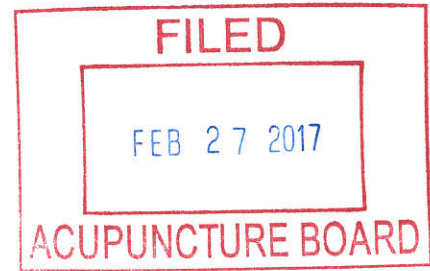


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8
9 **BEFORE THE**
ACUPUNCTURE BOARD
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 1A-2016-103

12 **WEI DONG ZHAO, L.Ac.**
13 **1205 North Euclid**
14 **Anaheim, CA 92801**
Acupuncturist License No. AC 15758,

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

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

21 2. On or about October 1, 2013, the Acupuncture Board issued Acupuncturist License
22 Number AC 15758 to WEI DONG ZHAO, L.Ac. (Respondent). The Acupuncturist License
23 expired on October 31, 2016, and has not been renewed, and is therefore delinquent.

24 **JURISDICTION**

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

28 //

1 4. Section 4928.1 of the Code states:

2 “Protection of the public shall be the highest priority for the Acupuncture Board in
3 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
4 public is inconsistent with other interests sought to be promoted, the protection of the public shall
5 be paramount.”

6 5. Section 4955 of the Code states in pertinent part:

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

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

10 “ . . .

11 “(b) Conviction of a crime substantially related to the qualifications, functions, or duties of
12 an acupuncturist, the record of conviction being conclusive evidence thereof.

13 “ . . . ”

14 “(i) Any action or conduct that would have warranted the denial of the acupuncture license.

15 “ . . . ”

16 6. Section 4956 of the Code states:

17 “A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
18 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
19 is deemed to be a conviction within the meaning of this chapter.

20 “The board may order a license suspended or revoked, or may deny a license, or may
21 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
23 suspending the imposition of sentence irrespective of a subsequent order under the provisions of
24 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to
25 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
26 complaint, information, or indictment.”

27 7. Section 490 of the Code states:

28 “(a) In addition to any other action that a board is permitted to take against a licensee, a

1 board may suspend or revoke a license on the ground that the licensee has been convicted of a
2 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
3 or profession for which the license was issued.

4 “(b) Notwithstanding any other provision of law, a board may exercise any authority to
5 discipline a licensee for conviction of a crime that is independent of the authority granted under
6 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
7 of the business or profession for which the licensee's license was issued.

8 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
9 conviction following a plea of nolo contendere. Any action that a board is permitted to take
10 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
11 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
12 made suspending the imposition of sentence, irrespective of a subsequent order under the
13 provisions of Section 1203.4 of the Penal Code.

14 “(d) The Legislature hereby finds and declares that the application of this section has been
15 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
16 554, and that the holding in that case has placed a significant number of statutes and regulations
17 in question, resulting in potential harm to the consumers of California from licensees who have
18 been convicted of crimes. Therefore, the Legislature finds and declares that this section
19 establishes an independent basis for a board to impose discipline upon a licensee, and that the
20 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
21 constitute a change to, but rather are declaratory of, existing law.”

22 8. Section 493 of the Code states:

23 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
24 the department pursuant to law to deny an application for a license or to suspend or revoke a
25 license or otherwise take disciplinary action against a person who holds a license, upon the
26 ground that the applicant or the licensee has been convicted of a crime substantially related to the
27 qualifications, functions, and duties of the licensee in question, the record of conviction of the
28 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,

1 and the board may inquire into the circumstances surrounding the commission of the crime in
2 order to fix the degree of discipline or to determine if the conviction is substantially related to the
3 qualifications, functions, and duties of the licensee in question.

4 “As used in this section, ‘license’ includes ‘certificate,’ ‘permit,’ ‘authority,’ and
5 ‘registration.’”

6 9. California Penal Code Section 246 states:

7 “Any person who shall maliciously and willfully discharge a firearm at an inhabited
8 dwelling house, occupied building, occupied motor vehicle, occupied aircraft, inhabited housecar,
9 as defined in Section 362 of the Vehicle Code, or inhabited camper, as defined in Section 243 of
10 the Vehicle Code, is guilty of a felony, and upon conviction shall be punished by imprisonment in
11 the state prison for three, five, or seven years, or by imprisonment in the county jail for a term of
12 not less than six months and not exceeding one year.

13 “As used in this section, "inhabited" means currently being used for dwelling purposes,
14 whether occupied or not.”

15 10. California Penal Code Section 273a states, in pertinent part:

16 “(a) Any person who, under circumstances or conditions likely to produce great bodily
17 harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable
18 physical pain or mental suffering, or having the care or custody of any child, willfully causes or
19 permits the person or health of that child to be injured, or willfully causes or permits that child to
20 be placed in a situation where his or her person or health is endangered, shall be punished by
21 imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six
22 years.”

23 COSTS

24 11. Section 4959 of the Code states:

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

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

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

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

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

13 **FIRST CAUSE FOR DISCIPLINE**

14 (Conviction of a Crime)

15 12. Respondent is subject to disciplinary action for unprofessional conduct under Code
16 section 4955, subdivisions (b) and (i), in that he was convicted of violating California Penal Code
17 sections 246, and 273a subdivision (a), commonly known respectively as Shooting At An
18 Inhabited Dwelling, and Child Abuse, crimes which are substantially related to the qualifications,
19 functions, and duties of an acupuncturist. The circumstances are as follows:

20 13. On or about October 13, 2016, in Superior Court of California proceedings entitled
21 *People of the State of California vs. Weidong Zhao*, case number KA112335, after his plea of
22 nolo contendere, Respondent was convicted of Count 2, a violation of Penal Code section 246,
23 and Count 3, a violation of Penal Code section 273a, subdivision (a). The remaining counts of
24 the First Amended Felony Complaint were dismissed by the Court in the interests of justice based
25 on the plea and sentence agreement.

26 14. Following Respondent's plea of nolo contendere, the Court sentenced Respondent to
27 serve seven (7) years in state prison as a result of his plea of nolo contendere to Count 2, and four
28 (4) years in state prison as a result of his plea of nolo contendere to Count 3. The Court ordered

1 the sentence imposed on Count 3 run concurrent to the sentence imposed on Count 2.

2 15. The Court further ordered Respondent to obey the protective order with which he was
3 served in open court, and recommended that Respondent be housed in a fire camp facility with
4 the Department of Corrections and Rehabilitations if Respondent qualified for that placement.

5 16. The facts underlying Respondent's plea of nolo contendere to Counts 2 and 3 in the
6 above conviction are as follows:

7 17. On or about April 17, 2016, at approximately 9:00 p.m. Respondent, accompanied by
8 his seven and eight year old sons, tracked his wife to a house where she was eating dinner with
9 two individuals. After arguing with his wife, Respondent left the house. Later, still accompanied
10 by his children in his car, Respondent returned to the house and fired two gunshots from his car at
11 the house. One of the above individuals was sitting in a chair by the front door of the house at the
12 time but was not wounded.

13 **PRAYER**

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

16 1. Revoking or suspending Acupuncturist License Number AC 15758, issued to Wei
17 Dong Zhao, L.Ac.;

18 2. Ordering Wei Dong Zhao, L.Ac. to pay the Acupuncture Board the reasonable costs
19 of the investigation and enforcement of this case, pursuant to Business and Professions Code
20 section 4959;

21 3. If placed on probation, ordering him to pay to the Acupuncture Board the costs of
22 probation monitoring; and,

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4. Taking such other and further action as deemed necessary and proper.

DATED: FEB 27 2017


BENJAMIN BODEA
Executive Officer
Acupuncture Board
Department of Consumer Affairs
State of California
Complainant

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