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ACUPUNCTURE BOARD

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

12 **In the Matter of the Accusation Against:**

Case No. 1A-2011-70

13 **Bong Dal Kim,**

14 **1807-B Wilshire Blvd.
Santa Monica, CA 90403**

A C C U S A T I O N

15
16 **Acupuncturist License number AC 292,**

17 Respondent.
18

19
20
21 Complainant alleges:

22 **PARTIES**

23 1. Terri Thorfinnson (Complainant) brings this Accusation solely in her official capacity
24 as the Executive Officer of the Acupuncture Board.

25 2. On or about February 1, 1977, the Acupuncture Board issued Acupuncturist License
26 Number AC 292 to Bong Dal Kim (Respondent). That license Acupuncturist was in full force
27 and effect at all times relevant to the charges brought herein and will expire on March 31, 2014,
28 unless renewed.

1
2 **JURISDICTION**

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

6 4. Section 652 of the Code states, in pertinent part:

7 " Violation of this article in the case of a licensed person constitutes unprofessional conduct
8 and grounds for suspension or revocation of his or her license by the board by whom he or she is
9 licensed, or if a license has been issued in connection with a place of business, then for the
10 suspension or revocation of the place of business in connection with which the violation occurs.
11 The proceedings for suspension or revocation shall be conducted in accordance with Chapter 5
12 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and
13 each board shall have all the powers granted therein.

14 ". . ."

15 5. Section 4927, subdivision (d), of the Code states:

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

21 6. Section 4937 of the Code states:

22 " An acupuncturist's license authorizes the holder thereof:

23 "(a) To engage in the practice of acupuncture.

24 "(b) To perform or prescribe the use of Asian massage, acupressure, breathing techniques,
25 exercise, heat, cold, magnets, nutrition, diet, herbs, plant, animal, and mineral products, and
26 dietary supplements to promote, maintain, and restore health. Nothing in this section prohibits
27 any person who does not possess an acupuncturist's license or another license as a healing arts
28 practitioner from performing, or prescribing the use of any modality listed in this subdivision.

1 “(c) For purposes of this section, a ‘magnet’ means a mineral or metal that produces a
2 magnetic field without the application of an electric current.

3 “(d) For purposes of this section, ‘plant, animal, and mineral products’ means naturally
4 occurring substances of plant, animal, or mineral origin, except that it does not include synthetic
5 compounds, controlled substances or dangerous drugs as defined in Sections 4021 and 4022, or a
6 controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the
7 Health and Safety Code.

8 “(e) For purposes of this section, ‘dietary supplement’ has the same meaning as defined in
9 subsection (ff) of Section 321 of Title 21 of the United States Code, except that dietary
10 supplement does not include controlled substances or dangerous drugs as defined in Section 4021
11 or 4022, or a controlled substance listed in Chapter 2 (commencing with Section 11053) of
12 Division 10 of the Health and Safety Code.”

13 7. Section 4955 of the Code states, in pertinent part:

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

16 "Unprofessional conduct shall include, but not be limited to, the following:

17 “ . . . ”

18 “(d) Aiding or abetting in, or violating or conspiring in, directly or indirectly, the
19 violation of the terms of this chapter or any regulation adopted by the board pursuant to this
20 chapter.

21 “ . . . ”

22 8. Section 4955.2 of the Code states:

23 “The board may deny, suspend, revoke, or impose probationary conditions upon the license
24 of any acupuncturist if he or she is guilty of committing any one of the following:

25 “(a) Gross negligence.

26 “(b) Repeated negligent acts.

27 “(c) Incompetence.”

28 9. California Code of Regulations, title 16, section 1399.426 states, in pertinent part:

1 “Each supervising acupuncturist shall have the following duties and responsibilities:

2 “(a) A supervisor shall at all times be responsible for and provide supervision of the work
3 performed by the trainee as required in these regulations.

4 “(b) The supervisor shall only assign those patient treatments which can be safely and
5 effectively performed by the trainee and which are consistent with the level of training received
6 by the trainee. The supervisor shall provide continuous direction and immediate supervision of
7 the trainee when patient services are provided. The supervisor shall be in the same facility as and
8 in proximity to the location where the trainee is rendering services and shall be readily available
9 at all times to provide advice, instruction and assistance to the trainee.

10 “ . . . ”

11 “(e) The supervisor shall insure that the trainee complies with the standards of practice in
12 Article 5 of the Acupuncture Regulations.

13 “ . . . ”

14 **COST RECOVERY**

15 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
16 administrative law judge to direct a licentiate found to have committed a violation or violations of
17 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
18 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
19 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
20 included in a stipulated settlement.

21 11. Section 4959 of the Code states:

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

26 “(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
27 any event be increased by the board. When the board does not adopt a proposed decision and
28

1 remands the case to an administrative law judge, the administrative law judge shall not increase
2 the amount of any costs assessed in the proposed decision.

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

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

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

11 **Factual Summary**

12 12. Respondent is the founder of Emperor's College Acupuncture and is the chief
13 acupuncturist at the school's clinic. On or about February 3, 2011, patient Dalia D.¹ died at
14 Emperor's College Acupuncture clinic. Patient D. began treatment with Respondent, at
15 Emperor's College in October 2010, when she presented with a primary complaint of numbness
16 of the feet. Patient D. suffered other health issues which included only one (1) functioning, albeit
17 infected lung, chronic cough, shortness of breath and difficulty breathing, asthma, rapid heartbeat,
18 poor appetite, fatigue, depression, and anxiety.

19 The following clinic student assistants and intern were also involved with patient D.'s care:
20 Ms. J., Ms. B., both assistants, and the intern, Mr. B. There are no records which specify the time
21 patient D. arrived at the clinic on or about February 3, 2011, nor do the patient's records fully
22 and clearly convey what each assistant and the intern did with regard to patient D.'s care on this
23 date.

24 13. According to Ms. B., a student assistant under Respondent's supervision, on or about
25 February 3, 2011, patient D. complained more than was usual about experiencing labored

26 _____
27 ¹ The names of patients and certain other witnesses are abbreviated to protect their privacy rights. The
28 names will be provided to Respondent upon written request for discovery.

1 breathing, poor/minimal sleep, no appetite, back pain, and weight loss. The patient arrived at the
2 clinic with an anxiety attack which had begun prior to treatment.

3 Ms. B. performed the intake assessment on patient D. assisted by student assistant Ms. J.
4 However, neither student assistant recorded results for patient D.'s blood pressure in the patient's
5 medical records. Based on her observations, Ms. B. believed the level of distress patient D. was
6 experiencing during the intake assessment was "more than usual," and reported her assessment to
7 Respondent. Respondent interviewed patient D. and then proceeded with her acupuncture
8 treatment. After inserting the acupuncture needles Respondent left the room. Ms. B. and Ms. J.
9 prepared patient D. for rest after the insertion of the needles and then stepped out of the room.

10 14. According to Ms. B., a few minutes after the student assistants left the treatment room,
11 patient D. requested someone to return and remain in the room with her, and Ms. J. went into the
12 patient's room. When Ms. B. returned to check on patient D. the patient reported feeling
13 uncomfortable. Ms. B. believed the patient was having a panic attack, as the patient was
14 exhibiting increased, labored breathing, and restlessness. The patient attempted to sit up while
15 Ms. B. went to alert Respondent to the patient's condition. Respondent returned to the treatment
16 room, and, according to Ms. B., removed some needles from the patient, calmed patient D. and
17 permitted the acupuncture treatment to continue. Ms. B. said patient D. refused to have 911
18 called. Ms. B. left patient D. at the end of her shift at 1:00 p.m.

19 15. Ms. J. and Ms. Bs' reports are not consistent as to the sequence of events after Patient
20 D. sat up. During her description of what occurred on or about February 3, 2011, Ms. J. stated
21 that after Ms. B. left the room patient D. attempted to sit up with needles still inserted in various
22 parts of her body. According to Ms. J., although she was a student assistant, with no training,
23 experience, or authorization to remove needles, and during this time was not being supervised by
24 a licensed acupuncturist, she nonetheless removed an unknown number of the acupuncture
25 needles from the patient to enable her to sit upright without experiencing injury.

26 Both Ms. J and Ms. B stated Respondent did return to the patient's treatment room, but
27 their accounts of Respondent's action differ. Ms. B. stated Respondent "removed some of the
28

1 acupuncture needles" and continued the patient's acupuncture treatment. As previously stated,
2 Ms. J. said she removed the needles from patient D. after which she calmed patient D.

3 During the police investigation into the events surrounding patient D.'s death Ms. J. also
4 said patient D. attempted to urinate as Ms. J. took the patient to the bathroom, but instead
5 defecated on the floor and toilet.

6 16. Further reports indicate that at 1:45 p.m. patient D. was lucid, conscious, but was
7 having difficulty breathing. After 2:00 p.m., patient D.'s pulse became weak and she began to
8 lose consciousness, so 911 was called. Prior to the arrival of emergency services patient D. lost
9 consciousness, was non responsive, and the patient's pulse could not be located. CPR was
10 performed on the patient by emergency services as soon as they arrived. Patient D. was
11 transported by emergency personnel to a nearby hospital where she arrived in full cardiac arrest,
12 and died shortly thereafter.

13 17. Respondent's statements to the police are inconsistent in a number of areas with the
14 student assistants' statements as well as with his statement to the Board. Respondent admitted
15 leaving the clinic to go to lunch in the cafeteria at 1:30 p.m., but made inconsistent statements
16 about where he was and what time it was when he became aware of the arrival of emergency
17 personnel. Respondent failed to mention being aware of patient D.'s attempted urination and
18 defecation on the floor and toilet. In addition, student notes with regard to patient D.'s physical
19 condition were not signed off by Respondent, and he did not appear to be aware of the
20 information the notes contained.

21 **Standard of Care**

22 18. The applicable standard of care requires that a licensed acupuncturist must directly
23 supervise student interns when the student interns perform an acupuncturist's duties. Student
24 assistants are not trained, experienced, or authorized to perform any of the duties of an
25 acupuncturist, most particularly those which involve handling needles. The licensee is liable for
26 the care provided by the trainees under his supervision.

1 Respondent removed all of the needles from the patient prior to his departure from the clinic for
2 lunch.

3 26. Patient D.'s obvious distress throughout the time she began treatment is another
4 circumstance which required Respondent, to remain with the patient throughout her treatment,
5 instead of leaving the patient in the care of student assistants and/or an intern. Student assistants
6 are not equipped with the training, experience, or authorization to be responsible for patient care
7 in these circumstances. After Ms. B., the student intern, left the treatment room there is no
8 evidence that another student intern under Respondent's supervision was present to assist with
9 patient D.'s care. This is a simple departure from the standard of care.

10 27. Respondent's failure to remain in the clinic throughout Patient D.'s treatment is a
11 simple departure from standard of care. Patient D. was left in the care of inexperienced, student
12 assistants when Respondent went to lunch. The supervisor must be in the same facility as, and in
13 proximity to, the location where the trainee is rendering services in order to be readily available at
14 all times to provide advice, instruction and assistance to the trainee. Being on campus in the
15 cafeteria does not constitute being in the clinic able to provide immediate and direct supervision
16 of the trainee caring for the patient.

17 28. Respondent's failure to have another licensed acupuncturist readily available to
18 provide necessary patient care is a simple departure from the standard of care. Respondent failed
19 to maintain a check-in/check-out log available for any clinic personnel, student, or intern to
20 review to determine which licensed acupuncturist practitioners were on duty to assist with the
21 patient when Respondent was not present.

22 29. There was a simple departure from standard of care when an unauthorized trainee
23 removed the needles from patient D. According to some of the renditions of the care provided to
24 patient D. a student assistant who was not trained, experienced, or authorized to perform needle
25 insertion or removal, removed needles from the patient without appropriate supervision. The
26 standard of care requires that a supervisor may only assign patient treatments to an authorized
27 trainee which can be safely and effectively performed by the trainee and which are consistent
28 with the level of training received by the trainee. The standard of care states that a licensee is

1 liable for the care provided by the trainees under his supervision. The removal of needles by an
2 unauthorized person is a simple violation of the standard of care.

3 30. There was a simple departure from standard of care exhibited by Respondent's failure
4 to be aware of pertinent information his trainees possessed about patient D.'s continual distress
5 throughout her treatment, which distress significantly increased after he left the clinic.
6 Respondent's failure in this regard is illustrated by his failure to describe the patient's weakened
7 state after he allegedly removed the needles, as well as his failure to approve and initial his
8 student assistant's report that the patient experienced a worsening panic attack, labored breathing,
9 weakened pulse and defecated on the floor in the bathroom prior to her cardiac arrest.
10 Respondent's failure to be aware of relevant patient information is a simple departure from the
11 standard of care.

12 31. There was a simple departure from standard of care when Respondent left the patient
13 with student assistants without a student intern present to provide continuous care until the patient
14 was discharged from the acupuncture clinic. Respondent's failure to confirm that the student
15 intern would remain with the patient under these circumstances is a simple departure from the
16 standard of care.

17 32. Respondent exhibited repeated failures to maintain and review adequate records.
18 Respondent failed to review and show signature approval of the addendum report provided by his
19 student assistant Ms. B. In addition, Respondent failed to maintain an appointment log with
20 information regarding when the patient signed into the clinic, when she was taken into a patient
21 room for treatment, and failed to maintain a check-in/check-out log available for any clinic
22 personnel, student, or intern to review to determine which licensed acupuncturist practitioners
23 were on duty to assist with the patient when Respondent was not present. These failures to
24 maintain and review are emblematic of his overall practice habits and are a simple departure from
25 the standard of care.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct)**

3 33. Respondent is subject to disciplinary action under Respondent is subject to
4 disciplinary action under section 4955 for unprofessional conduct. The circumstances are as
5 follows:

6 34. Complainant refers to and, by reference incorporates herein paragraphs 12-17
7 inclusive, above as though fully set forth here.

8 **PRAYER**

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

- 11 1. Revoking or suspending Acupuncturist Number AC 292, issued to Bong Dal Kim;
12 2. Ordering him to pay the Acupuncture Board the reasonable costs of the investigation
13 and enforcement of this case, pursuant to Business and Professions Code section 4959;
14 3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of
15 probation monitoring;
16 4. Taking such other and further action as deemed necessary and proper.

17
18 DATED: **FEB 10 2014**


19 _____
20 TERRI THORFINNSON
21 Executive Officer
22 Acupuncture Board
23 Department of Consumer Affairs
24 State of California
25 *Complainant*

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