

1 XAVIER BECERRA
Attorney General of California
2 ALEXANDRA M. ALVAREZ
Supervising Deputy Attorney General
3 MICHAEL J. YUN
Deputy Attorney General
4 State Bar No. 292587
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9453
7 Facsimile: (619) 645-2061

8 *Attorneys for Complainant*



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

13 In the Matter of the Second Amended
14 Accusation Against:

Case No. 1A-2014-164

15 **HENRY DAVID LEE, L.AC.**
16 8878 Warner Avenue
Fountain Valley, CA 92708

OAH No. 2016100337

SECOND AMENDED ACCUSATION

17 **Acupuncture License No. AC 8254,**

18 Respondent.

19
20 Complainant alleges:

21 **PARTIES**

22 1. Benjamin Bodea (complainant) brings this Second Amended Accusation solely in his
23 official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer
24 Affairs, State of California.

25 2. On or about March 20, 2002, the California Acupuncture Board (Board) issued
26 Acupuncture License No. AC 8254 to Henry David Lee, L.Ac. (respondent). The Acupuncture
27 License will expire on May 31, 2019, unless renewed.

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JURISDICTION

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

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

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

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

“... ”

“(d) [...] [V]iolating [...] the terms of this chapter or any regulation adopted by the board pursuant to this chapter.

“... ”

5. Section 4955.1 of the Code states, in pertinent part:

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

“... ”

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

6. Section 4955.2 of the Code states, in pertinent part:

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

“(a) Gross negligence.

“... ”

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1 7. California Code of Regulations, title 16, section 1399.453, states:

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

5 8. Section 726 of the Code states, in pertinent part:

6 “The commission of any act of sexual abuse, misconduct, or relations with a patient, client,
7 or customer constitutes unprofessional conduct and grounds for disciplinary action for any person
8 licensed under this division, under any initiative act referred to in this division and under Chapter
9 17 (commencing with Section 9000) of Division 3.”

10 **COST RECOVERY**

11 9. Section 4959 of the Code states, in pertinent part:

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

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

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

26 “(d) In any judicial action for the recovery of costs, proof of the board’s
27 decision shall be conclusive proof of the validity of the order of payment and the
28 terms for payment.

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

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Sexual Misconduct Against Patients)**

5 10. Respondent has subjected his Acupuncture License No. AC 8254 to disciplinary
6 action under section 726 of the Code, in that he committed an act or acts of sexual abuse or
7 misconduct against patients Jane Doe #1, Jane Doe #2, Jane Doe #3, Jane Doe #4, Jane Doe #5,
8 Jane Doe #6, and Jane Doe #7, as more particularly alleged hereinafter:

9 **Jane Doe #1 (K.A.)**

10 11. Since September 2014, Jane Doe #1 (Doe-1) was a regular patient at respondent’s
11 acupuncture clinic. The acupuncture treatment was always performed by respondent. On
12 average, Doe-1 received an acupuncture treatment from respondent once every two weeks. The
13 acupuncture sessions Doe-1 received typically took approximately two (2) hours. During the
14 treatment sessions, Doe-1 always wore a sports bra, her underwear, and her husband’s boxer
15 briefs over her underwear. The sessions she received consisted of acupuncture treatment with
16 needles and pressure point massage techniques all around her body. Respondent did not wear
17 latex gloves during any of Doe-1’s treatments.

18 12. On or about September 5, 2016, at approximately 7:30 p.m., Doe-1 went to
19 respondent’s clinic to receive a treatment. During this treatment, respondent pulled Doe-1’s
20 sports bra up towards her neck and exposed her breast. Respondent then firmly massaged Doe-
21 1’s entire breast area including her nipples on her breast for approximately one minute. Doe-1 felt
22 that respondent’s touching was wrong, but was not sure if it was part of the treatment.

23 13. On September 19, 2016 at 8:35 p.m., Doe-1 went to respondent’s clinic to receive a
24 treatment. Respondent began by pressing his face against Doe-1’s face which was unusual and
25 made her feel uncomfortable. During this treatment, respondent pulled her sports bra up towards
26 her neck and exposed her breasts. Respondent firmly massaged her breast including her nipples
27 on her breast.

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1 14. Respondent then placed one of his hands under Doe-1's underwear. Respondent used
2 two fingers and inserted them into her vagina. Respondent removed his fingers from her vagina
3 and re-inserted his fingers approximately six to eight (6-8) times. Doe-1 felt "paralyzed" and was
4 physically unable to react. Respondent told Doe-1 to turn over on her stomach and she complied.
5 Respondent inserted a finger inside Doe-1's anus. Doe-1 then reacted and pushed herself off the
6 table. Doe-1 told respondent she had to leave for an emergency.

7 15. During the sexual assault, respondent recited Bible verses.

8 16. Doe-1 waited to report the incident because she was a victim of another unrelated
9 sexual assault in the past. When she eventually told her husband of respondent's sexual assault,
10 her husband encouraged her to report it to the police.

11 17. On or about October 13, 2016, Doe-1, with her husband, went to the Fountain Valley
12 Police Department ("FVPD") to report respondent's sexual assault against her. Officer S.
13 Rodriguez of the FVPD took her report.

14 18. During the interview with Officer Rodriguez, Doe-1 was very emotional and cried as
15 she described respondent's sexual assault.

16 19. Respondent's course of record of acupuncture treatments for Doe-1 did not have pain
17 level assessment and treatment plan.

18 **Jane Doe #2 (S.M.)**

19 20. In or about May of 2014, Jane Doe #2 (Doe-2) was referred to respondent by her
20 chiropractor. Doe-2 saw respondent for acupuncture treatment once a week for a total of
21 approximately five (5) times from May to June of 2014. During the first appointment, respondent
22 conducted an intake appointment where he gathered information about her reasons for seeing him
23 and asked if she had ever been to an acupuncturist before. Doe-2 told respondent that she had
24 problems with numbness in her hands, an ovarian cyst, and depression. She also told respondent
25 that she had never seen an acupuncturist before.

26 21. Doe-2's appointments with respondent began with her removing her clothing except
27 for her bra and underwear, and her putting on a hospital style gown. She lay on the table face
28 down and respondent placed small needles in her body. Afterwards, she lay there for

1 approximately 30 minutes before respondent came back and removed the needles. Then,
2 respondent massaged various pressure points on Doe-2's body by applying pressure with his
3 fingertips. The same massaging of pressure points would repeat on the front of her body. The
4 appointments generally took one and a half to two (1.5 – 2) hours. Respondent ended each
5 appointment with a hug and a kiss on the cheeks, which Doe-2 initially thought was sweet.

6 22. During Doe-2's first appointment, respondent appeared to have trouble placing the
7 needles on her back due to a thick sports bra she was wearing. When Doe-2 asked respondent if
8 she should remove her bra, respondent laughed and said, "Yes." During all of the other
9 appointments; however, Doe-2 kept her bra on.

10 23. During Doe-2's first two appointments, respondent's massaging included his pressing
11 into Doe-2's chest and below her breast at the lower bra line. During these two appointments,
12 respondent used only his finger tips to massage these areas. Additionally, during these sessions,
13 respondent massaged Doe-2's pressure points on her lower stomach and along the top waistband
14 of her underwear.

15 24. During Doe-2's third appointment, respondent changed the way he massaged Doe-2's
16 breast area. Instead of just putting pressure at the bra line, respondent cupped Doe-2's entire
17 breast while from a standing position at the top of the table behind Doe-2's head. Respondent
18 used his fingers to press at the bra line while squeezing the entire breast. Respondent then put his
19 hands in through the top of Doe-2's sports bra, to cup her breasts and apply pressure to the bra
20 line. Doe-2 felt that respondent was "playing with her breasts" instead of just massaging the
21 pressure points.

22 25. This made Doe-2 felt uncomfortable and she asked respondent to stay over the
23 clothing, but respondent continued to put his hands inside the bra during the appointment.

24 26. At the end of the third and fourth sessions, respondent gave Doe-2 a short kiss on the
25 lips, which also made Doe-2 uncomfortable.

26 27. During Doe-2's fifth appointment, respondent again placed his hands inside her bra,
27 cupped, and fondled her breasts while pressing his fingertips into the bra line. Doe-2 asked
28 respondent again to stay over the clothing.

1 28. Respondent then moved his hands down to Doe-2's stomach area and applied
2 pressure to her lower belly and at the waist band of her underwear. Instead of stopping at the
3 waistband, he continued to move his hand lower towards Doe-2's pubic area and pushed the
4 fabric of the underwear down with his fingers.

5 29. Respondent then moved to the side of the table and applied pressure to Doe-2's upper
6 leg and inner thigh. He moved higher and placed his fingers inside Doe-2's underwear through
7 the leg of her underwear, placed one finger partially into her vagina, and pressed as if there was a
8 pressure point there. Doe-2 tensed up and pulled away in order to limit the depth respondent was
9 able to put his finger in her.

10 30. Respondent then pulled his fingers out of her underwear and moved on to pressure
11 points on Doe-2's legs and feet. Respondent ended this final appointment with a longer kiss on
12 Doe-2's lips, which lasted approximately five (5) seconds. This made Doe-2 feel extremely
13 uncomfortable. Doe-2 felt this behavior was inappropriate and she left the appointment very
14 upset. However, she did not want to tell the office manager because she knew that the office
15 manager was respondent's wife. Doe-2 never returned back to respondent's clinic.

16 31. For over two years, Doe-2 never told anyone about respondent's placing his finger
17 into her vagina because she was too ashamed.

18 32. On or about November 15, 2016, Doe-2 went to FVPD to report respondent's sexual
19 assault against her to Detective G. Scott.

20 **Jane Doe #3 (R.Z.)**

21 33. On or about January 7, 2014, patient Jane Doe #3 (Doe-3) first presented to
22 respondent for massage therapy and acupuncture, in order to treat her acute and chronic pain
23 conditions. Her referring complaints were hypochondriac pain of three days duration,
24 fibromyalgia of three (3) years duration, and low back pain of two (2) years duration. Doe-3
25 received a total of eleven (11) treatments from January 7, 2014, to August 18, 2014, at
26 respondent's business, Acupuncture and Herbs, located in Fountain Valley, California. She
27 received treatment from respondent for her fibromyalgia, depression and a liver condition.

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1 34. In the medical history form (“Health Questionnaire”) from the initial visit to
2 respondent on January 7, 2013, no chief complaint was identified. The form was also unsigned.
3 The chart notes from the initial visit documented three (3) chief complaints: “[p]ain at the
4 hypochondriac area radiating toward the inside of her back alternating in between sharp and dull
5 pain since 5 days;” “[f]ibromyalgia since 3 years ago diagnosed... pain illegible perhaps eye,
6 elbow, wrist, upper neck[,] shoulders and middle back;” and “[t]he pain of lower back, pain begin
7 at lower back radiating downwards illegible ankle joint of Rt side through lateral aspect since
8 about 2 years ago.”

9 35. In the chart notes, no documentation of a clear history of present illness of the
10 referring complaints existed. Also, there was no indication in the notes as to which side of the
11 body Doe-3’s hypochondriac pain was located. There was no Review of Systems (“ROS”)¹ in the
12 Health Questionnaire or in the chart notes. There was no record of a physical examination of
13 Doe-3, particularly for her gastro intestinal pain (hypochondriac pain) and for her two (2)
14 musculo-skeletal (fibromyalgia and low back pain), both of which had been articulated to
15 respondent as some of her chief complaints. Respondent’s medical record pertaining to his
16 treatment of Doe-3 lacked provider’s signature for each of the documented visits.

17 36. Also documented in Doe-3’s Health Questionnaire was information that at the time,
18 she was taking six (6) medications, four (4) of which were for pain. In the course of providing
19 care to Doe-3, respondent dispensed herbs to her on nine (9) different occasions between dates,
20 January 7, 2014, and August 18, 2014. According to Doe-3’s medical record, Doe-3 was
21 receiving multiple drugs including diclofenac, diltiazem, aspirin, oxycodone, gabapentin, and
22 lamotrigine. Dispensing of herbs to a patient who is receiving multiple drug therapy is a concern
23 because of potential herb interactions. This concern is not addressed in respondent’s medical
24 record of Doe-3.

25 37. The treatments that respondent received consisted of anterior and posterior
26 acupuncture and massage therapy with liniment. Doe-3 received one or more treatments each

27 _____
28 ¹ ROS is an inventory of body systems obtained through a series of questions seeking to identify signs and/or symptoms that the patient may be experiencing or has experienced.

1 week for approximately 7 weeks and has been going approximately once each month since in or
2 about May 2014. Respondent dispensed herb decoctions to her on nine (9) of the eleven (11)
3 visits.

4 38. A typical session with respondent consisted of acupuncture with needles on Doe-3's
5 back first and then on various points on her front torso, legs, and feet. This procedure took
6 approximately one hour. Respondent then massaged Doe-3's back followed by a massage of her
7 front torso and extremities. Prior to the treatments, Doe-3 removed her clothing, but left her bra
8 and underwear on and put on a gown that was open in the front. When respondent began the
9 acupuncture treatments, he removed the gown leaving Doe-3 wearing only her bra and underwear
10 for the remainder of the acupuncture treatment and massage.

11 39. Prior to the incident, Doe-3 had sometimes felt uncomfortable when respondent
12 massaged Doe-3's buttocks under her underwear, but she dismissed her discomfort as being
13 embarrassed rather than perceiving it as respondent doing something inappropriate. On several
14 occasions, Doe-3's mother was seated in the small treatment room while Doe-3 received her
15 treatment. Even when her mother was present in the room, respondent massaged Doe-3's
16 buttocks under her underwear.

17 40. Doe-3 had been a victim of sexual abuse in the distant past and she saw a therapist on
18 a regular basis to deal with lingering fears, insecurities and emotional pain related to that period in
19 her life. As a result, Doe-3 feels particularly vulnerable being unclothed in the presence of a
20 male.

21 41. On or about August 18, 2014, Doe-3 was receiving a similar treatment described
22 above. Her mother was not with her in the treatment room on this day. After the acupuncture
23 treatment and back massage, Doe-3 turned onto her back as she always did. Respondent began
24 massaging Doe-3's shoulders and then her upper chest. Respondent then moved his hands under
25 patient Doe-3's bra and fondled her breasts. Respondent moved the bra straps off her shoulders
26 and pulled her bra down exposing her breasts. Respondent continued fondling Doe-3's breasts for
27 several seconds.

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1 42. Respondent then moved his hands to Doe-3's vagina. Respondent slipped his hand
2 under Doe-3's underwear and inserted his fingers into the upper opening of the vagina and rubbed
3 the clitoris and the area around it. After several seconds, respondent tried to spread Doe-3's legs,
4 but she resisted and kept them together. Respondent fondled Doe-3's clitoris again, inserting his
5 fingers into the upper opening of the vagina.

6 43. Respondent told Doe-3, "I know what you need." Respondent reached across Doe-3's
7 body, placing his left hand under her right shoulder, and pulled her upper torso and head toward
8 him. Respondent then kissed Doe-3 on the mouth. Respondent continued fondling Doe-3's
9 breast and vaginal area under her underwear for several more seconds. Respondent once again
10 reached across Doe-3 and pulled her toward him. Respondent kissed Doe-3 on the mouth again
11 and tried to put his tongue into her mouth, but she held her lips closed.

12 44. Doe-3 felt frozen in fear when respondent groped and fondled her. She kept her body
13 stiff and closed her eyes, but said nothing and did not push respondent away or attempt to leave.
14 Doe-3 related this incident to her previous experience of being sexually abused. Initially, she was
15 in disbelief when respondent began to touch her breasts. It took her several seconds to process
16 what was happening. Doe-3 reflexively stiffened her body and mentally shut down. She did not
17 tell respondent to stop because she "just wanted it to be over."

18 45. After several minutes, respondent exited the room without saying anything. Doe-3
19 dressed and exited to the outer lobby area. Respondent's wife, E.L., worked at the front counter
20 as receptionist and bookkeeper. While Doe-3 was waiting to pay, respondent came into the
21 reception area and said loudly, "I helped you, I helped you." Doe-3 noticed respondent had never
22 done this in the past. She thought respondent did this to make sure she did not say anything to his
23 wife about what happened. Doe-3 was charged for respondent's services and she paid for the
24 session.

25 46. Doe-3 has not been back to respondent and has not spoken with him since this
26 incident. She spoke with her therapist a few days after the incident about what had happened.

27 47. On or about October 8, 2014, Department of Consumer Affairs Investigator Autumn
28 Holmes interviewed Doe-3 regarding respondent's alleged sexual misconduct. In her interview,

1 Doe-3 described how, on August 18, 2014, respondent made repeated attempts to sexually arouse
2 her which included: “groping [her] breast,” “pull[ing] [her] bra down to expose [her] boobs,”
3 “twist[ing] [her] nipples,” and “groping [her] left boob with his right hand while moving his left
4 hand down to [her] underwear and touching [her] clitoris area and mov[ing] his fingers in a
5 circle.”

6 48. Respondent further provided the following information to Investigator Holmes:

7 “[Respondent] was trying to get [her] legs open, but [she] was stiff. [...] He put
8 his arm around [her] and lifted [her] upper body and tried to kiss [her ...] twice. The
9 second time [respondent] tried to kiss her, he tried to put his tongue in [her] mouth.
10 [...] [Respondent] went back to touching [her] in [her] vaginal area and it hurt. He
11 was rubbing hard.”

12 49. On or about October 30, 2014, Doe-3 participated in a covert telephone call to
13 respondent at the request of Officer D. Steele of FVPD.

14 50. When Doe-3 dialed the number to the business office of respondent’s clinic,
15 respondent’s wife, E.L., answered the phone. Doe-3 asked to speak with respondent and his wife
16 handed him to the phone. Doe-3 started the conversation with respondent and asked him to
17 acknowledge what he did to her and then apologize for his actions. Respondent refused to
18 acknowledge the allegations and told her that he would call her back either later that same day or
19 the day after. Doe-3 insisted that he speak with her at that current time and attempt to resolve the
20 issues.

21 51. When Doe-3 confronted respondent with the prior incident which resulted in his
22 acupuncture license being disciplined, respondent did not respond. When Doe-3 asked
23 respondent why he inserted his fingers into her vaginal area, respondent did not answer.

24 52. Doe-3 explained to respondent that she needed an apology, so she would have closure
25 to the situation and be able to move forward with her life. Respondent told her that he would pray
26 for her. Respondent told Doe-3 that he needed to go and terminated the phone call.

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1 **Jane Doe #4 (D.T.)**

2 53. In or around August 2014, Jane Doe #4 (Doe-4) was a chiropractic patient at a Dr.
3 D.'s office. Doe-4 suffered from long-term physical pain. Dr. D. referred Doe-4 for acupuncture
4 treatment to further treat her issues. She was referred to respondent's acupuncture clinic at 8878
5 Warner Ave. Fountain Valley and she saw him approximately once a week since then until
6 October 2016.

7 54. Prior to treatment with respondent, Doe-4 had never gotten an acupuncture treatment
8 and did not know what to expect. During the appointments, respondent was very charismatic and
9 friendly, complimenting her numerous times. During the appointments, Doe-4 was instructed to
10 take off all of her clothing except for her bra and her underwear and to put on a medical gown.
11 Each time, she had worn a regular type bra and a high-waist underwear. The appointments started
12 with respondent sticking approximately 75 needles over her entire body. He had told her she had
13 inflammation all over her body and that she required treatment to her whole body.

14 55. After the needle treatment, he moved on to massage her pressure points as a routine.
15 The massage, however, included a massage of her breasts. Respondent took each breast out of her
16 bra and massaged it thoroughly. He told Doe-4 this was important, and that it would help reduce
17 her chances of breast cancer. Doe-4 was uncomfortable but thought this made sense and allowed
18 it because her sister had both breasts removed due to breast cancer. In the first appointment,
19 respondent massaged everywhere on her breasts except the nipple area. During subsequent
20 appointments, he massaged Doe-4's actual nipple area. Doe-4 felt that respondent was "playing
21 with" her nipples by rubbing, twisting and stimulating them as if he was attempting to arouse her.

22 56. Afterwards, respondent moved on to the rest of Doe-4's body. He massaged around
23 Doe-4's groin area and even under her underwear. Initially, he avoided the actual vaginal area,
24 but massaged extensively around and under her underwear. He massaged her groin area as if he
25 was "pulling the underwear away and pressing all around her vagina." He did not penetrate the
26 labia at that time. Doe-4 kept her eyes shut in an attempt to relax but as he got closer to her
27 vaginal area, she looked down to see what his facial expression was. Respondent was standing
28 next to the table, to her left, and massaging with both hands. He appeared to be "looking" at her

1 vaginal area as if he was “checking out her stuff.” He got very close to the opening of her vagina
2 and when Doe-4 asked him what that was for, respondent answered, “Oh, this is to increase the
3 estrogen.”

4 57. The massage around her vaginal area made her very uncomfortable, therefore Doe-4
5 thought about it more after she left the clinic. At her next appointment, she told respondent she
6 would prefer not to have her vaginal area treated during the massage. Respondent did not
7 massage her vaginal area at that appointment, but resumed doing the same thing during
8 subsequent appointments.

9 58. During her treatments, respondent kissed Doe-4 on both sides of her face. During the
10 first appointment, she thought this was very weird and told him so. Respondent replied that this
11 was his “culture” and spoke about religion to justify this. She told him that it made her
12 uncomfortable and that it was not part of the American culture and asked him to stop.
13 Nonetheless, respondent continued to try to kiss her at every appointment thereafter.

14 59. During one of Doe-4’s treatments on a day when respondent’s wife who works as the
15 receptionist was out of the country to visit her mother, respondent kissed Doe-4 on the lips. This
16 shocked Doe-4 and she said, “Whoa! This has got to stop.” When Doe-4 confronted respondent
17 to stop certain things such as kissing her or massaging her groin, respondent stopped only for a
18 few appointments and then return to doing the same things at later appointments.

19 60. Doe-4 continued seeing respondent even though these things made her uncomfortable
20 because she was slowly getting better and was desperate to be healed from the ailments she had
21 suffered for so many years.

22 61. During a treatment in August of 2016, respondent inserted his finger into Doe-4’s
23 vagina. While massaging her pelvic region, respondent massaged closer and closer to Doe-4’s
24 vagina an inch by inch. He inserted what she believed to be one finger into her vagina
25 approximately one and a half inches into her vagina. He moved it in and out as if trying to
26 stimulate her. She was not sure if he removed it completely to reinsert it or not. Respondent was
27 silent as he did this.

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1 62. This scared Doe-4 and she told respondent, "You know, let's don't do that. I want to
2 leave that out." Respondent paused, removed his finger from inside her vagina, and then
3 continued on with the massage to the rest of her body. Doe-4 knew these things made her
4 uncomfortable, but was not sure if they were part of the treatment.

5 63. In October 2016, respondent asked Doe-4 to write him a letter of recommendation to
6 state that he was a good doctor and that he had helped her. Respondent's wife, E.L., told Doe-4
7 there was a lawsuit filed against respondent for sexual misconduct and gave her the case to read
8 over. As Doe-4 read the case, she realized she could not write him a letter of recommendation
9 because what the legal document alleged had also happened to her. Doe-4 sent a message to E.L.
10 to say she could not write a letter of recommendation for respondent because she believed
11 everything in the lawsuit to be true. E.L. responded and asked for a chance to talk to her, but
12 Doe-4 never responded to meet. She discontinued all contact with respondent's office.

13 64. As a way to heal, Doe-4 wrote a letter that she considered sending to the Acupuncture
14 Board, but she decided against it because she did not want to go through the process of having to
15 talk to anyone about this. She kept the letter and did not send it.

16 65. About four months later, on or about February 28, 2017, Detective G. Scott of FVPD
17 received a phone call from Doe-4. Doe-4 told Detective Scott that she was informed by the
18 receptionist at her chiropractor's office that a criminal case was being issued against respondent.
19 Doe-4 stated she had been a patient of respondent and reported his conduct against her. When she
20 met with Detective Scott for the police interview, Doe-4 gave Detective Scott the letter she had
21 written to the Acupuncture Board but never sent.

22 **Initial Criminal Filing**

23 66. On or about April 5, 2017, in the Superior Court of California, County of Orange, in
24 the case entitled *The People of the State of California v. Henry Lee*, Superior Court Case No.
25 17WF0711, the Orange County District Attorney's Office charged respondent Henry David Lee
26 with five (5) felony counts of Penal Code section 243.4(C) [Sexual Battery by Fraud] and four (4)
27 Felony counts of Penal Code section 289(d)(4) [Sexual Penetration by Means of Fraudulent
28 Representation of Professional Purpose]. The criminal complaint listed Jane Doe # 2 as the

1 victim in Counts 1, 2, and 3, listed Jane Doe # 3 as the victim in Counts 4 and 5, and listed Jane
2 Doe #1 as the victim in Counts 6, 7, 8, and 9.

3 67. Respondent was arraigned on his felony charges on April 26, 2017.

4 **Post-Initial Criminal Filing Developments**

5 68. Sometime after respondent's arrest, the FVPD's Public Information Officer issued a
6 Press Release with respondent's photo and requested potential victims to call FVPD.

7 69. On or about April 6, 2017, Jane Doe #5 (Doe-5) contacted Sergeant Frahm of FVPD
8 regarding respondent. On or about April 7, 2017, when Sergeant Varner (Sgt. Varner) of FVPD
9 called Doe-5 and spoke to her on the phone, she agreed to meet with Sgt. Varner at FVPD.

10 70. On or about April 13, 2017, Sgt. Varner interviewed Jane Doe #6 (Doe-6) at FVPD.

11 71. On or about April 7, 2017, Sgt. Varner received a voicemail from Jane Doe #7 (Doe-
12 7) who stated she saw respondent on the news and that she may have been a victim of his. Sgt.
13 Varner interviewed Doe-7 at FVPD on April 19, 2017.

14 72. On or about April 10, 2017, Sgt. Varner received a voicemail from Jane Doe #6 (Doe-
15 6) who said she was a patient of respondent approximately six (6) months ago. Doe-6 stated
16 respondent was grabby with her and that he played with her breasts and her crotch. Sgt. Varner
17 called her to set up an interview with her on April 13, 2017.

18 73. On or about April 10, 2017, Sgt. Varner received a call from M.R. who said she saw
19 the news and recognized the photo as an acupuncturist who fondled her breasts more than 10
20 years ago at a clinic in Santa Monica. Sgt. Varner contacted an enforcement analyst at the
21 California Acupuncture Board who pulled up respondent's education record and told Sgt. Varner
22 that respondent attended the Emperor's College of Traditional Oriental Medicine from January
23 1998 to December 2001, which is located on the 1000 block of Wilshire Boulevard in Santa
24 Monica, California. On or about April 20, 2017, Sgt. Varner left a message for M.R. to request
25 further information.

26 **Jane Doe #5 (M.N.)**

27 74. In or around 2014, Jane Doe #5 (Doe-5) was at her dental office when she overheard
28 the receptionist talking about her sister-in-law's positive experience with an acupuncturist. The

1 receptionist said the acupuncturist had healed her sister-in-law almost 100% from long-term
2 medical issues. Doe-5 had been looking for any help for her illness and asked for the name of the
3 acupuncturist who was being so highly recommended. The receptionist told her it was respondent
4 whose office was located in Fountain Valley.

5 75. Doe-5 went to respondent's office and had an initial appointment with him. She told
6 respondent what she had been diagnosed with and the medications she was on. Respondent told
7 her he would be able to heal her and that she would no longer need to take those medications.
8 Doe-5 set up an appointment with respondent's wife who was the receptionist. The appointment
9 cost \$90, which seemed expensive to Doe-5, but she was desperate to get better.

10 76. During Doe-5's first appointment, respondent instructed her to take off her clothing
11 with the exception of her bra and underwear. Doe-5 laid face down on the table and respondent
12 put needles all over her back. He set a timer and left the room. When he returned, he removed
13 the needles from Doe-5 and performed acupressure which consisted of a massage on the pressure
14 points of her body. During the massage, respondent rubbed very close to Doe-5's genital area
15 where her thigh meets her pelvis, along where her underwear would begin. The massage was over
16 the underwear and respondent did not put his hands inside of her underwear at that time. Doe-5
17 thought it was strange, but assumed it was to massage pressure points in that area.

18 77. After the massage, Doe-5 was still in her bra and underwear, and when she stood up,
19 respondent reached out to hug her in a gesture that suggested he was saying goodbye. As
20 respondent hugged Doe-5, he kissed her directly on the lips and then put his tongue in her mouth.
21 Doe-5 was shocked and pushed him away. She told him, "No, no, I don't like that." Respondent
22 then said, "If you feel uncomfortable, that's okay. I won't do it again." He then asked her
23 something about whether or not there was more saliva in her mouth now. This confused her and
24 she thought he was possibly asking her this because her medical conditions cause her to have a
25 dry mouth and eyes. Respondent then left the room and Doe-5 got dressed, paid for the
26 appointment, and left. Doe-5 thought that because he promised not to do it again, she would go
27 for her second appointment.

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1 78. Doe-5 saw respondent again approximately a week later. During her next
2 appointment, respondent completed the same procedure as before but did not end the appointment
3 with a kiss. Doe-5 felt relieved and set up a third appointment to be held a week later.

4 79. Doe-5 went to respondent's clinic for her third appointment. During the treatment,
5 Doe-5 was again in her bra and underwear. At the end of the appointment, she stood up to get
6 dressed. This time, respondent again initiated a hug at the end of the appointment and again
7 kissed Doe-5 directly on the lips, putting his tongue into her mouth. Doe-5 again pushed him
8 away. This time, respondent did not say anything and left the room. Doe-5 quickly got dressed
9 and paid for her appointment. She did not make an additional appointment.

10 80. At the time, Doe-5 felt terrible and did not know whom to tell about what happened.
11 Prior to this, the only man she had kissed was her husband and she felt like she did something
12 wrong or had cheated on him, even though she did not want to be kissed by respondent. She
13 considered telling respondent's wife, but she was not sure that she should because she felt bad for
14 respondent's wife. It bothered Doe-5 for several months and she did not tell her husband out of
15 fear that he would do something to respondent.

16 81. Eventually, Doe-5 told her good friend, C.W., about what respondent did to her and
17 asked C.W. for advice as to whether or not she should tell her husband. C.W. told her not to tell
18 her husband and agreed with Doe-5 that her husband might try to go beat up respondent. After
19 that, Doe-5 did not talk about it with anyone for several months.

20 82. Eventually when Doe-5 attended a yoga class, she confided in her teacher, M.C. that
21 respondent had kissed her during an acupuncture session. Doe-5 asked M.C. if she thinks Doe-5
22 should tell respondent's wife. M.C. encouraged her to tell respondent's wife. Doe-5 worked up
23 the courage and went back to respondent's office and planned to tell respondent's wife who was
24 at the receptionist desk. As she was about to tell respondent's wife, respondent walked up from
25 the back of the clinic and looked at Doe-5. He then turned around and walked into an exam room.
26 This caused Doe-5 to lose her nerve and she left without telling the wife.

27 83. Prior to respondent, Doe-5 had seen an acupuncturist once before, but he did not do as
28 much as respondent. There was no acupressure done by the previous acupuncturist. Therefore,

1 Doe-5 did not know what to expect from the massage at respondent's office. Besides the person
2 who recommended respondent, Doe-5 did not know any other patients of respondent.

3 84. On or about April 6, 2017, Doe-5 received a text message from M.C. from her yoga
4 class. M.C.'s message read, "[...] I think your acupuncturist was just arrested. They are looking
5 for more people who can come forward [...]" Thereafter, Doe-5 called the police department to
6 report what respondent did to her.

7 85. Respondent's course of record of acupuncture treatments for Doe-5 did not contain
8 pain level assessment and treatment plan.

9 **Jane Doe #6 (C.E.)**

10 86. Jane Doe #6 (Doe-6) suffers from arthritis in her neck and shoulder. Prior to her
11 breast reduction surgery in November 2016, Doe-6 had large, "G" sized breasts that contributed to
12 her pain. In or around August 2016, her yoga instructor R.M. recommended that Doe-6 see an
13 acupuncturist and recommended respondent who also treated Doe-6's friend, S.N. At the time,
14 Doe-6 had never seen an acupuncturist before, so she asked her friend, S.N. what to expect. S.N.
15 told her generally about what to expect from the treatment and told her that she would be wearing
16 her bra and panties but that she would have a medical gown on. S.N. told Doe-6 that when S.N.
17 went to respondent's clinic as a patient, the treatment starts by her lying on the stomach with her
18 back up and respondent pulled her panties up her "crack" in order to insert multiple needles. S.N.
19 also told Doe-6 that respondent reaches under the bra, on the sides of the breasts to massage the
20 sides (under the armpits) and underneath the breast area.

21 87. Sometime before August 15, 2016, Doe-6 went to respondent's clinic for an initial
22 consultation during which respondent and his wife sat down with Doe-6 to fill out a medical
23 history sheet. During that time, Doe-6 disclosed that she was single and divorced and that she had
24 arthritis in her neck. She was scheduled for an acupuncture appointment on August 15, 2016.

25 88. On or about August 15, 2016, Doe-6 went to her first appointment with respondent.
26 During the treatment, she had on her regular panties (full, covering the buttocks) and a normal,
27 daily bra with lace. She put on a medical gown with the opening to her back. Doe-6 lay down on
28 her stomach on the massage table inside a treatment room and respondent pulled her panties down

1 to below her buttocks. He put needles all over her body and left the room. After a 20-minute
2 waiting period, he returned to the room and removed the needles. He then commenced an
3 intensive acupressure treatment by putting "Tiger Balm" and "Icy Hot" on her neck and shoulders
4 and then gave a deep massage.

5 89. Respondent then had Doe-6 turn over to lie on her back with the gown still covering
6 the front of her body. Respondent pulled the gown down to Doe-6's waist and exposed her bra
7 and stomach. He then proceeded to insert needles throughout her shoulders and under the
8 armpits. After that, he proceeded with the massage during which he put his hands underneath the
9 sides of Doe-6's bra, directly on the skin and massaged the sides, the bottoms, and the front of her
10 breasts. Respondent touched the front skin of her breasts, but did not seem to be focusing on that
11 part at the moment. Doe-6 did not like this contact, but did not feel extremely awkward about it
12 and assumed it was part of the treatment.

13 90. Throughout this appointment on or about August 15, 2016, respondent told Doe-6
14 that she was very beautiful and that she looked like Cindy Crawford. Doe-6 thought this was odd
15 and thought he did this possibly to try to help patients with their self-confidence. After the
16 massage, she sat up on the table, still with her bra, panties, and gown on. Respondent stood in
17 between her legs, embraced her in a hug, and kissed her on both cheeks. Respondent continued
18 telling Doe-6 that she was beautiful. He then left the room while she got dressed. Aside from the
19 awkward moments, Doe-6 felt a lot of relief from the acupuncture treatment she received and
20 made another appointment for August 22, 2016.

21 91. During her second appointment on or about August 22, 2016, Doe-6 again had a
22 medical gown over her bra and panties and lay on her stomach. Respondent placed needles all
23 over her body, again after pulling her panties down to below her buttocks. This time, he did not
24 place as many needles and did not spend as much time on the acupressure. When Doe-6 turned
25 over to her front, respondent pulled down the medical gown, exposed her upper half, and put
26 needles in her front. When he removed the needles, he did not immediately proceed to the
27 acupressure massage portion. Instead, he told her to wait and left the room.

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1 92. Doe-6 waited for approximately half an hour, but respondent did not return. Doe-6
2 got dressed and walked out of the treatment room to tell respondent's wife that she was done.
3 Respondent's wife told Doe-6 that she was not done and that respondent still needed to do the
4 massage portion. Doe-6 told her she did not want to wait anymore, but respondent's wife was
5 insistent and went to get respondent who told her to go back into the room and remove her
6 clothing. Does-6 argued with respondent a little, but ultimately went back in and removed her
7 clothing and placed the gown back on as instructed.

8 93. Respondent came back to the treatment room and proceeded to do the frontal
9 massage. He was very rough and touched Doe-6's breasts excessively. He reached his hands
10 under the bra on the sides of the breasts as before, but this time roughly rubbed and bounced her
11 breasts up and down, at one point even giggling. Doe-6 felt that the massage she received was
12 nothing like the one she received during the first appointment and respondent appeared to be
13 "playing" with her breasts.

14 94. Respondent then reached down to her crotch area and moved the gown over to expose
15 Doe-6's crotch. He then grabbed her crotch and pinched her over her underwear between her
16 thighs and genitals. He moved his hands back to her breasts and played with them some more,
17 then down to her feet to massage them briefly, and back to her crotch after moving the gown
18 again and pinching her crotch. Doe-6 did not like this and pushed respondent's hand away from
19 her crotch while saying, "Uh-uh," to express her disapproval.

20 95. When Doe-6 sat up, respondent again moved in between her legs and reached for a
21 hug. This time, respondent held her face with his hands on both sides and kissed her directly on
22 the lips. Doe-6 pulled back, but respondent continued to pull her face toward his face and kissed
23 her several times directly on the lips. Respondent then left the room and Doe-6 got dressed and
24 walked out. Doe-6 did not know what to do because she felt that respondent's wife might be
25 complicit in this as she was pushing her to go back into the room when she expressed she wanted
26 to leave. Doe-6 scheduled her next appointment, but was not going to attend it.

27 96. On the next day, on or about August 23, 2016, Doe-6 told R.M. about what happened.
28 R.M. apologized, stopped referring anyone else to respondent's clinic, and stopped going back to

1 respondent for acupuncture herself. R.M. told her that she had not experienced this kind of
2 behavior from respondent. On the same day, Doe-6 also told S.N. about what happened. Since
3 then, S.N. stopped seeing respondent for acupuncture. S.N. also told Doe-6 that she had not
4 experienced this kind of behavior from respondent.

5 97. On or about April 7, 2017, Doe-6 read the newspaper and saw the report that stated
6 respondent had been arrested. Soon thereafter, Doe-6 decided to contact FVPD to report what
7 respondent did to her. At that time, Doe-6 did not know any other patients of respondent besides
8 R.M., her yoga teacher and S.N, her friend from the yoga class.

9 98. Respondent's course of record of acupuncture treatments for C.E. did not contain pain
10 level assessment and treatment plan.

11 **Jane Doe #7 (S.G.)**

12 99. In or about May 2014, Jane Doe #7 (Doe-7) began seeing respondent for acupuncture
13 treatment. For her first appointment, Doe-7 disrobed completely and lay on her stomach with a
14 sheet covering her buttocks. Respondent put acupuncture needles on her back and after he
15 removed them, he performed acupressure massage. Doe-7 felt that this massage was a gentle
16 massage with long strokes. After the massage, respondent left the room and she got dressed. She
17 then went to see respondent's wife to get herbal tea and schedule the second appointment.

18 100. Approximately two weeks later, Doe-7 had her second appointment with respondent
19 during which she received treatment on her back.

20 101. Sometime later, Doe-7 had her third appointment. The third appointment started in
21 the same manner, but this time respondent told her to lie down on her back with her stomach
22 facing up. She was covered on the groin area with a sheet and respondent began massaging the
23 front of her body. These were long strokes from her neck down. Respondent also rubbed Doe-7's
24 breasts and stomach. Doe-7 felt it was not a particularly sexual massage and he was not
25 particularly focusing on her breasts, but he did rub across her front nipple area.

26 102. Respondent then moved to massage Doe-7's lower half while removing the sheet
27 covering her groin. Respondent at first rubbed long strokes down the front of her thighs to her
28 feet, then rubbed up on the insides of her legs. He rubbed all the way up to her groin area,

1 rubbing outwards where the thigh meets the pelvis. When he reached this part, he used his fingers
2 to rub over the vaginal area, but did not penetrate the labia. The front massage lasted
3 approximately 15-20 minutes.

4 103. While respondent conducted the frontal massage, Doe-7 felt his crotch rub against her
5 arm several times. As respondent's crotch pressed against her arm, she could feel that his penis
6 was erect. This increased her feeling that the massage was sexual in nature.

7 104. After the massage, respondent left and Doe-7 got dressed. When she walked out, she
8 gave him a hug, which she described as a regular hug with his face next to hers. During the
9 massages and appointments, respondent did not wear gloves. His English was broken, but he
10 would talk about religious things and quote bible verses. He told her that she was going to be
11 healed while he conducted the massage. Doe-7 was creeped out by the end of the third
12 appointment with respondent and she felt the treatments did not help her very much. She did not
13 make another appointment and did not tell anyone about her experience with respondent at the
14 time. She was not aware of any other patients that had negative experiences with respondent and
15 had not heard anything else bad about him until she saw the news report after his criminal arrest.

16 105. Respondent's course of record of acupuncture treatment for Doe-7 did not contain
17 pain level assessment and treatment plan.

18 **Amended Criminal Filing**

19 106. On or about September 22, 2017, in the Superior Court of California, County of
20 Orange, in the case entitled *The People of the State of California v. Henry Lee*, Superior Court
21 Case No. 17WF0711, the Orange County District Attorney's Office amended the felony
22 complaint and charged respondent Henry David Lee with eight (8) Felony counts of Penal Code
23 section 243.4(C) [Sexual Battery by Fraud] and eight (8) Felony counts of Penal Code section
24 289(d)(4) [Sexual Penetration by Means of Fraudulent Representation of Professional Purpose].
25 The amended felony complaint listed Jane Doe #1 as the victim in Counts 6, 7, 8, and 9; listed
26 Jane Doe #2 as the victim in Counts 1, 2, and 3; listed Jane Doe # 3 as the victim in Counts 4 and
27 5; listed Jane Doe #4 as the victim in Counts 15 and 16; listed Jane Doe #5 as the victim in

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1 Counts 12, 13, and 14; listed Jane Doe #6 as the victim in Count 10; and listed Jane Doe #7 as the
2 victim in Count 11.

3 **SECOND CAUSE FOR DISCIPLINE**

4 **(Gross Negligence)**

5 107. Respondent has further subjected his Acupuncture License No. AC 8254 to
6 disciplinary action under section 4955.2, subdivision (a), of the Code, in that he was grossly
7 negligent in his care, treatment, and management of patients Jane Doe #1, Jane Doe #2, Jane Doe
8 #3, Jane Doe #4, Jane Doe #5, Jane Doe #6, and Jane Doe #7 as set forth in paragraphs 10
9 through 106, above, which are incorporated herein by reference as if fully set forth herein.

10 **THIRD CAUSE FOR DISCIPLINE**

11 **(Repeated Negligent Acts)**

12 108. Respondent has further subjected his Acupuncture License No. AC 8254 to
13 disciplinary action under section 4955.2, subdivision (b), of the Code, in that he has committed
14 repeated acts of negligence in the practice of acupuncture, as set forth in paragraphs 10 through
15 106, above, which are incorporated herein by reference as if fully set forth herein.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failing to Maintain Adequate and Accurate Records
18 Relating to the Provision of Services to Patients)**

19 109. Respondent has further subjected his Acupuncture License No. AC 8254 to
20 disciplinary action under section 4955.1, subdivision (e), of the Code, and Title 16, section
21 1399.453, of the California Code of Regulations, in that during his care, treatment, and
22 management of patients Jane Doe #1, Jane Doe #3, Jane Doe #5, Jane Doe #6, and Jane Doe #7,
23 he failed to maintain adequate and accurate record, as set forth in paragraphs 11 through 19,
24 paragraphs 33 through 52, and paragraphs 74 though 106, above, which are incorporated herein
25 by reference as if fully set forth herein.

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FIFTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

110. Respondent has further subjected his Acupuncture License No. AC 8254 to disciplinary action under section 4955 of the Code, in that he engaged in unprofessional conduct in his care, treatment, and management of patients Jane Doe #1, Jane Doe #2, and Jane Doe #3, as set forth in paragraphs 10 through 109, above, which are incorporated herein by reference as if fully set forth herein.

SIXTH CAUSE FOR DISCIPLINE

(Violation of the Acupuncture Licensure Act)

111. Respondent is subject to disciplinary action under section 4955, subdivision (d), of the Code, in that he violated the terms of the Acupuncture Licensure Act, as set forth in paragraphs 10 through 110, above, which are incorporated herein by reference as if fully set forth herein.

FACTOR IN AGGRAVATION

112. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about April 28, 2009, in a prior disciplinary action entitled *In the Matter of the First Amended Accusation Against Henry David Lee, L.Ac.* before the Acupuncture Board, in Case No. 1A-2007-31. Respondent's license was placed on probation for three (3) years with the effective date of February 6, 2009, for repeated sexual misconduct/relations with a patient in respondent's office. That decision is now final and is incorporated by reference as if fully set forth.

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PRAYER

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

1. Revoking or suspending Acupuncture License No. AC 8254, issued to respondent Henry David Lee, L.Ac.;
2. Ordering respondent Henry David Lee, L.Ac. to pay the California Acupuncture Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 4959; and
3. Taking such other and further action as deemed necessary and proper.

DATED: OCT 31 2017


BENJAMIN BODEA
Executive Officer
Acupuncture Board
State of California
Complainant

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