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FILED

MAR 21 2014

ACUPUNCTURE BOARD

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

11
12 In the Matter of the Accusation Against:

Case No. 1A-2012-25

13 **KYONG KEUN KWAK, L.Ac.**
10063 Folsom Boulevard, #D
14 Sacramento, California 95827

A C C U S A T I O N

15 Acupuncture License No. AC 5461

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

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

22 2. On or about July 31, 1996, the Board issued Acupuncture License Number AC 5461
23 to Kyong Keun Kwak, L.Ac. ("Respondent"). That license was in full force and effect at all times
24 relevant to the charges brought herein and will expire on December 31, 2015, unless renewed.

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1 **JURISDICTION**

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

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

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

12 “...”

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

14 “‘Acupuncture’ means the stimulation of a certain point or points on or near the surface of
15 the body by the insertion of needles to prevent or modify the perception of pain or to normalize
16 physiological functions, including pain control, treatment of certain diseases or dysfunctions of
17 the body and includes the techniques of electroacupuncture, cupping, and moxibustion.”

18 6. Section 4937 of the Code states:

19 “An acupuncturist’s license authorizes the holder thereof:

20 “(a) To engage in the practice of acupuncture.

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

26 (c) For purposes of this section, a “magnet” means a mineral or metal that produces a
27 magnetic field without the application of an electric current.

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

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

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

12 “ The board may deny, suspend, or revoke, or impose probationary conditions upon, the
13 license of an acupuncturist if or she is guilty of unprofessional conduct.

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

15 “...”

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

18 “...”

19 8. Section 4955.1 of the Code states:

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

23 “...”

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

26 9. Section 4955.2 of the Code states:

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

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“...”

“(b) Repeated negligent acts.”

“...”

10. California Code of Regulations, title 19, section 1399.453, states:

“An acupuncturist shall keep complete and accurate records on each patient who is given acupuncture treatment, including but not limited to, treatments given and progress made as a result of the acupuncture treatments.”

COST RECOVERY

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

12. Section 4959 of the Code states:

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

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

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

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1 “(d) In any judicial action for the recover of costs, proof of the board’s decision shall be
2 conclusive proof of the validity of the order of payment and the terms for payment.

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

5 **FACTUAL SUMMARY**

6 12. Respondent is employed at Asiana Acupuncture as a licensed acupuncturist. On or
7 about April 12, 2012, at approximately 6:30 p.m., patient Julia K. received treatment at Asiana
8 Acupuncture for back pain. Ms. K. began treatment with Respondent on July 27, 2011, when she
9 presented with a primary complaint of a sore ankle and depression. Ms. K. received follow-up
10 treatment on July 29, 2011, on August 1, 2011, and on August 8, 2011.

11 13. On April 23, 2012, Ms. K. made a complaint to the Acupuncture Board regarding her
12 treatment on April 12, 2012. On May 3, 2012, the Acupuncture Board submitted a request that
13 Ms. K’s complaint be investigated. On June 22, 2012, Investigator Laura Avila was assigned to
14 investigate Ms. K’s complaint against Respondent. Ms. K. provided Investigator Avila with a
15 signed authorization for the release of her medical records on October 15, 2012.

16 14. On or about October 15, 2012, Investigator Avila went to Asiana Acupuncture and
17 requested to see the medical file that corresponded to Ms. K. The medical records for Ms. K.
18 included records for July 27, 2011, July 29, 2011, August 1, 2011, and August 8, 2011. There
19 were no records that showed Ms. K. received services in the month of April, 2012.

20 15. Investigator Avila spoke to Respondent and asked why there were no medical records
21 present from April, 2012. Respondent admitted that, “he must have forgotten to make it, because
22 she (Ms. K.) came in after hours.” Investigator Avila took possession of Respondent’s records as
23 they related to Ms. K. Ms. K’s records were in both Korean and English.

24 16. On or about September 30, 2013, a retained Acupuncture Board expert, Lance D. Lee,
25 Lic. # AC 5461, reviewed and translated the records that related to Ms. K. Respondent’s failure
26 to document acupuncture treatment provided to Ms. K. on April 12, 2012, represented a departure
27 from the standard of care.

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1 17. Respondent also failed to document Ms. K's progress in treatment, failed to list the
2 results of findings, failed to document subsequent treatments, and failed to note physical
3 measurements taken during the intake exam. Respondent's records as they related to Ms. K.
4 represented a departure from the standard of care.

5 18. On or about October 15, 2012, Respondent suggested that Investigator Avila speak to
6 a second patient named Beverly C. about her experiences receiving treatment from the
7 Respondent. On November 2, 2012, Investigator Avila and Ms. Park, a Korean-English
8 translator, met and interviewed Ms. C. Ms. C. explained that she had been going to Respondent
9 for a year and half. Ms. C. agreed to have her medical records examined and signed an
10 Authorization for Release.

11 19. On November 5, 2012, Investigator Avila sent Ms. C's authorization to Respondent's
12 office. On December 6, 2012, Investigator Avila received Ms. C's records. Ms. C's records were
13 in both Korean and English.

14 20. On or about, September 30, 2013, retained expert, Mr. Lee, reviewed and translated
15 the records that related to Ms. C. Respondent had twelve records of treatment for Ms. C. between
16 February 29, 2010, through January 7, 2012. Only one record, dated March 21, 2010, noted the
17 progress of the patient. Also, there was a record for a price list that indicated Ms. C. had received
18 treatments on June 20, 2011 and October 15, 2011, but the treatments and progress forms
19 contained no record of treatments on those dates. Respondent's failure to document Ms. C's
20 records indicated a departure from the standard of care.

21 **FIRST CAUSE FOR DISCIPLINE**

22 **(Failure to Maintain Adequate And Accurate Records)**

23 21. Respondent is subject to disciplinary action under section 4955.1 (e) and California
24 Code of Regulations 1399.453 in that Respondent failed to maintain adequate and accurate
25 records. The circumstances are as follows:

26 22. Complainant refers to and, by reference incorporates herein paragraphs 12-20
27 inclusive, above as though fully set forth here.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Repeated Negligent Acts)**

3 23. Respondent is subject to disciplinary action under section 4955.2(b) in that
4 Respondent committed repeated negligent acts. The circumstances are as follows:

5 24. Complainant refers to and, by reference incorporates herein paragraphs 12-20
6 inclusive, above as though fully set forth here.

7 **PRAYER**

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

10 1. Revoking or suspending Acupuncture License Number AC 5461, issued to Kyong
11 Keun Kwak, L.Ac.

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.

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18 DATED: **MAR 21 2014**



19 TERRI THORFINNSON
20 Executive Officer
21 Acupuncture Board
22 Department of Consumer Affairs
23 State of California

24 *Complainant*

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