

IN THE MATTER OF *

BEFORE THE

SANG H. KIM, L.Ac.

MARYLAND STATE

Respondent

ACUPUNCTURE BOARD

License No.: U02098

Case Nos.: 20-02/20-03/20-04

* * * * *

CHARGES UNDER THE MARYLAND ACUPUNCTURE ACT

The Maryland State Acupuncture Board (the “Board”) hereby charges the license of **SANG H. KIM, L.Ac.** (the “Respondent”), License Number U02098, to practice as a Licensed Acupuncturist (“L.Ac.”) in the State of Maryland, with violating the Maryland Acupuncture Act (the “Act”) codified at Md. Code Ann., Health Occ. (“Health Occ.”) §§ 1A-101 *et seq.* (2014 Repl. Vol. and 2019 Supp.) and the Board’s regulations under Md. Code Regs. (“COMAR”) 10.26 *et. seq.*

The Board charges the Respondent with violation the following provisions under the Act:

§ 1A-309. Reprimands, probations, suspensions, and revocations – Grounds.

Subject to the hearing provisions of § 1A-310 of this subtitle, the Board, on the affirmative vote of a majority of its full authorized membership, may deny a license to practice acupuncture to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license if the licensee:

....

(3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture;

....

(6) Knowingly violates any provision of this title or any rule or regulation of the Board adopted under this title;

....

- (15) Fails to cooperate with a lawful investigation conducted by the Board;
- (16) Commits any act of gross negligence, incompetence, or misconduct in the practice of acupuncture;
- (17) Engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture[.]

The relevant provisions of the code of ethics and regulations adopted by the Board provide:

COMAR 10.26.03.03 Standards of Practice

....

C. A licensee shall:

....

- (7) Cooperate with a lawful investigation conducted by the Board, including:
 - (a) Furnishing information requested,
 - (b) Complying with a subpoena,
-
- (d) Providing meaningful and timely access to relevant patient records[.]

COMAR 10.26.03.05 Professional Boundaries

A. The licensee shall:

- (1) Maintain professional boundaries, even when the patient initiates crossing the boundaries of the professional relationship;
- (2) Respect and maintain professional boundaries and respect the patient's reasonable expectation of professional conduct; and

- (3) If the licensee and the patient mutually desire a personal relationship, immediately terminate the professional relationship, make an appropriate referral to another health care practitioner, and wait before engaging in such a relationship for a time when it is reasonably certain that the professional relationship has no influence on the personal relationship.

B. A licensee may not:

.....

- (3) Engage in sexual misconduct which includes behavior in which a licensee has engaged in sexual behavior with a patient in the context of a professional evaluation, treatment, procedure, or other service to the patient, regardless of the setting in which the professional service is provided.

ALLEGATIONS OF FACT

The Board bases its charges on the following facts that the Board has reason to believe are true:¹

I. BACKGROUND

1. At all times relevant, the Respondent was authorized to practice as a licensed acupuncturist in the State of Maryland. The Respondent was originally certified to practice acupuncture medicine in the State of Maryland on September 10, 2013, under License Number U02098. The Respondent's license was summarily suspended by the Board on March 16, 2020 and is scheduled to expire on November 30, 2021.

¹ The allegations regarding the Respondent's conduct identified herein are intended to provide the Respondent with notice of the basis of the Board's action. They are not intended as, and do not necessarily represent, a complete description of the evidence, either documentary or testimonial, to be offered against the Respondent.

II. COMPLAINTS AND INVESTIGATION

2. On or about January 23, 2020, the Board received a complaint filed by Patient 1.² The complaint alleged on August 29, 2019, Patient 1 attended an appointment with the Respondent, and during the treatment, the Respondent placed his hands on the Patient 1's breasts.

3. After receiving Patient 1's complaint, the Board initiated an investigation of the Respondent under Case Number 20-02.

4. On or about February 26, 2020, the Board received a complaint filed by Patient 2, a 50-year-old female. The complaint alleged that on or about March 4, 2019, Patient 2 attended an appointment with the Respondent, and during the examination, the Respondent touched Patient 2's nipple prior to treating the patient's back.

5. After receiving Patient 2's complaint, the Board initiated an investigation of the Respondent under Case Number 20-03.

6. On or about March 5, 2020, the Board received a complaint filed by Patient 3, a 47-year-old female. The complaint alleged that between February and March of 2019, Patient 3 was a patient of the Respondent, and that she filed a report with the Montgomery County Police Department.

7. After receiving Patient 3's complaint, the Board initiated an investigation of the Respondent under Case Number 20-04.

8. As part of its investigation under Case Number 20-02, on January 30, 2020, the Board's Investigator interviewed Patient 1 under oath.

² To maintain confidentiality, witness and facility names will not be disclosed in this document but will be provided to the Respondent upon request.

9. As part of its investigation under Case Number 20-02, on February 21, 2020, the Board's Investigator interviewed the Respondent under oath.

10. As part of its investigation under Case Number 20-03, on February 26, 2020 the Board's Investigator interviewed Patient 2 under oath.

11. As part of its investigation under Case Number 20-04, on March 9, 2020, the Board's Investigator interviewed Patient 3 under oath.

III. SEXUAL MISCONDUCT BY INAPPROPRIATE TOUCHING

Patient 1

12. Patient 1 made an appointment at the Respondent's office on August 29, 2019 to see the Respondent due to experiencing some chest and shoulder pain. After arriving at the Respondent's office, she checked in with a woman at the front desk and was taken into another room and was handed a gown. She was told to take off her bra but leave her underwear on and put the gown open in the front.

13. The Respondent came in, asked why Patient 1 was there, and she "explained that [she] had some pain in [her] sternum that radiates down [her] left arm, that [she] had it for a really long time, that in the past there had been some relief from acupuncture."

14. After discussing her diet, the Respondent asked Patient 1 to lay down.

15. The Respondent used the tips of his fingers and pushed down on parts of Patient 1's body asking how bad the pain was. The Respondent pressed her abdomen, sternum bone, and as Patient 1 described "then started to move [Respondent's] hand like away from [Patient 1's] sternum towards [Patient 1's] left breast, pressing more into the

breast tissue, at which point in time he proceeded to – essentially like massage [Patient 1's] entire breast while looking at me.” The Respondent then did the same thing to her right breast.

16. The Respondent never told Patient 1 why he touched her breast, what he was trying to find, or what the treatment process was.

17. When questioned by the Board investigator, the Respondent initially denied touching Patient 1's breast, but after further questioning admitted he checked Patient 1's breasts.

18. The Respondent stated that he diagnosed Patient 1 and treated Patient 1 for pain, arthritis, and chest pain. The treatment provided included electric stimulation of the ear and needles on the legs and on the hand. The Respondent's acupuncture treatment lasted about ten to fifteen minutes.

19. After the acupuncture treatment, Patient 1 quickly got dressed, walked to the front desk and paid, and left the Respondent's office.

Patient 2

20. On March 2, 2019, Patient 2 injured her lower back lifting some feed bags.

21. On March 4, 2019, Patient 2 made an appointment at the Facility to see the Respondent. Upon arriving, she sat down and filled out the requested information. She then was taken to another room and the Respondent told her to get undressed and asked her to take her bra off.

22. The Respondent began to ask permission to touch her back and hip, and then without permission, touched her left nipple. The Respondent then touched her in

another area and then went back to touching her nipple. She then sat up, told the Respondent her lower back was hurting, and asked him if he could fix that.

Patient 3

23. On or about February 20, February 27, and March 4, 2019, Patient 3 had appointments at the Respondent's office.

24. During the first visit, Patient 3 filled out paperwork, went into one of the office rooms, and was told to undress and put a gown on with the opening towards the front.

25. The Respondent went over all her complaints, explained acupuncture briefly, and then asked if he could perform an exam.

26. As part of what the Respondent called an exam the Respondent pulled back both sides of the gown so both of her breasts were exposed.

27. The Respondent put his hands on both of her breasts, squeezed both of her nipples very hard. Patient 3 described the squeezing to be more painful than breast examinations she had previously experienced during gynecological visits or mammogram.

28. The Respondent insinuated that he thought Patient 3 was more apt to get cancer.

29. The Respondent also felt her lower abdomen, what Patient 3 described as her uterus and ovaries.

30. During her final visit, Patient 3 was receiving treatment from the Respondent, and the Respondent suddenly said, "we're done here."

31. The Respondent told her that her neck is fine and that she doesn't need to see him anymore.

32. The Respondent said he can't see her, that he would like to date her, and that he can't date his patients. She was the last patient in the office and was alone in the office with the Respondent. The Respondent then locked the office, and she and the Respondent walked out of the office together.

33. Prior to the treatment during the final visit, the Respondent asked Patient 3 if he could text her. The Respondent did text her, did not mention about going on a date, but did insinuate that he wanted to go on a date and that she needed to let him know if she was interested in that.

34. On or about February 4, 2020, she received a birthday card from the Respondent. The card stated, "[Patient 3], I hope you have a great birthday and I wish it to be the best one yet! Love, Dr. Kim."

IV. FAILURE TO COOPERATE WITH THE BOARD'S INVESTIGATION

35. On February 5, 2020, the Board issued a *subpoena duces tecum* to the Respondent, summoning the Respondent to produce ten patient records selected by the Board's Investigator.

36. On February 7, 2020, at approximately 11:00 AM, the Board's Investigator and another investigator appeared at the Respondent's offices to serve the subpoena.

37. The Respondent did not give the items required under the subpoena and the Respondent went into his office, shut his door, and took a phone call.

38. While at the Respondent's offices, the Board's investigators began to review some records, and the Respondent snatched the records and told the Board's investigators to put them down and get out of the office.

39. When later asked about the subpoena served on February 7, 2020 by the Board's Investigator, the Respondent admitted that he impeded the investigation for the subpoena for the ten records requested and denied the investigators access to those records.

V. FAILURE TO MAINTAIN ADEQUATE PATIENT RECORDS

40. The Respondent provided acupuncture records for Patient 1, Patient 2, and Patient 3 to the Board's Investigator.

41. According to Patient 1's acupuncture record, Patient 1's date of visit was August 29, 2019. Patient 1's acupuncture record included demographic information, insurance information, and health history, all completed by the patient herself.³ Patient 1's acupuncture record did not include documentation of vital signs, diagnosis, or a treatment plan.

³ Patient 1 did not sign the acupuncture record indicating that she had attended the appointment.

42. In the February 21, 2020 interview with the Board's Investigator, the Respondent admitted that the treatment that was performed for Patient 1 was not indicated in Patient 1's acupuncture record and that it could not be determined what treatment was performed for Patient 1 during the visit from the record. The Respondent admitted that he took Patient 1's pulse but did not write it down. The Respondent also admitted that his records were lacking.

43. According to Patient 2's acupuncture record, Patient 2's date of visit was March 4, 2019. Patient 2's acupuncture record included demographic information, insurance information, and health history, all completed by the patient herself. Patient 2's acupuncture record did not include documentation of vital signs, diagnosis, or a treatment plan.

44. According to Patient 3's acupuncture record, Patient 3 attended appointments at the Respondent's office on January 28, 2019, February 27, March 1, and March 6.⁴ Patient 3's acupuncture record included patient information, insurance information, and health history, all completed by the patient herself on January 13, 2019. Patient 3's acupuncture record did not include documentation of vital signs, diagnosis, a treatment plan, or any narrative showing the Respondent performed services during any appointment.

GROUND FOR DISCIPLINE

45. The Respondent touched the breasts of three female patients. The touching was not part of a legitimate clinical acupuncture procedure. Instead, the touching was

⁴ Patient 3 did not sign the acupuncture record indicating that she had attended the appointment on March 6.

sexual behavior with the patients in the context of a professional evaluation, treatment, or procedure. The Patients did not consent to being touched on their breasts. And none of the patients consented to any touching for non-clinical reasons.

46. The Respondent told one patient that he wished to date her, and, in doing so, failed to maintain professional boundaries.

47. The Respondent did not comply with a Board subpoena for records, thereby, failing to cooperate with a Board investigation.

48. The Respondent's acupuncture medical records for Patients 1, 2, and 3 did not conform with generally accepted professional standards for medical records.

49. The allegations of fact set forth in this document, if proven, constitutes violations of: Health Occ. § 1A-309(3) (is guilty of immoral or unprofessional conduct in the practice of acupuncture); § 1A-309(6) (knowingly violates any provision of this title or any rule or regulation of the Board adopted under this title); § 1A-309(15) (fails to cooperate with a lawful investigation conducted by the Board); § 1A-309(16) (commits any act of gross negligence, incompetence, or misconduct in the practice of acupuncture); § 1A-309(17) (engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture); and/or COMAR 10.26.03.03C(7), and/or COMAR 10.26.03.05A, B(3).

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds that there are grounds for action under Health Occ. § 1A-309(3), (6), (15), (16), (17), COMAR 10.26.03.03C(7), and/or COMAR 10.26.03.05A., B(3), the Board may impose disciplinary sanctions against the

Respondent's license pursuant to its regulations under COMAR 10.26.04 *et. seq.*, including reprimanding the Respondent, placing the Respondent on probation, or suspending or revoking the Respondent's license, and/or may impose a monetary penalty.

April 15, 2020

Date

Tom Ingegno, DACM, LAc

Thomas Ingegno, L.Ac., Chair
Maryland State Acupuncture Board

Sang H. Kim, L. Ac.
20010 Fisher Avenue, Suite D
Poolesville, Maryland 20837

RECEIVED

Date: 5/27/2020

JUN 5 2020

Thomas Ingegno, Chair
Maryland State Acupuncture Board
4201 Patterson Avenue, 3rd Floor
Baltimore, MD 21215-2299

MARYLAND
BOARD OF ACUPUNCTURE

Re: Surrender of License to Practice Acupuncture
Sang H. Kim, L.Ac. License Number: U02098
Case Number: 20-02, 20-03, 20-04

Dear Mr. Ingegno and Members of the Board,

Please be advised that, pursuant to Md. Code Ann., Health Occ. § 1A-308, I have decided to **SURRENDER** my license to practice acupuncture in the State of Maryland, License Number U02098, effective immediately. I understand that upon surrender of my license, I may not engage in the practice of acupuncture in the State of Maryland as it is defined in the Maryland Acupuncture Act (the "Act"), Health Occ. §§ 1A-101 *et seq.* and other applicable laws. In other words, as of the effective date of this Letter of Surrender, I understand that the surrender of my license means that I am in the same position as an unlicensed individual in the State of Maryland.

I understand that this Letter of Surrender is a **PUBLIC DOCUMENT**, and upon acceptance, becomes a **FINAL ORDER** of the Maryland State Acupuncture Board (the "Board").

I acknowledge that the Board initiated an investigation of my practice. On March 16, 2020, the Board issued an Order summarily suspending my license. On April 15, 2020, the Board issued disciplinary charges against me under Health Occ. § 1A-309(3) (is guilty of immoral or unprofessional conduct in the practice of acupuncture), (6) (knowingly violates any provision of this title or any rule or regulation of the Board), (15) (fails to cooperate with a lawful investigation conducted by the Board), (16) (commits any act of gross negligence, incompetence, or misconduct in the practice of acupuncture), and (17) (engages in a course of conduct that is inconsistent with generally accepted professional standards in the practice of acupuncture), and the Board's regulations, COMAR 10.26.03.03C(7) pertaining to my failure to cooperate with the Board's investigation, and COMAR 10.26.03.05 pertaining to my violation of professional boundaries. Specifically, the Board alleged that I am guilty of unprofessional conduct, inconsistent with generally accepted professional standards in the practice of acupuncture, by touching the breasts of three female patients (and in two instances additionally touching the nipples) without permission and without medical indication, that I failed to maintain adequate medical records, and that I failed to cooperate with the

Sang H. Kim, L.Ac. and Maryland State Board of Acupuncture

RE: Sang H. Kim, L.Ac.

Letter of Surrender

Page 2

Board's investigation. A copy of the charges is attached as Attachment 1. I have decided to surrender my license to practice acupuncture in the State of Maryland to avoid further investigation and prosecution of these disciplinary charges.

I wish to make it clear that I have voluntarily, knowingly and freely chosen to submit this Letter of Surrender to avoid further prosecution of the disciplinary charges. I acknowledge that for all purposes related to my acupuncture licensure, the charges will be treated as if proven.

I understand that by executing this Letter of Surrender I am waiving my right to a hearing to contest the disciplinary charges. In waiving my right to contest the charges, I am also waiving the right to be represented by counsel at the hearing, to confront witnesses, to give testimony, to call witnesses on my own behalf, to present other evidence to support my position, and all other substantive and procedural protections provided by law, including the right to appeal to circuit court.

I understand that the Board will advise the National Practitioner Data Bank of this Letter of Surrender. I also understand that in the event I would apply for licensure in any form in any other state or jurisdiction that this Letter of Surrender may be released or published by the Board to the same extent as a final order that would result from disciplinary action, pursuant to Md. Code Ann., Gen. Prov. §§ 4-101 *et seq.*, and that this Letter of Surrender constitutes a disciplinary action by the Board.

I affirm that I will provide access to and copies of medical records to my patients in compliance with Title 4, subtitle 3 of the Health General Article.

I further recognize and agree that by submitting this Letter of Surrender, my license will remain surrendered unless and until the Board grants reinstatement. I understand that I may apply for reinstatement of my license in two years. I further understand that if I file a petition for reinstatement, I will approach the Board in the same position as an individual whose license has been revoked.

In the event that I apply for reinstatement of my Maryland License, I will be required to submit a written application for reinstatement on a form prescribed by the Board, the appropriate fee, written responses to any questions that the Board may propose concerning the reasons my license was surrendered and concerning my current fitness to practice. The Board may conduct an informal inquiry with the opportunity to have a personal interview with the Board. The Board may consider my history and an oral presentation from me and the administrative prosecutor's office. I understand that the Board is not required to grant reinstatement. The Board will consider my application, my responses to any written questions and supporting documentation and written arguments, if any submitted by me and any response by the administrative prosecutor's office. I understand that the Board shall determine in its discretion if post-disciplinary reinstatement is consistent with the health and welfare of the general public and with the

Sang H. Kim, L.Ac. and Maryland State Board of Acupuncture
RE: Sang H. Kim, L.Ac.
Letter of Surrender
Page 3

best interest of the profession. The Board will issue a written order on the post-disciplinary reinstatement application that either (1) denies reinstatement of my license (2) reinstates my license without conditions; or (3) reinstates my license with one or more of the following conditions: (a) Probation; (b) requirements for supervision or chaperone; (c) limitations on practice; or (d) other conditions that the Board considers appropriate for public safety and the protection of the integrity and reputation of the profession. If the Board denies me reinstatement I understand that the Board may set out when, if ever, a subsequent petition may be submitted.

I acknowledge that I may not rescind this Letter of Surrender in part or in its entirety for any reason whatsoever. Finally, I wish to make clear that I have been advised of my right to be represented by an attorney of my choice throughout proceedings before the Board, including the right to consult with an attorney prior to signing this Letter of Surrender. I have knowingly and willfully waived my right to be represented by an attorney before signing this letter surrendering my license to practice acupuncture in Maryland. I understand both the nature of the Board's actions and this Letter of Surrender fully. I acknowledge that I understand and comprehend the language, meaning and terms and effect of this Letter of Surrender. I make this decision knowingly and voluntarily.

Very truly yours,

Sang H. Kim, L.Ac.

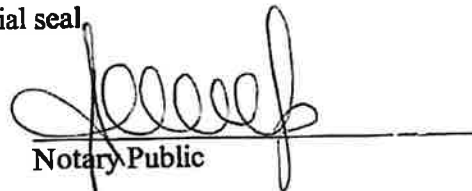


NOTARY

STATE OF MD
CITY/COUNTY OF Gaithersburg / Montgomery

I HEREBY CERTIFY that on this 27 day of MAY, 2020 before me, a Notary Public of the City/County aforesaid, personally appeared Sang H. Kim, L.Ac., and declared and affirmed under the penalties of perjury that the signing of this Letter of Surrender was their voluntary act and deed.

AS WITNESS my hand and Notarial seal


Notary Public

My commission expires: 02/19/2024

Sang H. Kim, L.Ac. and Maryland State Board of Acupuncture
RE: Sang H. Kim, L.Ac.
Letter of Surrender
Page 4

ACCEPTANCE

On behalf of the Board on this 9th day of June, 2020, I, Penny Heisler,
accept Sang H. Kim, L.Ac.'s **PUBLIC SURRENDER** of their license to practice
medicine in the State of Maryland.


Penny Heisler, Executive Director
Maryland State Board of Acupuncture