18 Code. The facts and circumstances are as follows:

19 a. On or about February 16, 2011, Respondent was cited for violating Section
20 17.28.020(A)(I) of the Montebello Municipal Code (operating or permitting the operation of a
21 massage parlor without first obtaining a conditional use permit), a misdemeanor (Count 1),
22 Section 5.48.020 of the Montebello Municipal Code (operating or permitting the operation of a
23 massage parlor without first obtaining an operator's permit), a misdemeanor (Count 2), and
24 Section 17.22.100(C) of the Montebello Municipal Code (maintaining or permitting unapproved
25 fencing [to wit, fencing that was screened with unapproved bamboo material], a misdemeanor
26 (Count 3).

27 b. At a hearing held on or about July 6, 2011, in the Superior Court of the State of
28 California, County of Los Angeles, Case No. 1EA01930, Respondent pled nolo contendere to

1 Board. Registration of practice locations is fundamental in enabling the Board to monitor a
2 licensed acupuncturist's practice.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Allowing Prostitution in the Work Area)

5 13. Respondent is subject to disciplinary action for having allowed prostitution to take
6 place in his practice location in violation of Section 731 of the Code. The facts and
7 circumstances are as follows:

8 a. On or about December 1, 2010, Jin Young Lee was cited for violating Penal
9 Code Section 647(b) (engaging in an act of prostitution and doing some act in furtherance of an
10 act of prostitution), a misdemeanor, at Respondent's business location at 612 W. Whittier
11 Boulevard, Montebello, California. Furthermore, on or about December 1, 2010, Kim Pokmyong
12 Pastrer was cited for violating Penal Code Section 653.23(a)(1) (directing, supervising, recruiting
13 or otherwise aiding another person in the commission of a crime, to wit, engaging in an act of
14 prostitution and doing some act in furtherance of an act of prostitution), a misdemeanor, at
15 Respondent's business location at 612 W. Whittier Boulevard, Montebello, California.

16 b. At a hearing held on or about February 23, 2011, in the Superior Court of the
17 State of California, County of Los Angeles, Case No. OEA11056, Jin Young Lee pled nolo
18 contendere to violating Penal Code Section 647(b) (engaging in an act of prostitution and doing
19 some act in furtherance of an act of prostitution), a misdemeanor, for acts engaged in at
20 Respondent's practice location (Count 1). Jin Young Lee received one year of probation and was
21 ordered to pay total fines and assessments amounting to \$391.00, with additional terms and
22 conditions, including that she not engage in acts of prostitution.

23 c. At a hearing held on or about February 23, 2011, in the Superior Court of the
24 State of California, County of Los Angeles, Case No. OEA11056, Kim Pokmyong Pastrer pled
25 nolo contendere to violating Penal Code Section 653.23(a)(1) (directing, supervising, recruiting
26 or otherwise aiding another person in the commission of a crime, to wit, engaging in an act of
27 prostitution and doing some act in furtherance of an act of prostitution), a misdemeanor, at
28 Respondent's practice location (Count 2). Kim Pokmyong Pastrer received one year of probation

1 and was ordered to pay total fines and assessments amounting to \$780.00, with additional terms
2 and conditions, including that she not engage or offer to engage in any sexual activity in a public
3 place or a place open to the public or exposed to public view.

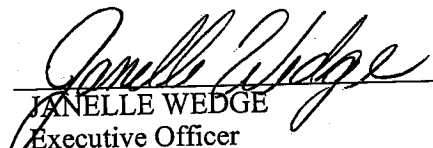
4 14. Respondent's failure to prevent prostitution from occurring in his practice location is
5 substantially related to the qualifications, functions and duties of his profession. Prostitution is a
6 crime and has no place in a facility intended for human health care. Prostitution, by its nature,
7 will expose patients coming to the location for acupuncture treatments to unsanitary and
8 unhealthy conditions. Furthermore, the presence of prostitutes at a practice location indicates that
9 they are involved in the practice at some level, again exposing patients to dangerous conditions.

10 PRAYER

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

- 13 1. Revoking or suspending Acupuncturist License Number AC 9186, issued to Phillip
14 Mankeun Shon;
- 15 2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation
16 and enforcement of this case, pursuant to Business and Professions Code section 4959, and;
- 17 3. Taking such other and further action as deemed necessary and proper.

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19
20 DATED: OCT 06 2011


JANELLE WEDGE
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California

23 *Complainant*

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