

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

In the Matter of the Statement of Issues)
Against:)
)
CHOL SU KIM)
4838 Elmwood, #1)
Los Angeles, CA 90004)
)
)
Respondent.)
_____)

Case No. 1A-2015-238

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Acupuncture Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on September 8, 2017.

It is so ORDERED August 11, 2017.



Amy Matecki, MD, L.Ac., President
Acupuncture Board
Department of Consumer Affairs
State of California

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

11
12 In the Matter of the Statement of Issues
13 Against:

14 **CHOL SU KIM**
15 **4838 Elmwood, #1**
Los Angeles, CA 90020,

16
17 Applicant.

Case No. 1A-2015-238

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

18
19 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Benjamin Bodea (Complainant) is the Executive Officer of the Acupuncture Board
23 (Board). He brought this action solely in his official capacity and is represented in this matter by
24 Xavier Becerra, Attorney General of the State of California, by Wendy Widlus, Deputy Attorney
25 General.

26 2. Applicant CHOL SU KIM (Applicant) is represented in this proceeding by attorney
27 Kevin H. Jang, whose address is: Kevin H. Jang, A Law Corporation, 3435 Wilshire Blvd. Suite
28

1 2300, Los Angeles, CA 90010.

2 3. On or about May 20, 2016, Applicant filed an application dated May 17, 2016, with
3 the Board to obtain an Acupuncturist License.

4 **JURISDICTION**

5 4. Statement of Issues No. 1A-2015-238 was filed before the Board, and is currently
6 pending against Applicant. The Statement of Issues and all other statutorily required documents
7 were properly served on Applicant on March 13, 2017.

8 5. A copy of Statement of Issues No. 1A-2015-238 is attached as exhibit A and
9 incorporated herein by reference.

10 **ADVISEMENT AND WAIVERS**

11 6. Applicant has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Statement of Issues No. 1A-2015-238. Applicant has also carefully
13 read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 7. Applicant is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Statement of Issues; the right to confront and cross-
17 examine the witnesses against him; the right to present evidence and to testify on his own behalf;
18 the right to the issuance of subpoenas to compel the attendance of witnesses and the production of
19 documents; the right to reconsideration and court review of an adverse decision; and all other
20 rights accorded by the California Administrative Procedure Act and other applicable laws.

21 8. Applicant voluntarily, knowingly, and intelligently waives and gives up each and
22 every right set forth above.

23 **CULPABILITY**

24 9. Applicant admits the truth of each and every charge and allegation in Statement of
25 Issues No. 1A-2015-238.

26 10. Applicant agrees that his Acupuncturist License is subject to denial and he agrees to
27 be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

28 //

CONTINGENCY

11. This stipulation shall be subject to approval by the Acupuncture Board. Applicant understands and agrees that counsel for Complainant and the staff of the Acupuncture Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Applicant or his counsel. By signing the stipulation, Applicant understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Applicant Chol Su Kim's Acupuncturist License will be issued and immediately revoked. The revocation will be stayed and the Applicant placed on five (5) years probation on the following terms and conditions.

1. CLINICAL DIAGNOSTIC EVALUATION

1) Within 30 days of the effective date of this decision and on whatever periodic basis thereafter as may be required by the Board or its designee, Applicant shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon

1 who holds a valid, unrestricted license, has three (3) years' experience in providing evaluation of
2 healthcare practitioners with substance abuse disorders, and is approved by the Board or its
3 Designees. The clinical diagnostic evaluation shall be conducted in accordance with acceptable
4 professional standards for conducting substance abuse clinical diagnostic evaluations. The
5 evaluator shall not have a current or former financial, personal, or business relationship with
6 Applicant within the last five (5) years. *The evaluator shall provide an objective, unbiased, and
7 independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's
8 opinion, whether Applicant has a substance abuse problem, whether Applicant is a threat to
9 himself or herself or others, and recommendations for substance abuse treatment, practice
10 restrictions, or other recommendations related to Applicant's rehabilitation and ability to practice
11 safely. If the evaluator determines during the evaluation process that Applicant is a threat to
12 himself or herself or others, the evaluator shall notify the Board within twenty-four (24) hours of
13 such a determination.

14 In formulating his or her opinion as to whether Applicant is safe to return to either part-
15 time or full-time practice and what restrictions or recommendations should be imposed, including
16 participation in an inpatient or outpatient treatment program, the evaluator shall consider the
17 following factors: Applicant's license type; Applicant's history; Applicant's documented
18 length of sobriety (i.e., length of time that has elapsed since Applicant's last substance use);
19 Applicant's scope and pattern of substance abuse; Applicant's treatment history, medical
20 history and current medical condition; the nature, duration and severity of Applicant's
21 substance abuse problem or problems; and whether Applicant is a threat to himself or herself or
22 the public. For all clinical diagnostic evaluations, a final written report shall be provided to the
23 Board no later than ten (10) days from the date the evaluator is assigned the matter. If the
24 evaluator requests additional information or time to complete the evaluation and report, an
25 extension may be granted, but shall not exceed thirty (30) days from the date the evaluator was
26 originally assigned the matter.

27 The Board shall review the clinical diagnostic evaluation report within five (5) business
28 days of receipt to determine whether Applicant is safe to return to either part-time or full-time

1 practice and what restrictions or recommendations shall be imposed on Applicant based on the
2 recommendations made by the evaluator. Applicant shall not be returned to practice until he or
3 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests
4 indicating that he or she has not used, consumed, ingested, or administered to himself or herself a
5 prohibited substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California
6 Code of Regulations or alcohol, marijuana and controlled substances, as defined in the California
7 Uniform Controlled Substances Act (Division 10, commencing with section 11000, Health and
8 Safety Code) and dangerous drugs as defined in Section 4022 of the Business and Professions
9 Code, or any drugs requiring a prescription and their associated paraphernalia except when the
10 drugs are lawfully prescribed by a licensed practitioner as part of a documented medical
11 treatment.

12 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall
13 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic
14 evaluation, including any and all testing deemed necessary by the examiner, the Board or its
15 designee, shall be borne by the licensee.

16 Applicant shall not engage in the practice of acupuncture until notified by the Board or its
17 designee that he or she is fit to practice acupuncture safely. The period of time that Applicant is
18 not practicing acupuncture shall not be counted toward completion of the term of probation.
19 Applicant shall undergo biological fluid testing as required in this Decision at least two (2)
20 times per week while awaiting the notification from the Board if he or she is fit to practice
21 acupuncture safely.

22 Applicant shall comply with all restrictions or conditions recommended by the examiner
23 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being
24 notified by the Board or its designee.

25 2. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION

26 Within seven (7) days of the effective date of this Decision, Applicant shall provide to the
27 Board the names, physical addresses, mailing addresses, and telephone numbers of any and all
28 employers and supervisors. Applicant shall also provide specific, written consent for the

1 Board, Applicant's worksite monitor, and Applicant's employers and supervisors to
2 communicate regarding Applicant's work status, performance, and monitoring.

3 3. BIOLOGICAL FLUID TESTING

4 Applicant shall immediately submit to biological fluid testing, at Applicant's expense,
5 upon request of the Board or its designee. "Biological fluid testing" may include, but is not
6 limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by
7 the Board or its designee. Applicant shall make daily contact with the Board or its designee to
8 determine whether biological fluid testing is required. Applicant shall be tested on the date of the
9 notification as directed by the Board or its designee. The Board may order Applicant to undergo
10 a biological fluid test on any day, at any time, including weekends and holidays. Except when
11 testing on a specific date as ordered by the Board or its designee, the scheduling of biological
12 fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne
13 by the Applicant.

14 During the first year of probation, Applicant shall be subject to 52 to 104 random tests.
15 During the second year of probation and for the duration of the probationary term, up to five (5)
16 years, Applicant shall be subject to 36 to 104 random tests per year. Only if there has been no
17 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing
18 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number
19 of random tests to the first-year level of frequency for any reason.

20 Prior to practicing acupuncture, Applicant shall contract with a laboratory or service,
21 approved in advance by the Board or its designee, that will conduct random, unannounced,
22 observed biological fluid testing and meets all the following standards:

23 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing
24 Industry Association or have completed the training required to serve as a collector for the United
25 States Department of Transportation.

26 (b) Its specimen collectors conform to the current United States Department of
27 Transportation Specimen Collection Guidelines.

28 (c) Its testing locations comply with the Urine Specimen Collection Guidelines

1 published by the United States Department of Transportation without regard to the type of
2 test administered.

3 (d) Its specimen collectors observe the collection of testing specimens.

4 (e) Its laboratories are certified and accredited by the United States Department of
5 Health and Human Services.

6 (f) Its testing locations shall submit a specimen to a laboratory within one (1)
7 business day of receipt and all specimens collected shall be handled pursuant to
8 chain of custody procedures. The laboratory shall process and analyze the
9 specimens and provide legally defensible test results to the Board within seven (7)
10 business days of receipt of the specimen. The Board will be notified of non-
11 negative results within one (1) business day and will be notified of negative test
12 results within seven (7) business days.

13 (g) Its testing locations possess all the materials, equipment, and technical
14 expertise necessary in order to test Applicant on any day of the week.

15 (h) Its testing locations are able to scientifically test for urine, blood, and hair
16 specimens for the detection of alcohol and illegal and controlled substances.

17 (i) It maintains testing sites located throughout California.

18 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure
19 on-line computer database that allows the Applicant to check in daily for testing.

20 (k) It maintains a secure, HIPAA-compliant website or computer system that
21 allows staff access to drug test results and compliance reporting information that is
22 available 24 hours a day.

23 (l) It employs or contracts with toxicologists that are licensed physicians and have
24 knowledge of substance abuse disorders and the appropriate medical training to
25 interpret and evaluate laboratory biological fluid test results, medical histories, and
26 any other information relevant to biomedical information.

27 (m) It will not consider a toxicology screen to be negative if a positive result is
28 obtained while practicing, even if the Applicant holds a valid prescription for the

1 substance.

2 Prior to changing testing locations for any reason, including during vacation or other
3 travel, alternative testing locations must be approved by the Board and meet the requirements
4 above.

5 The contract shall require that the laboratory directly notify the Board or its designee of
6 nonnegative results within one (1) business day and negative test results within seven (7) business
7 days of the results becoming available. Applicant shall maintain this laboratory or service
8 contract during the period of probation.

9 A certified copy of any laboratory test result may be received in evidence in any
10 proceedings between the Board and Applicant.

11 If a biological fluid test result indicates Applicant has used, consumed, ingested, or
12 administered to himself or herself a prohibited substance, the Board shall order Applicant to cease
13 practice and instruct Applicant to leave any place of work where Applicant is practicing
14 acupuncture. The Board shall immediately notify all of Applicant's employers, supervisors and
15 work monitors, if any, that Applicant may not practice acupuncture while the cease practice order
16 is in effect.

17 A biological fluid test will not be considered negative if a positive result is obtained while
18 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited
19 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

20 After the issuance of a cease-practice order, the Board shall determine whether the
21 positive biological fluid test is in fact evidence of prohibited substance use by consulting with the
22 specimen collector and the laboratory, communicating with the licensee, his or her treating
23 physician(s), other health care provider, or group facilitator, as applicable.

24 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the
25 acquisition and chemical analysis of a Applicant's urine, blood, breath, or hair.

26 For purposes of this condition, the term "prohibited substance" means an illegal drug, a
27 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by
28 Applicant and approved by the Board, alcohol, or any other substance the Applicant has been

1 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

2 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited
3 substance, Applicant has committed a major violation, as defined in section 1361.52, subdivision
4 (a), of Title 16 of the California Code of Regulations, and the Board shall impose any or all of the
5 consequences set forth in section 1361.52, subdivision (b), of Title 16 of the California Code of
6 Regulations, in addition to any other terms or conditions the Board determines are necessary for
7 public protection or to enhance Applicant's rehabilitation.

8 4. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS

9 Within thirty (30) days of the effective date of this Decision, Applicant shall submit to the
10 Board or its designee, for its prior approval, the name of a substance abuse support group which
11 he or she shall attend for the duration of probation. Applicant shall attend substance abuse
12 support group meetings at least once per week, or as ordered by the Board or its designee.
13 Applicant shall pay all substance abuse support group meeting costs.

14 The facilitator of the substance abuse support group meeting shall have a minimum of
15 three (3) years' experience in the treatment and rehabilitation of substance abuse, and shall be
16 licensed or certified by the state or nationally certified organizations. The facilitator shall not
17 have a current or former financial, personal, or business relationship with Applicant within the
18 last five (5) years. Applicant's previous participation in a substance abuse group support meeting
19 led by the same facilitator does not constitute a prohibited current or former financial, personal, or
20 business relationship.

21 The facilitator shall provide a signed document to the Board or its designee showing
22 Applicant's name, the group name, the date and location of the meeting, Applicant's
23 attendance, and Applicant's level of participation and progress. The facilitator shall report any
24 unexcused absence by Applicant from any substance abuse support group meeting to the Board,
25 or its designee, within twenty-four (24) hours of the unexcused absence.

26 5. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE

27 Within thirty (30) calendar days of the effective date of this Decision, Applicant shall
28 submit to the Board or its designee for prior approval as a worksite monitor, the name and

1 qualifications of one or more licensed acupuncturists, other licensed health care professional if no
2 acupuncturist is available, or, as approved by the Board or its designee, a person in a position of
3 authority who is capable of monitoring the Applicant at work.

4 The worksite monitor shall not have a current or former financial, personal, or familial
5 relationship with Applicant, or any other relationship that could reasonably be expected to
6 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its
7 designee. If it is impractical for anyone but Applicant's employer to serve as the worksite
8 monitor, this requirement may be waived by the Board or its designee, however, under no
9 circumstances shall Applicant's worksite monitor be an employee or supervisee of the licensee.

10 The worksite monitor shall have an active unrestricted license with no disciplinary action
11 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms
12 and conditions of Applicant's disciplinary order and agrees to monitor Applicant as set forth by
13 the Board or its designee.

14 Applicant shall pay all worksite monitoring costs.

15 The worksite monitor shall have face-to-face contact with Applicant in the work
16 environment on as frequent a basis as determined by the Board or its designee, but not less than
17 once per week; interview other staff in the office regarding Applicant's behavior, if requested by
18 the Board or its designee; and review Applicant's work attendance.

19 The worksite monitor shall verbally report any suspected substance abuse to the Board
20 and Applicant's employer or supervisor within one (1) business day of occurrence. If the
21 suspected substance abuse does not occur during the Board's normal business hours, the verbal
22 report shall be made to the Board or its designee within one (1) hour of the next business day. A
23 written report that includes the date, time, and location of the suspected abuse; Applicant's
24 actions; and any other information deemed important by the worksite monitor shall be submitted
25 to the Board or its designee within 48 hours of the occurrence.

26 The worksite monitor shall complete and submit a written report monthly or as directed by
27 the Board or its designee which shall include the following: (1) Applicant's name and acupuncture
28 license number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license

1 number, if applicable; (4) the location or location(s) of the worksite; (5) the dates Applicant had
2 face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if
3 applicable; (7) a report of Applicant's work attendance; (8) any change in Applicant's behavior
4 and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by
5 Applicant. Applicant shall complete any required consent forms and execute agreements with the
6 approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee,
7 and worksite monitor to exchange information.

8 If the worksite monitor resigns or is no longer available, Applicant shall, within five (5)
9 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior
10 approval, the name and qualifications of a replacement monitor who will be assuming that
11 responsibility within fifteen (15) calendar days. If Applicant fails to obtain approval of a
12 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the
13 monitor, Applicant shall receive a notification from the Board or its designee to cease the
14 practice of medicine within three (3) calendar days after being so notified. Applicant shall
15 cease the practice of acupuncture until a replacement monitor is approved and assumes
16 monitoring responsibility

17 6. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE-ABUSING
18 LICENSEES

19 Failure to fully comply with any term or condition of probation is a violation of probation.

20 A. If Applicant commits a major violation of probation as defined in section 1361.52,
21 subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or
22 more of the following actions:

23 (1) Issue an immediate cease-practice order and order Applicant to undergo a clinical
24 diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of
25 Title 16 of the California Code of Regulations, at Applicant's expense. The cease-practice
26 order issued by the Board or its designee shall state that Applicant must test negative for at least
27 a month of continuous biological fluid testing before being allowed to resume practice. For
28 purposes of the determining the length of time a Applicant must test negative while undergoing

1 continuous biological fluid testing following issuance of a cease-practice order, a month is
2 defined as thirty calendar (30) days. Applicant may not resume the practice of acupuncture until
3 notified in writing by the Board or its designee that he or she may do so.

4 (2) Increase the frequency of biological fluid testing.

5 (3) Refer Applicant for further disciplinary action, such as suspension, revocation, or
6 other action as determined by the Board or its designee. (California Code of Regulations, Title 16
7 section 1361.52, subdivision (b))

8 B. If Applicant commits a minor violation of probation as defined by section 1361.52,
9 subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or
10 more of the following actions:

11 (1) Issue a cease-practice order;

12 (2) Order practice limitations;

13 (3) Order or increase supervision of Applicant;

14 (4) Order increased documentation;

15 (5) Issue a citation and fine, or a warning letter;

16 (6) Order Applicant to undergo a clinical diagnostic evaluation to be conducted in
17 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
18 Regulations, at Applicant's expense;

19 (7) Take any other action as determined by the Board or its designee. (California Code of
20 Regulations, Title 16 section 1361.52, subdivision (d).)

21 C. Nothing in this Decision shall be considered a limitation on the Board's authority to
22 revoke Applicant's probation if he or she has violated any term or condition of probation. (See
23 (California Code of Regulations, Title 16 section 1361.52, subdivision (e).) If Applicant violates
24 probation in any respect, the Board, after giving Applicant notice and the opportunity to be heard,
25 may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or
26 Petition to Revoke Probation, or an Interim Suspension Order is filed against Applicant during
27 probation, the Board shall have continuing jurisdiction until the matter is final, and the period of
28 probation shall be extended until the matter is final.

1 7. ALCOHOL AND DRUG ABUSE TREATMENT PROGRAM Effective 30 days
2 from the date of this Decision, Applicant shall enter an inpatient or outpatient alcohol or other
3 drug abuse recovery program (a minimum of three months duration) or an equivalent program as
4 approved by the Board or its designee. The Board may consider a recovery program taken under
5 court order within the last three years prior to the effective date of the decision. Quitting the
6 program without permission or being expelled for cause shall constitute a violation of probation
7 by Applicant. Applicant shall submit proof of completion of the recovery program to the Board or
8 its designee within 15 days of its conclusion.

9 8. LICENSE SURRENDER Following the effective date of this Decision, if Applicant
10 ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and
11 conditions of probation, Applicant may request the voluntary surrender of his or her license or
12 registration. The Board or its designee reserves the right to evaluate Applicant's request and to
13 exercise its discretion whether or not to grant the request, or to take any other action deemed
14 appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender,
15 Applicant shall, within 15 calendar days, deliver Applicant's pocket and/or wall certificate to the
16 Board or its designee and Applicant shall no longer practice acupuncture. Upon formal
17 acceptance of the tendered license, Applicant will no longer be subject to the terms and
18 conditions of probation.

19 Voluntary surrender of Applicant's license shall be considered to be disciplinary action
20 and shall become a part of Applicant's license history with the Board. Applicant may not reapply
21 for an acupuncture license. If Applicant does reapply for an acupuncture license, the application
22 shall be treated as a petition for reinstatement of a revoked or surrendered license.

23 9. SEVERABILITY CLAUSE Each condition of probation is a separate and distinct
24 condition. If any condition of this Decision and Order, or any application thereof, is declared
25 unenforceable in whole, in part, or to any extent, the remainder of this Decision and Order, and all
26 other applications thereof, shall not be affected. Each condition of this Decision and Order shall
27 separately be valid and enforceable to the fullest extent permitted by law.

28 10. MAINTENANCE OF VALID LICENSE Applicant shall, at all times, maintain an

1 active current license with the Board, including any period of suspension or tolled probation.

2 If an initial license must be issued (Statement of Issues) or a license is reinstated,
3 probation shall not commence until a license is issued by the Board. Applicant must complete the
4 licensure process within two years from the effective date of the Board's Decision.

5 Should Applicant's license expire, by operation of law or otherwise, upon renewal or
6 reinstatement, Applicant's license shall be subject to any and all conditions of this probation not
7 previously satisfied.

8 11. NOTIFICATION OF NAME, ADDRESS, TELEPHONE NUMBER OR E-MAIL
9 ADDRESS CHANGES Applicant shall notify the assigned probation monitor, in writing within
10 10 days, of any and all name, address, telephone and/or e-mail address changes.

11 12. REIMBURSEMENT FOR PROBATION SURVEILLANCE MONITORING
12 Applicant shall reimburse the Board for the hourly costs it incurs in monitoring the probation to
13 ensure compliance for the duration of the probation period.

14 13. OBEY ALL LAWS Applicant shall obey all federal, state and local laws and all
15 regulations governing the practice of acupuncture in California. A full and detailed account of
16 any and all violations of law shall be reported by the Applicant to the Board in writing within
17 seventy-two (72) hours of occurrence.

18 14. QUARTERLY REPORTS Applicant shall submit quarterly declarations under
19 penalty of perjury on forms provided by the Board, stating whether there has been compliance
20 with all the conditions of probation.

21 15. SURVEILLANCE PROGRAM Applicant shall comply with the Board's probation
22 surveillance program and shall, upon reasonable notice, report to the assigned investigative
23 district office. Applicant shall contact the assigned probation surveillance monitor regarding any
24 questions specific to the probation order. Applicant shall not have any unsolicited or unapproved
25 contact with 1) victims or complainants associated with the case; 2) Board members or members
26 of its staff; or 3) persons serving the Board as expert examiners.

27 16. INTERVIEW WITH THE BOARD OR ITS DESIGNEE Applicant shall appear in
28 person for interviews with the Board or its designee upon request at various intervals and with

1 reasonable notice.

2 17. CHANGES OF EMPLOYMENT Applicant shall notify the Board in writing,
3 through the assigned probation surveillance compliance officer of any and all changes of
4 employment, location and address within 30 days of such change.

5 18. TOLLING FOR OUT-OF-STATE PRACTICE OR RESIDENCE In the event
6 Applicant should leave California to reside or to practice outside the State, Applicant must notify
7 the Board in writing of the dates of departure and return. Periods of residency or practice outside
8 California will not apply to the reduction of this probationary period.

9 19. EMPLOYMENT AND SUPERVISION OF TRAINEES Applicant shall not employ
10 or supervise or apply to employ or supervise acupuncture trainees during the course of this
11 probation. Applicant shall terminate any such supervisory relationship in existence on the
12 effective date of this probation.

13 20. VIOLATION OF PROBATION If Applicant violates probation in any respect, the
14 Board may, after giving Applicant notice and the opportunity to be heard, revoke probation and
15 carry out the disciplinary order that was stayed. If an accusation or petition to revoke probation is
16 filed against Applicant during probation, the Board shall have continuing jurisdiction until the
17 matter is final, and the period of probation shall be extended until the matter is final. No petition
18 for modification or termination of probation shall be considered while there is an accusation or
19 petition to revoke probation pending against Applicant.

20 21. COMPLETION OF PROBATION Upon successful completion of probation,
21 Applicant's license will be fully restored.


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1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
3 discussed it with my attorney, Kevin H. Jang. I understand the stipulation and the effect it will
4 have on my Acupuncturist License. I enter into this Stipulated Settlement and Disciplinary Order
5 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
6 Acupuncture Board.


7
8 DATED: 5/26/2017 
9 CHOL SU KIM
10 Applicant

11 I have read and fully discussed with Applicant CHOL SU KIM the terms and conditions
12 and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve
13 its form and content.

14 DATED: 5/26/2017 
15 Kevin H. Jang Attorney for Applicant

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Acupuncture Board.

19 Dated: 
20 May 30, 2017

21 Respectfully submitted,
22 XAVIER BECERRA
23 Attorney General of California
24 E. A. JONES III
25 Supervising Deputy Attorney General


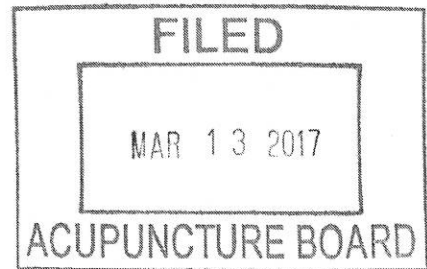
26 
27 WENDY WIDLUS
28 Deputy Attorney General
Attorneys for Complainant

Exhibit A

Statement of Issues No. 1A-2015-238

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

13 In the Matter of the Statement of Issues
14 Against:

Case No. 1A-2015-238

15 **CHOL SU KIM**
16 **4838 Elmwood Ave., #1**
17 **Los Angeles, CA 90004,**

STATEMENT OF ISSUES

Applicant.

18 Complainant alleges:

PARTIES

- 19 1. Benjamin Bodea (Complainant) brings this Statement of Issues solely in his official
20 capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.
- 21 2. On or about May 20, 2016, the Acupuncture Board received an application for an
22 Acupuncturist License from Chol Su Kim (Applicant). On or about May 17, 2016, Applicant
23 certified under penalty of perjury to the truthfulness of all statements, answers, and
24 representations in the application. The Board denied the application on August 16, 2016.
25 Applicant requested a hearing on September 30, 2016.

JURISDICTION

- 26 3. This Statement of Issues is brought before the Acupuncture Board (Board) under the
27 authority of the following laws. All section references are to the Business and Professions Code
28

1 (Code) unless otherwise indicated.

2 4. Section 4928.1 of the Code states:

3 “Protection of the public shall be the highest priority for the Acupuncture Board in
4 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
5 public is inconsistent with other interests sought to be promoted, the protection of the public shall
6 be paramount.”

7 5. Section 4938 of the Code states:

8 “The Board shall issue a license to practice acupuncture to any person who makes an
9 application and meets the following requirements:

10 “...

11 “(d) Is not subject to denial pursuant to Division 1.5 (commencing with Section 475).

12 “...”

13 6. Section 4944 of the Code states:

14 “The board shall have the authority to investigate and evaluate each and every applicant
15 applying for a license to practice acupuncture and to make the final determination of the
16 admission of the applicant to the examination, or for the issuance of a license, in conformance
17 with the provisions of this chapter.

18 “...”

19 7. Section 4955 of the Code states:

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

22 “Unprofessional conduct shall include, but not be limited to, the following:

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

28

1 “(b) Conviction of a crime substantially related to the qualifications, functions, or duties of
2 an acupuncturist, the record of conviction being conclusive evidence thereof.

3 “ . . . ”

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

5 “ . . . ”

6 8. Section 4955.1 of the Code states:

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

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

11 “ . . . ”

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

14 “ . . . ”

15 9. Section 4956 of the Code states:

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

19 The board may order a license suspended or revoked, or may deny a license, or may impose
20 probationary conditions upon a license, when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal, or when an order granting probation is made suspending
22 the imposition of sentence irrespective of a subsequent order under the provisions of Section
23 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a
24 plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
25 information, or indictment.@

26 10. Section 475 of the Code states:

27 “(a) Notwithstanding any other provisions of this code, the provisions of this division shall
28 govern the denial of licenses on the grounds of:

1 “(1) Knowingly making a false statement of material fact, or knowingly
2 omitting to state a material fact, in an application for a license.

3 “(2) Conviction of a crime.

4 “(3) Commission of any act involving dishonesty, fraud or deceit with the
5 intent to substantially benefit himself or another, or substantially injure another.

6 “(4) Commission of any act which, if done by a licentiate of the business or
7 profession in question, would be grounds for suspension or revocation of license.

8 “(b) Notwithstanding any other provisions of this code, the provisions of this division shall
9 govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2)
10 of subdivision (a).

11 “(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good
12 moral character or any similar ground relating to an applicant's character, reputation, personality,
13 or habits.”

14 11. Section 480 of the Code states, in pertinent part:

15 “(a) A board may deny a license regulated by this code on the grounds that the applicant
16 has one of the following:

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

23 “(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
24 benefit himself or herself or another, or substantially injure another.

25 “(3)(A) Done any act that if done by a licentiate of the business or profession in question,
26 would be grounds for suspension or revocation of license.

27 “(B) The board may deny a license pursuant to this subdivision only if the crime or act is
28 substantially related to the qualifications, functions, or duties of the business or profession for

1 which application is made.

2 “ . . . ”

3 “(d) A board may deny a license regulated by this code on the ground that the applicant
4 knowingly made a false statement of fact that is required to be revealed in the application for the
5 license.”

6 12. 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 13. California Code of Regulations, title 16, section 1399.156.1, states, in pertinent part:

19 “For the purposes of denial, suspension or revocation of a license or registration pursuant to
20 Division 1.5 (commencing with Section 475) of the code, a crime or act shall be considered to be
21 substantially related to the qualifications, functions or duties of a person holding a license under
22 the Act if to a substantial degree it evidences present or potential unfitness of a person holding a
23 license to perform the functions authorized by his or her license or registration in a manner
24 consistent with the public health, safety, or welfare. Such crimes or acts shall include, but not be
25 limited to, those involving the following:

26 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
27 violation of, or conspiring to violate any provision or term of the Act.

28 “ . . . ”

1 14. California Code of Regulations, title 16, section 1399.156.2, states:

2 “When considering the denial of a license or registration under Section 480 of the code or a
3 petition for reinstatement under Section 11522 of the Government Code, the board, in evaluating
4 the rehabilitation of the applicant and his or her present eligibility for a license, will consider the
5 following criteria:

6 “(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for
7 denial.

8 “(b) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under
9 consideration as grounds for denial which also could be considered as grounds for denial under
10 Section 480 of the code.

11 “(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in
12 subdivision (1) or (2).

13 “(d) The extent to which the applicant has complied with any terms of parole, probation,
14 restitution, or any other sanctions lawfully imposed against the applicant.

15 “(e) Evidence, if any, of rehabilitation submitted by the applicant.”

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 (Conviction)

18 15. Applicant's application is subject to denial under Code sections 4955, subdivisions
19 (a), and 4955 subdivision (b), 4956, 475, subdivisions (a)(1)(2), 480, subdivision (a)(1), 480,
20 subdivisions (a)(3)(A), and (a)(3)(B), and 490, subdivisions (a) and (c), in that he has sustained
21 two substantially related convictions. The circumstances are as follows:

22 1998 Conviction

23 16. On or about April 1, 1998, in the city of White Plains, State of New York, Applicant
24 hit a man over the head with a dangerous instrument or deadly weapon, to wit, a glass beer mug.
25 Emergency medical treatment of was required and six (6) stitches were required to close the
26 wound in the man's head.

27 17. The Westchester County New York State District Attorney filed felony criminal
28 complaint case number 98-0914 against Applicant charging Applicant with a violation of Penal

1 Law section 120.05-02, assault with intent to cause physical injury with a weapon.

2 18. On July 21, 1998, in case number 98-0914, Applicant pled guilty to a lesser charge of
3 Penal Law section 120.00, assault in the third degree. The Court sentenced Applicant as follows:
4 three (3) years probation, with terms and conditions of probation which included a one (1) year
5 restraining order, and the payment of a \$650.00 fine.

6 2015 Conviction

7 19. On or about September 9, 2015, Applicant was charged in *People of the State of*
8 *California vs. Kim Chol*, Los Angeles County Superior Court Case 5CA11925, with a violation of
9 Health and Safety Code section 11350, subdivision (a), possession of a controlled substance as a
10 result of his June 15, 2015, arrest by Los Angeles Police Department officers who witnessed him
11 purchasing cocaine at the Oasis Motel.

12 20. On or about November 2, 2015, in *People of the State of California vs. Kim Chol*, Los
13 Angeles County Superior Court Case 5CA11925, the Court amended the complaint to add Count
14 2, a violation of Penal Code section 602, subdivision (k), trespass for the purpose of injuring a
15 property or business. Applicant was convicted on his plea of nolo contendere to Count 2, as a
16 misdemeanor.

17 21. As a result of his plea Applicant was sentenced, inter alia, to two years summary
18 probation, one day in county jail, ordered to pay fines, to stay at least 100 yards away from the
19 Oasis Motel, to not use or possess any narcotics, dangerous or restricted drugs or associated
20 paraphernalia, except with a valid prescription and to stay away from places where users or
21 sellers congregate.

22 **SECOND CAUSE FOR DENIAL OF APPLICATION**

23 Engaging in Conduct Which Warrants the Denial of An Acupuncture License

24 22. Applicant's application is subject to denial under Code section 4955, subdivision (i),
25 in that he engaged in actions or conduct that would have warranted the denial of the acupuncture
26 license. The circumstances are as follows:

27 2001 Arrest For Possession of Crack Cocaine

28 23. On or about March 9, 2001, Los Angeles Police Department officers arrested

1 Applicant for purchasing cocaine from a known 18th Street gang member in front of a liquor
2 store.

3 24. On or about March 13, 2001, Applicant was charged in *People of the State of*
4 *California vs. Kim Su Chol*, Los Angeles County Superior Court Case BA214817, with a
5 violation of Health and Safety Code section 11350, subdivision (a), possession of a controlled
6 substance and a violation of Health and Safety Code section 11364, as a result of his March 9,
7 2001, arrest by Los Angeles Police Department officers.

8 25. On or about April 13, 2001, Applicant was referred to the Los Angeles County
9 Probation Department for evaluation for Deferred Entry of Judgment. Applicant was ordered to
10 return to court on April 27, 2001, for arraignment and plea. On or about May 1, 2001, the Court
11 terminated proceedings in this matter.

12 2003 Arrest For Possession of Crack Cocaine

13 26. On or about August 8, 2003, in the city of White Plains, State of New York,
14 Applicant was arrested for a violation of Penal Law section 220.03, being in possession of a glass
15 pipe used to smoke cocaine which contained a residue of crack cocaine.

16 27. The Westchester County New York State District Attorney filed a felony criminal
17 complaint, case number 03-2466, against Applicant charging Applicant with a violation of Penal
18 Law section 220.03. The Court referred Applicant to a drug diversion program.

19 **THIRD CAUSE FOR DENIAL OF APPLICATION**

20 Failure to Disclose a Material Fact on a License Application

21 28. Applicant's application is subject to denial under Code sections 480, subdivision (d),
22 and 4955, subdivision (i), in that he knowingly made a false statement of fact that is required to
23 be revealed in the application for the license. The circumstances are as follows:

24 29. On or about May 17, 2016, Applicant signed, under penalty of perjury, that all
25 statements made in his Application for an Acupuncture License were true in every respect, and
26 that misstatement, or omissions of material facts may be cause for denial of his application for
27 licensure. Applicant sent his signed Application for an Acupuncture License to the Acupuncture
28 Board of California.

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30. Applicant's signed Application for an Acupuncture License failed to disclose his 2015 conviction sustained in *People of the State of California vs. Kim Chol*, Los Angeles County Superior Court Case 5CA11925, as a result of his plea of nolo contendere to a violation of Penal Code section 602, subdivision (k).

PRAYER

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

1. Denying the application of CHOL SU KIM for an Acupuncture license;
2. Taking such other and further action as deemed necessary and proper.

DATED: MAR 13 2017



BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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