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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-2016-103

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

DEFAULT DECISION
AND ORDER

17 One. [Gov. Code, §11520]

18 FINDINGS OF FACT

19 1. On or about February 27, 2017, Complainant Benjamin Bodea, in his official capacity
20 as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs, filed
21 Accusation No. 1A-2016-103 against WEI DONG ZHAO, L.Ac. (Respondent) before the
22 Acupuncture Board.

23 2. On or about October 1, 2013, the Acupuncture Board (Board) issued Acupuncturist
24 License No. AC 15758 to Respondent. The Acupuncturist License expired on October 31, 2016,
25 and has not been renewed. A true and correct copy of Respondent's license history is attached as
26 Exhibit 1, in the separate accompanying Default Decision Evidence Packet and incorporated by
27 reference as if fully set forth herein.¹

28 ¹ All exhibits are attached in the Default Decision Evidence Packet. Each exhibit in the
Default Decision Evidence Packet is a true and correct copy and is incorporated by reference, as
if fully set forth herein.

1 3. On or about February 27, 2017, Kristine Brothers, an employee of the Complainant
2 Agency, served by Certified and First Class Mail a copy of the Accusation No. 1A-2016-103,
3 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
4 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which
5 was and is 1205 North Euclid Anaheim, CA 92801. A copy of the Accusation, the related
6 documents, and Declaration of Service are attached as exhibit 2, and are incorporated herein by
7 reference.

8 4. Service of the Accusation was effective as a matter of law under the provisions of
9 Government Code section 11505, subdivision (c). On or about March 6, 20147, the U.S. Postal
10 Service returned a signed Certified Return Receipt Card to the Board, indicating that the
11 Accusation Packet had been delivered and signed for by the Respondent on March 1, 2017. A
12 copy of the signed Certified Return Receipt Card returned by the post office is attached as Exhibit
13 3.

14 5. Government Code section 11506 states, in pertinent part:

15 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
16 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
17 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
18 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

19 6. California Government Code section 11520 states, in pertinent part:

20 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
21 agency may take action based upon the respondent's express admissions or upon other evidence
22 and affidavits may be used as evidence without any notice to respondent."

23 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
24 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
25 1A-2016-103. A copy of the Declaration of Deputy Attorney General Wendy Widlus is attached
26 as Exhibit 4, and is incorporated herein by reference.

27 8. Pursuant to its authority under Government Code section 11520, the Board finds
28 Respondent is in default. The Board will take action without further hearing and, based on

1 Respondent's express admissions by way of default and the evidence before it, contained in
2 exhibits 1 thru 6, finds that the allegations in Accusation No. 1A-2016-103 are true.

3 9. Business and Professions Code section 118 states, in pertinent part:

4 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
5 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
6 order of a court of law, or its surrender without the written consent of the board, shall not, during
7 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
8 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
9 provided by law or to enter an order suspending or revoking the license or otherwise taking
10 disciplinary action against the license on any such ground."

11 10. Section 4928.1 of the Code states:

12 "Protection of the public shall be the highest priority for the Acupuncture Board in
13 exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the
14 public is inconsistent with other interests sought to be promoted, the protection of the public shall
15 be paramount."

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

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

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

20 "...

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

23 "..."

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

25 "..."

26 12. Section 4956 of the Code states:

27 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
28 charge which is substantially relate to the qualifications, functions, or duties of an acupuncturist is

1 deemed to be a conviction within the meaning of this chapter.

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

9 13. Section 490 of the Code states:

10 “(a) In addition to any other action that a board is permitted to take against a licensee, a
11 board may suspend or revoke a license on the ground that the licensee has been convicted of a
12 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
13 or profession for which the license was issued.

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

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

24 “(d) The Legislature hereby finds and declares that the application of this section has been
25 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
26 554, and that the holding in that case has placed a significant number of statutes and regulations
27 in question, resulting in potential harm to the consumers of California from licensees who have
28 been convicted of crimes. Therefore, the Legislature finds and declares that this section

1 establishes an independent basis for a board to impose discipline upon a licensee, and that the
2 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
3 constitute a change to, but rather are declaratory of, existing law.”

4 14. Section 493 of the Code states:

5 “Notwithstanding any other provision of law, in a proceeding conducted by a board within
6 the department pursuant to law to deny an application for a license or to suspend or revoke a
7 license or otherwise take disciplinary action against a person who holds a license, upon the
8 ground that the applicant or the licensee has been convicted of a crime substantially related to the
9 qualifications, functions, and duties of the licensee in question, the record of conviction of the
10 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
11 and the board may inquire into the circumstances surrounding the commission of the crime in
12 order to fix the degree of discipline or to determine if the conviction is substantially related to the
13 qualifications, functions, and duties of the licensee in question.

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

16 15. California Penal Code Section 246 states:

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

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

25 16. California Penal Code Section 273a states, in pertinent part:

26 “(a) Any person who, under circumstances or conditions likely to produce great bodily
27 harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable
28 physical pain or mental suffering, or having the care or custody of any child, willfully causes or

1 permits the person or health of that child to be injured, or willfully causes or permits that child to
2 be placed in a situation where his or her person or health is endangered, shall be punished by
3 imprisonment in a county jail not exceeding one year, or in the state prison for two, four, or six
4 years.”

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

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

16 19. Following Respondent’s plea of nolo contendere, the Court sentenced Respondent to
17 serve seven (7) years in state prison as a result of his plea of nolo contendere to Count 2, and four
18 (4) years in state prison as a result of his plea of nolo contendere to Count 3. The Court ordered
19 the sentence imposed on Count 3 run concurrent to the sentence imposed on Count 2.

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

23 21. The facts underlying Respondent’s plea of nolo contendere to Counts 2 and 3 in the
24 above conviction are as follows:

25 22. On or about April 17, 2016, at approximately 9:00 p.m. Respondent, accompanied by
26 his seven and eight-year-old sons, tracked his wife to a house where she was eating dinner with
27 two individuals. After arguing with his wife, Respondent left the house. Later, still accompanied
28 by his children in his car, Respondent returned to the house and fired two gunshots from his car at

1 the house. One of the above individuals was sitting in a chair by the front door of the house at the
2 time but was not wounded.

3 23. The Acupuncture Board further finds that pursuant to Business and Professions Code
4 section 4959, the cost of investigation and enforcement total \$2,770.00 based on the Certification
5 of Costs contained in Exhibit 5.

6
7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent WEI DONG ZHAO, L.Ac. has
9 subjected his Acupuncturist License No. AC 15758 to discipline. A copy of the Accusation and
10 the related documents and Declaration of Service are attached.

11 2. The agency has jurisdiction to adjudicate this case by default.

12 3. The Acupuncture Board is authorized to revoke Respondent's Acupuncturist License
13 based upon the following violations alleged in the Accusation:

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

19 4. Respondent is liable to the Board the costs of investigation and enforcement in the
20 amount of \$2,770.00.

21
22 ORDER

23 IT IS SO ORDERED that Acupuncturist License No. AC 15758, heretofore issued to
24 Respondent WEI DONG ZHAO, L.Ac., is revoked.

25 Respondent is ordered to reimburse the Acupuncture Board the amount of \$2,770.00 for its
26 investigative and enforcement costs. The filing of bankruptcy by Respondent shall not relieved
27 Respondent of his responsibility to reimburse the board for its costs. Respondent's Acupuncture
28 Licenses may not be renewed or reinstated unless all costs ordered under Business and

1 Professions Code section 4959 have been paid.

2 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
3 written motion requesting that the Decision be vacated and stating the grounds relied on within
4 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
5 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

6 This Decision shall become effective on _____.

7 It is so ORDERED _____

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FOR THE ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS

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