

1 MATTHEW RODRIQUEZ
Acting Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 ALICE W. WONG
Deputy Attorney General
4 State Bar No. 160141
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3873
6 Facsimile: (415) 703-5480
Attorneys for Complainant
7

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

12 In the Matter of the Accusation Against:

Case No. 1A-2017-231

13 **ANN TUNG CAPP, L.AC.**

14 **P.O. Box 152**
15 **Cupertino, CA 95015**
Acupuncture No. 11253

ACCUSATION

16 Respondent.

17
18
19 **PARTIES**

20 1. Benjamin Bodea (Complainant) brings this Accusation solely in his official capacity
21 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

22 2. On or about October 2, 2006, the Acupuncture Board issued Acupuncture license
23 Number 11253 to Ann Tung Cappa, L.Ac. (Respondent). The Acupuncture license was in full
24 force and effect at all times relevant to the charges brought herein and will expire on December
25 31, 2021, unless renewed.

26
27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the 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:

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

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

...

(c) False or misleading advertising.

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

...

(j) The violation of any law or local ordinance on an acupuncturist’s business premises by an acupuncturist’s employee or a person who is working under the acupuncturist’s professional license or business permit, that is substantially related to the qualifications, functions, or duties of an acupuncturist. These violations shall subject the acupuncturist who employed the individuals, or under whose acupuncturist license the employee is working, to disciplinary action.

...

(l) the failure to notify the board of the use of any false, assumed, or fictitious name other than the name under which the licensee is licensed as an individual to practice acupuncture.

5. Section 4927, of the Code states:

As used in this chapter, unless the context otherwise requires:

...

(d)

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

6. Section 4955.1 of the Code states:

The board may deny, suspend, revoke, or impose probationary conditions upon

1 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:

2 ...

3 (b) Committing a fraudulent or dishonest act as an acupuncturist.

4 ...

5 7. Section 4961 of the Code states:

6 (a) Every person who is now or hereafter licensed to practice acupuncture in
7 this state shall register, on forms prescribed by the Acupuncture Board, the licensee's
8 place of practice, or, if the licensee has more than one place of practice, all of the
9 places of practice. If the licensee has no place of practice, the licensee shall notify the
board of that fact. A person licensed by the board shall register within 30 days after
the date of his or her licensure.

10 (b) An acupuncturist licensee shall post his or her wall license in a conspicuous
11 location in his or her place of practice at all times. If an acupuncturist has more than
one place of practice, he or she shall obtain from the board a duplicate wall license
for each additional location and post the duplicate wall license at each location.

12 (c) Any licensee that changes the location of his or her place of practice shall
13 register each change within 30 days of making that change. In the event a licensee
14 fails to notify the board of any change in the address of a place of practice within the
15 time prescribed by this section, the board may deny renewal of licensure. An
16 applicant for renewal of licensure shall specify in the application whether or not there
has been a change in the location of the licensee's place of practice and, if so, the date
of that change. The board may accept that statement as evidence of the change of
address.

17 8. Section 4975 of the Code states:

18 An acupuncture corporation is a corporation which is authorized to render
19 professional services, as defined in Section 13401 of the Corporations Code, so long
20 as that corporation and its shareholders, officers, directors, and employees rendering
21 professional services who are acupuncturists are in compliance with the Moscone-
Knox Professional Corporation Act, this article and all other statutes and regulations
now or hereafter enacted or adopted pertaining to that corporation and the conduct of
its affairs.

22 With respect to an acupuncture corporation, the governmental agency referred
23 to in the Moscone-Knox Professional Corporation Act is the Acupuncture Board.

24 9. Section 4976 of the Code states:

25 It shall constitute unprofessional conduct and a violation of this chapter for any
26 person licensed under this chapter to violate, attempt to violate, directly or indirectly,
27 or assist in or abet the violation of, or conspire to violate, any provision or term of
this article, the Moscone-Knox Professional Corporation Act, or any regulations duly
adopted under those laws.

28 10. Section 119 of the Code states:

Any person who does any of the following is guilty of a misdemeanor:

...

(b) Lends the person’s license to any other person or knowingly permits the use thereof by another.

...

(e) Knowingly permits any unlawful use of a license issued to the person.

...

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration” or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

11. Section 125 of the Code states:

Any person, licensed under Division 1 (commencing with Section 100), Division 2 (commencing with Section 500), or Division 3 (commencing with Section 5000) is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to them, who conspires with a person not so licensed to violate any provision of this code, or who, with intent to aid or assist that person in violating those provisions does either of the following:

(a) Allows their license to be used by that person.

(b) Acts as their agent or partner.

REGULATORY PROVISIONS

12. California Code of Regulations, title 16, section 1399.475, states:

An acupuncture corporation shall comply with the following provisions:

(a) The corporation is organized and exists pursuant to the general corporation law and is a professional corporation within the meaning of Part 4, Division 3, Title 1 of the Corporations Code

(b) Each shareholder, director, and officer (except as provided in Section 13403 of the Corporations Code and Section 4977.2 of the code) holds a valid acupuncture certificate. An acupuncturist may be a shareholder in more than one acupuncture corporation.

(c) Each professional employee of the corporation who will practice acupuncture, whether or not a director, officer, or shareholder, holds a valid acupuncture certificate.

COST RECOVERY

13. Section 4959 of the Code states:

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

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

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

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

19 (e) All costs recovered under this section shall be considered a reimbursement
20 for costs incurred and shall be deposited in the Acupuncture Fund.

21 **FACTUAL ALLEGATIONS**

22 **Golden Bay Health Center, LLC**

23 14. On around March 20, 2017, Golden Bay Massage, a massage parlor, located at 1998
24 Homestead Ave., Suite 121, Santa Clara, CA, closed its business due to upcoming zoning changes
25 which would have required Golden Bay Massage to relocate or vacate their business. Golden Bay
26 Massage was owned by Shu Juan Li, a massage therapist. Li is not a licensed acupuncturist.

27 15. On the same day Golden Bay Massage closed its business, the business re-opened as
28 Golden Bay Health Center, LLC and filed in the City of Santa Clara, a New Business Tax
Affidavit, listing Shu Juan Li as the owner and Respondent as the Manager. The business is listed
as providing acupuncture,

16. On around May 15, 2017, Golden Bay Health Center, LLC, filed their newly formed
corporation with the Secretary of State, listing the only service offered was acupuncture, with the
business address at 1998 Homestead Ave., Suite 121, Santa Clara, CA. Shu Juan Li is listed as the
Chief Executive Officer and Respondent as the Manager.

1 17. As of October 31, 2017, the business Golden Bay Health Center, LLC. looked the
2 same as when the business was operating as Golden Bay Spa. The exterior of the business still
3 had the Golden Bay Massage business name and only advertised massage services. The inside
4 lobby only had advertisement for massage services with pricing displayed. There were no
5 references or any indication that acupuncture services were offered at the location.

6 18. On November 21, 2017, Santa Clara County police officers conducted a massage
7 business inspection/compliance check at Golden Bay Health Center, LLC. Prior to arriving at the
8 business, officers conducted an internet search to determine if massage services were being
9 advertised, as this is supposed to be an acupuncture establishment, and no longer a massage
10 parlor. The officers did find advertisements posted on “backpage.com”¹ on November 20, 2017,
11 which provided the name of the business as Golden Bay Spa, phone number, address, and
12 inappropriate photos of women in sexually suggestive poses. Upon arrival, officers were greeted
13 by a massage therapist. The officers observed three California Massage Therapy Council
14 certificates posted on the wall along with the acupuncture license of Respondent. The officers did
15 not observe any acupuncture equipment or supplies. Respondent was not present. Officers issued
16 an administrative citation to Shu Juan Li for five city ordinance violations: failure to post massage
17 certificates, incomplete ledger, inappropriate advertising, linens not stored properly, and failure to
18 register a massage therapist.

19 19. On January 29, 2018, online advertisements for Golden Bay Health Center, LLC on
20 Craigslist showed an advertisement for acupuncture services and acceptance of PPO insurance.

21 20. On March 9, 2018, the Respondent was interviewed by the Board’s investigator.
22 Respondent stated she was currently unemployed but sees patients occasionally at 2234 Irving
23 Street, San Francisco, CA, where she also teaches piano lessons. Respondent told the investigator
24 that she was co-owner of the Golden Bay Health Center with Shu Juan Li and provided the
25 business address as 1998 Homestead, but was unable to provide the phone number of the
26 business. Respondent told the investigator that Li paid her \$550 per month to have Respondent’s
27 acupuncture license posted on the wall at Golden Bay Health Center. Respondent provided an

28 ¹ Backpage.com is a classified advertising website.

1 employment agreement dated March 2017, signed by Li and Respondent, stating the terms of the
2 full-time employment agreement which included the \$550 per month for license fee and a \$25 per
3 hour starting wage. The employment agreement also listed Respondent as the employee and Li as
4 the employer, and Respondent would be the only acupuncturist for the company. Even though
5 Respondent received the \$550 monthly payment, Respondent never practiced acupuncture at
6 Golden Bay Health Center between March 2017 and March 2018.

7 21. On March 20, 2018, Golden Bay Health Center, LLC filed in the City of Santa Clara,
8 a Renewal of Business Tax Affidavit, listing both Wenmei Xue and Ann Tung as owners and
9 license type as acupuncture. Wenmei Xue is not a licensed acupuncturist.

10 22. On June 8, 2018, the Board's investigator took photos of the exterior of the Golden
11 Bay Health Center, LLC. The business is still identified by signage as the Golden Bay Spa with
12 only massage advertisements on the windows of the business.

13 23. On October 30, 2018, the Santa Clara Police Department conducted an undercover
14 operation at Golden Health Center, LLC. An undercover officer went into Golden Health Center,
15 LLC with a preplanned appointment for a massage. Wenmei Xue directed the undercover officer
16 to undress. During the massage, Xue inappropriately touched the undercover officer's penis and
17 offered sexual services for money. Shortly after the undercover officer left, police officers
18 entered Golden Health Center, LLC to conduct a massage compliance check. Respondent was
19 located in the front lobby. Three massage therapists were working at the time of inspection. One
20 of the massage therapist was Wenmei Xue.

21 24. On October 24, 2018, a citizen filed a report with the Santa Clara Police Department
22 regarding an encounter that occurred at the Golden Bay Health Center, LLC on October 23, 2018.
23 The citizen paid cash for a massage. During the massage, the masseuse touched the citizen
24 inappropriately on his testicles. The citizen reported the encounter on belief that prostitution was
25 occurring at the business.

26 25. On January 3, 2019, Respondent was interviewed again by the Board's investigator.
27 During the interview, Respondent informed the investigator Golden Bay Health Center, LLC
28 closed in December 2018 due to infractions cited by the City of Santa Clara which included

1 sexual services offered at the business. Respondent also admitted she thought sexual services
2 were being offered at the business.

3 **Acuwonder, Inc.**

4 26. On November 28, 2018, the Board’s investigator visited 53 Cronin Drive, Santa
5 Clara, CA where an online google search showed Acuwonder was listed as a business at the
6 location.

7 27. Acuwonder, Inc. was formed on or about March 23, 2011 as an acupuncture and
8 acupressure business. Jinyi Huang filed Articles of Incorporation as the Chief Executive Officer,
9 with a business location at 1280 S. Abel St, Milpitas, CA 95035. On October 26, 2018, Aidan
10 Xie, an Officer, signed an updated Statement of Information. Jinyi Huang and Aidan Xie are not
11 licensed acupuncturist.

12 28. During the January 3, 2019 interview with the Board investigator, Respondent told
13 the investigator that she worked at Acuwonder located at 265 Meridian Ave., San Jose, CA.
14 Respondent disclosed she was paid by Acuwonder \$550 per month for the use of her acupuncture
15 license, but she never saw any patients there. Respondent told the investigator the agreement was
16 for Acuwonder to use her acupuncture license and that Respondent needed to physically be at the
17 office “for when the city inspection happen.”

18 29. On May 10, 2019, the Board investigator conducted an online search through the City
19 of San Jose website for current business licenses at 265 Meridian Ave., Suite 9, San Jose, CA.
20 The current business licensed at the address is Acuwonder, which is listed as an acupuncture
21 business. The Board investigator went to the address location and was greeted by Aidan Xie.
22 The investigator asked to speak to the acupuncturist. Xie pulled Respondent’s acupuncturist
23 certificate from a back shelf and presented it to the investigator. Also posted on the wall behind
24 the back counter was a California Massage Therapy license for Xinfeng Bao. Bao was one of the
25 massage therapist present at the police inspection at Golden Health Center, LLC on October 30,
26 2018.

27 ///

28 ///

1 **Shu Ling Health Center LP (formerly Shangrila Spa, LP)**

2 30. On December 5, 2018, the Board investigator found Secretary of State records, listing
3 Shui Ling Health Center LP as an acupuncture business, which listed Jie Len Chen as the owner
4 and Respondent as the Agent for Service of Process. On April 21, 2014, Sui Zhou and
5 Respondent became partners for Shangrila Spa, located at 131 E. Taylor Ave., San Jose, CA. On
6 March 12, 2015, the name of Shangrila Spa, LP was changed to Shui Ling Health Center. Jie Lan
7 Chen was added as General Partner. Sui Zhou was disassociated as a partner and Respondent was
8 listed as the Agent of Service. On August 15, 2018, Shu Ling Health Center, LP was cancelled,
9 signed by Jie Lan Chen. Sui Zhou and Jie Lan Chen are not licensed acupuncturist.

10 31. On the January 3, 2019 interview with the Board investigator, Respondent told the
11 investigator that she became a partner to the business Shu Ling Health Center LP in 2014 with the
12 owner named Jie Lan Chen, who Respondent believed to be a massage therapist. Chen paid
13 Respondent \$550 per month to offer acupuncture. Respondent did not believe she had a wall
14 certificate posted on the walls of the business. Respondent also provided a Limited Partnership
15 Agreement, dated March 28, 2014, entered between Sui Zhou and Respondent, to provide
16 professional services.

17 32. On February 8, 2019, the Board investigator visited Shui Ling Health Center LP at
18 the listed address and found the building showed no business signage and the electric “open” sign
19 was off. The address appeared to be a vacant address.

20 **Other Practice Locations**

21 33. On April 14, 2018, in an email to the Board, Respondent disclosed she practices at
22 her office located at 2234 Irving Street, San Francisco and works actively with Jade Health and
23 Wellness Facilities of Synergy and Fremont Orthopedic & Rehabilitative Medicine. She also
24 works inactively² with Shuiling Health Center, Golden Bay Health Center, and a new office with
25 Acuwonder. None of these offices and locations are registered with the Board as places of
26 practice for Respondent.

27 _____
28 ² Respondent’s email stating she works “inactively” refers to the three businesses that she allowed
to post her acupuncture certificate in exchange for payment. She does not see patients at the three
businesses.

1 **FIRST CAUSE FOR DISCIPLINE**

2 (Lends License and/or Permits Unlawful Use of a License and/or Fraudulent and Dishonest Act)

3 34. Respondent is subject to disciplinary action under Code section 119(b) and/or 119(e),
4 section 125, section 4955(d) and 4955.1(b) in that Respondent engaged in conduct described
5 above, including, but not limited to, the following:

6 a. Respondent registered Golden Bay Health Center, LLC as a purported acupuncture
7 business, which was used as a massage parlor.

8 b. Respondent allowed her California Acupuncture license to be used by Shu Yuan Li as
9 a massage parlor and avoid oversight by the Santa Clara Police Department, violating multiple
10 local ordinances, including offering sexual services.

11 c. Respondent allowed her California Acupuncture license to be used by Acuwonder,
12 Inc. knowing the intended purpose was to respond to city inspections, and not for acupuncture
13 services.

14 d. Respondent knowingly permitted the use of her license by others, and for unlawful
15 purposes of presenting an establishment as an acupuncture clinic, when it was not.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Partnership and/or Employment Agreement with Unlicensed Individuals)

18 35. Respondent is subject to disciplinary action under California Code of Regulations,
19 title 16, section 1399.475, Code section 4975 and 4976 in that Respondent engaged in conduct
20 described above, including, but not limited to, the following:

21 a. Respondent entered into a partnership and/or employment agreement with Shu Juan
22 Li, who is not a licensed acupuncturist, in the formation of Golden Bay Health Center, LLC.

23 b. Respondent entered into ownership of Golden Bay Health Center, LLC with Wenmei
24 Xue, who is not a licensed acupuncturist.

25 c. Respondent entered into employment agreement with Jinyi Huang and/or Aidan Xie,
26 both unlicensed acupuncturist, in her association and work at Acuwonder, Inc.

1 d. Respondent entered into partnership and employment agreement with Sui Zhou
2 and/or Jie Lan Chen, both unlicensed acupuncturist, in her partnership and work at Shui Ling
3 Health LP (formerly Shangrila Spa, LP).

4 **THIRD CAUSE FOR DISCIPLINE**

5 (False Advertising and/or Committing a Fraudulent or Dishonest Act as an Acupuncturist)

6 36. Respondent is subject to disciplinary action under Code section 4955(c), section 4955
7 (d), and 4955(j) in that Respondent engaged in conduct described above, including, but not
8 limited to, the following:

9 a. Respondent advertised rented her California Acupuncture license to be used by Shu
10 Yuan Li to register Golden Bay Health Center, LLC as a purported acupuncture business, which
11 was used as a massage parlor.

12 **FOURTH CAUSE FOR DISCIPLINE**

13 (Failure to Notify Place of Practice)

14 37. Respondent is subject to disciplinary action under Code section 4955(l) and 4961(a)
15 in that Respondent engaged in the conduct described above, including, but not limited to, the
16 following:

17 a. Respondent failed to notify the Acupuncture Board of all the places of practice,
18 including her office located at 2234 Irving Street, San Francisco, Jade Health and Wellness
19 Facilities of Synergy, Fremont Orthopedic & Rehabilitative Medicine, Shuiling Health Center LP,
20 Golden Bay Health Center, and Acuwonder, Inc.

21 b. Respondent failed to register with the Acupuncture Board all the places of practice,
22 including her office located at 2234 Irving Street, San Francisco, Jade Health and Wellness
23 Facilities of Synergy, Fremont Orthopedic & Rehabilitative Medicine, Shuiling Health Center LP,
24 Golden Bay Health Center, and Acuwonder, Inc

25 **PRAYER**

26 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
27 and that following the hearing, the Acupuncture Board issue a decision:
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Revoking or suspending Acupuncture Number 11253, issued to Ann Tung Cappa, L.Ac.;
2. Ordering Ann Tung Cappa, L.Ac. to pay the 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: April 20, 2021

Original Signature on File
BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

SF2020401907